A Strategic Review of the New South Wales Juvenile Justice System

Report for the Minister for Juvenile Justice

Noetic Solutions Pty Limited
ABN 87 098 132 024
April 2010
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<td>Mr Peter Muir, Chief Executive Juvenile Justice, Department of Human Services</td>
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Executive Summary

OVERVIEW

1. This report was commissioned by the Minister for Juvenile Justice and his agency to undertake a strategic and comprehensive review of juvenile justice in New South Wales (NSW). Juvenile Justice was last reviewed in 1993 and this led to significant reforms that had many positive outcomes for both the State, and children and young people in, or at risk of entering, the system. In recent years it would appear that some of these improvements have been eroded and the outlook for the future is poor. A key indicator is that levels of detention have risen substantially, and will continue to do so, despite the levels of juvenile crime remaining essentially static.

2. In approaching this task, the Review consulted widely including representatives from NSW agencies, academia, the Non-Government sector, other jurisdictions and with members of the Government and Opposition. Members of the public also made a range of submissions that were considered by the Review. The Review spoke with young people who were caught up in the juvenile justice system – this provided a very different perspective. A key task of the Review Team was the development of an evidence base to understand leading practice in Australia and overseas. This report consequently provides a comprehensive description of juvenile justice more broadly and more specifically about how it operates in NSW.

3. The Review notes that Government has introduced legislation, some aimed at adults, which has had unintended consequences for children and young people. This report positions that children and young people are different to adults and need to be considered separately in the justice debate. This thread runs through the report and influences a number of the recommendations. In saying this, the Review wholeheartedly believes that children and young people must be held accountable for their actions.

4. The issue of detaining children and young people was raised consistently during the consultation process. There is no doubt that detention is required for some offenders and offences. There is also little doubt that detention does not act as a deterrent and that it leads to poorer long term outcomes both for the individual and society in general. The Review notes that the most recent research into those detained in NSW’s juvenile justice system found that a quarter could have intellectual disabilities. This throws a very different light upon the issue of detention – is NSW addressing what is fundamentally a health issue through justice means? This complex issue will require careful consideration by Government.

5. As with many complex issues, the causes of juvenile crime fall within the ambit of a range of agencies and addressing the issue is not a problem for Juvenile Justice and the Department of Human Services alone. The report highlights the many interdependencies between agencies and the requirement for Whole of Government (and indeed Whole of Community) solutions to juvenile justice. The report notes the key role played by the NSW Police and makes a number of recommendations to strengthen its role, including amending some current practices particularly around bail determination and compliance.
6. The Review’s Terms of Reference specifically state the requirement to examine ways to reduce Indigenous offending. In doing so, the Review found that Indigenous offending is a highly complex issue with deep seated and long standing social disadvantage being the root cause of Indigenous overrepresentation in the NSW (and national) juvenile justice system. Addressing this disadvantage is a long term, multi-agency and multi-jurisdictional task. A key recommendation of the Review is centred on how NSW can address this issue.

7. The Review makes a total of 77 recommendations. In implementing these recommendations it offers three strategic choices for consideration by Government. The options and recommendations present Government with difficult and challenging decisions. Unless these challenges are confronted, NSW will be faced with escalating costs, poor social outcomes and a less safe society.

BACKGROUND

8. Noetic Solutions Pty Ltd (Noetic) was contracted by the Minister for Juvenile Justice and Juvenile Justice, Department of Human Services to undertake a strategic review of juvenile justice in NSW. The purpose of the review is propose a plan for future policy, programs, and practices within the juvenile criminal justice system. This plan is to be developed through the identification of emerging trends, evaluating existing government legislation, policy and practices, with the aim of reducing re-offending (particularly of Indigenous offenders). In doing so, the Review is to take into account relevant national and international research, and provide the costs and benefits of various strategies and options available to the government.

9. The last strategic review of the juvenile justice system was conducted in 1993 with the Green Paper, Future Directions for Juvenile Justice in New South Wales released by the Juvenile Justice Advisory Council of NSW in 1994. This review provided the basis of significant reform, including the introduction of restorative justice principles and a strategic focus on prevention, diversion, community-based programs and the use of detention as a last resort. Some of the major changes as a result of the review included the development of a Charter of Principles for Juvenile Justice in NSW, and ultimately the introduction of the Young Offenders Act 1997.

10. Much has changed since the introduction of the Young Offenders Act in 1997. This includes a significant increase in the numbers of children and young people under control orders, a large growth in the numbers held on remand, a continued overrepresentation of Indigenous young people in the juvenile justice system, and while a steady decline in the re-offending rate has occurred, it remains at approximately 57.3% overall (and at 65.6% for those in custody). Other trends are also noteworthy. This includes a perceived reduction in the bipartisan support of the changes introduced in the 1990s around diversion and detention as a last resort, with an increased focus on ‘law and order’ and ‘getting tough on crime’. Other external drivers include growing community expectations of government, greater focus on whole-of-government approaches (e.g. the new ‘super agencies’), and the current financial pressure on the NSW Government. These trends, issues and drivers are all considered by the Review.

A FUNDAMENTAL QUESTION

11. Before exploring the Review’s findings, the Review sets out two fundamental questions for consideration – ‘Are children and young people important, and if so, are they different to adults?’ The
Review’s position is that children and young people are important to society – they represent the future, and failure to effectively prepare them for the future results in significant long term costs to the individual and the community. The Review also sets out that it is equally important to understand they are not ‘little adults’ – they are developing and learning to become adults. Notably, this importance and difference is recognised in a number of strategic and planning documents issued by the NSW Government. Government’s acknowledgement of these facts was also a driver for the introduction of the reforms of the 1990s.

12. The reforms of the 1990s realised considerable improvements in the areas of prevention, early intervention and community-based responses. Importantly, this resulted in a shift towards addressing the underlying causes of crime and preventing children and young people from entering the juvenile justice system. There are a number of examples of effective current practice throughout NSW including the implementation of evidence-based programs such as the Intensive Supervision Program, expansion of the Brighter Futures early intervention program, local case management by the NSW Police and diversionary options such as the Adolescent Court and Community Team for children and young people with mental health problems. These are just some of the effective services and programs identified by the Review.

However, the very nature of its task has meant that the Review has concentrated on aspects of the system that require improvement and action. The approach that the Review has taken in presenting its findings is encapsulated in the diagram below.

**NSW Juvenile Justice Review Framework**

![NSW Juvenile Justice Review Framework](image)

**KEY FINDINGS**

13. The last decade has seen a growth in ‘getting tough on crime’ rhetoric from politicians in NSW. The evidence for this is best demonstrated in the changes to the *Bail Act 1978* over that time, with 18 amendments being made since 2000. While it is appropriate that Government respond to community concerns about law and order, it is apparent that many of the changes resulting from this response have had unintended consequences for children and young people. If it is agreed that children and young people are different to adults, then it is fitting that they be excluded from this debate. This is not to say that children and young people should not be held accountable for their actions. The Review makes no findings that seek to lessen personal accountability or responsibility. Rather, it is recommended that a bipartisan approach to juvenile justice be adopted based on a recognition that children and young people are both important and different, that rehabilitation and diversion underpin
the State’s approach to juvenile justice and that criticism of the government of the day on the issue be evidence based.

14. The juvenile justice system is built around a number of key pieces of legislation. The most important of these are the Young Offenders Act, the Children (Criminal Proceedings) Act and the Bail Act. The Review believes that in general the Young Offenders Act is effective, although some recommendations are made to improve its oversight and implementation. In examining the Children (Criminal Proceedings) Act and the Bail Act, the Review has found that the changes to the Bail Act have had a range of unintended consequences that have negatively impacted on the juvenile justice system. The Review found that these unintended consequences on children and young people can best be overcome by having the Children (Criminal Proceedings) Act take precedence over the Bail Act. This will ensure that the specific principles for dealing with children and young people are considered for the determination of bail. To assist with the reduction in the likelihood of unintended consequences with government decisions, the Review also recommends that a children and young person’s impact statement is introduced into the legislation and policy development and amendment process.

15. It is evident that individual departments and agencies are doing a lot of good work for children and young people, but this effort is not always coordinated, and does not fit into a broader strategic framework. The majority of existing Government ‘strategic’ documents are focused on identifying actions and projects (e.g. the State Plan, Youth Action Plan and Keep Them Safe). There is no strategy or framework that sets out a philosophical approach, long term goals, and brings together the range of services, projects, programs etc. available for children and young people (i.e. from building youth friendly infrastructure to juvenile justice centres). The Review recommends the development of such a strategy in order to assist policy makers and implementers with decision making and action by providing a coherent long term approach to children and young people.

16. Children and young people who enter the juvenile justice system will do so with well known risk factors. These factors emerge early in a child’s life and are linked to a range of risk factors, including family dysfunction, intellectual disability, poor mental health, dislocation from education, and homelessness. There is substantial evidence that intervening early in the lives of children at risk will divert them from entering the juvenile justice system and the Review makes a number of recommendations about how this might be best achieved. It is noted that the Government’s Brighter Futures initiative will help address some of the issues raised. However, it is also noted that a substantial increase in the number of children entering care has occurred. This is significant as many of these children will go on to enter the juvenile justice system.

17. The first point of contact for children who enter the juvenile justice system is the NSW Police. The NSW Police undertake a difficult task in dealing with children and young people who commit crime. Notably, children and young people make up 26% of all persons of interest (i.e. of all ages) proceeded against by NSW Police, and a large proportion of unrecorded crime. The NSW Police effectively divert many of them from offending behaviour through the use of the Young Offenders Act. However, the use of diversionary options is not uniformly applied across all Local Area Commands and the Review believes this is an area for improvement. The Review also makes recommendations about strengthening the role of the Police and Community Youth Clubs, drawing together the various
elements of the NSW Police involved with children and young people into a single command and raising the level of the Police Spokesperson on Youth. The Review identifies the requirement for Police to develop an up to date and evidence based strategic approach to children and young people.

18. As an individual progresses through the juvenile justice system, unless diverted, they will next come in contact with the Courts. The Children's Court provides a full range of support and sentencing options to offenders. Unfortunately this range of services is not provided in regional and remote locations and improving this situation is a recommendation of the Review. The Review also notes that there has been an increasing trend in the use of control orders (that is detention), and this coupled with a significant increase in the use of remand, has seen a significant increase in the numbers in detention. The evidence, both Australian and international, is that detention is counter productive by providing neither a deterrent or reducing re-offending. Quite simply greater use of detention is not making NSW a safer place.

19. Once a child or young person receives a youth justice conference, community-based order or control order, they are in the domain of Juvenile Justice. It is notable that this agency is in effect at the ‘end of the line’ and deals with the consequences of social dysfunction. In reviewing the performance of the agency, the Review notes that re-offending rates from the use of community-based orders have remained relatively stable over the previous six years. Improving these outcomes should be a high priority for the agency. The Review also notes that the rising levels of detention and other predictive factors (increasing numbers entering care, etc.) means that the capacity of juvenile justice centres will quickly be exceeded. Addressing this issue is a challenge for the NSW Government and the Review makes a number of recommendations that will assist the Government with the issue.

20. Once a child or young person exits a detention centre they are assisted with their reintegration into the community by Juvenile Justice and the non-Government sector. The effective reintegration of this group is important as they have the highest re-offending rates and are invariably the most serious offenders. While there are services and programs to assist with reintegration, the Review is recommending a significant change to the way these services programs to reduce re-offending are undertaken. This involves providing services and programs to young offenders on a voluntary basis beyond their court ordered mandate (control and supervised orders) in order to ensure successful reintegration into the community.

21. In reviewing offenders, it is readily apparent that Indigenous children and young people are significantly overrepresented in all categories. As noted earlier, the causes of offending behaviour are well known and consequently, Indigenous overrepresentation is rooted in deep social disadvantage. The Review makes a number of recommendations to help reduce this overrepresentation, however, these will not address the underlying causes of disadvantage. The Review observes that much is being done by the Commonwealth and NSW Government to reduce disadvantage, but the indicators suggest that little progress is being made. In seeking to improve this situation the Review recommends a fundamental rethink of the approach to addressing Indigenous disadvantage. Without new approaches to improving Indigenous social cohesion, overrepresentation will remain a feature of juvenile justice both in NSW and Australia more generally.
GOVERNMENT’S STRATEGIC OPTIONS

22. The Review provides the NSW Government with three strategic options for determining the future of juvenile justice in NSW. Each strategy will have its own benefits and disadvantages which must be weighed up by government. The figure below summarises the key features of each strategy. Underpinning each strategy are a number of common recommendations that the Review believes can easily be implemented and will result in short to medium term benefits. Each strategy then provides Government with an increasing opportunity for greater reform. In positioning these reforms, the Review believes that the community will gain greater long term benefits by adopting proven approaches to reducing re-offending.

Overview of Strategic Options

<table>
<thead>
<tr>
<th>Option 1: Continue on the same path</th>
<th>Option 2: Less cost and some better outcomes</th>
<th>Option 3: A change in thinking – Justice Reinvestment</th>
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<tr>
<td>+ Maintaining the status quo plus the implementation of some common recommendations.</td>
<td>+ Implementation of common recommendations.</td>
<td>+ Involves all Review recommendations.</td>
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<tr>
<td>+ Based on current static crime figures and perceived low appetite for reform.</td>
<td>+ Implementation of recommendations to reduce remand numbers.</td>
<td>+ Justice reinvestment to divert funding from building juvenile justice centres to evidence-based prevention and early intervention programs and services for local communities.</td>
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<td>+ Approximate cost of $348.14 million over the next 6 years to meet forecast juvenile justice centre capacity.</td>
<td>+ Based on evidence that shows the negative effects of remand.</td>
<td>+ Could be implemented through spiral development or immediate widespread implementation.</td>
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<tr>
<td>+ Highly unlikely to address the underlying causes of crime or reduce re-offending.</td>
<td>+ Approximate cost of $34.4 million over the next 3 years to meet forecast juvenile justice centre capacity (less demand than Option 1).</td>
<td>+ Approximate costs of $348.14 million to reinvest into addressing the underlying causes of crime.</td>
</tr>
<tr>
<td>+ Low risk option in terms of certainty of outcomes.</td>
<td>+ Is unlikely to address the underlying causes of crime or reduce re-offending - particularly indigenous offending.</td>
<td>+ Significant long term benefits for the community.</td>
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THE RECOMMENDED OPTION

23. The Review can not recommend the simplest option – Option One – because it will result in substantial expenditure by the NSW Government with no benefit and expose the community and children and young people to poor long term outcomes. Although Option 2 will minimise these costs, it will not address the underlying causes of juvenile crime. Consequently, the Review recommends that Option Three is adopted by the NSW Government. An outline implementation plan (and all associated Review recommendations) is included in this report. Option Three is recommended because it provides the greatest long term return on investment through tangible benefits such as reduced crime, reduced re-offending and cost savings. The basis of this option is Justice Reinvestment – this approach seeks to address the causes of crime through investing resources in social programs that would otherwise have been spent on dealing with the consequences of crime – most notably the construction of prisons and detention centres. It is important to understand that while it has the potential to deliver the greatest benefits, it does not come without risk. However, international evidence, particularly from the United States suggests that Justice Reinvestment is extremely effective if well implemented. The challenge for Government is to take a long term perspective on the issue of juvenile justice in order to deliver the most benefits to the young people and the community of NSW.
Introduction

Background

1. Noetic Solutions Pty Limited (Noetic) was contracted by the Minister for Juvenile Justice and Juvenile Justice, Department of Human Services to undertake a strategic review of juvenile justice in New South Wales (NSW) (the Review). The Terms of Reference for the Review are provided below. The NSW Government has periodically undertaken reviews of the juvenile justice system with the last major review being conducted in 1993. This resulted in significant reform which marked a major change in the State’s approach to juvenile justice. This Review takes a whole-of-government perspective of the issue as no one agency has control over the legislation, policy and programs.

2. To gather the necessary information the Review had to consult widely with stakeholders in Government, the bureaucracy, non-government organisations, academia, the community and young people in the juvenile justice system. The Review also had to undertake an extensive literature review to build a comprehensive evidence base from Australia and overseas in order to test current practice and new ideas.

3. To enhance this information, the Minister invited submissions from the public and interested parties. This invitation was announced through the media and posted on the Juvenile Justice website. The Review received a range of submissions which were considered in the development of this report.

Aim

4. The aim of this report is to detail the findings of Noetic’s Review into NSW the juvenile justice system.

Terms of Reference

5. The terms of reference for the strategic review of NSW juvenile justice are:

   a. Identification of emerging issues and trends in juvenile justice and offending in NSW that adversely impact State Plan goals and outcomes.

   b. Evaluation of the impact of existing government legislation, policy and practice to develop recommendations to Government on appropriate reform to laws, policies & programs to assist achieving the Government’s commitment to reducing juvenile re-offending.

   c. Recommendations on strategies for dealing effectively with offending young persons taking into account relevant national and international research & reports and their application to the NSW context.

   d. Recommendations to enhance the ability of government agencies and communities to assist in the continuum of services for young people in the juvenile justice system to achieve a reduction in offending, particularly by Indigenous offenders.
e. Information on the cost benefits of various strategies/options to the Government, using available research and data.

f. A proposed way forward on future policy, programs, practices within the juvenile criminal justice system in NSW (including monitoring and evaluation of these) taking into account resource implications & with particular reference to vulnerable groups of young people including Indigenous youth, young women & culturally diverse groups.

Structure

6. To ensure that all elements of the Terms of Reference are answered the report is structured to cover the following areas:

a. why children and young people are important;

b. historical and social context of juvenile justice in New South Wales;

c. key stakeholders in the juvenile justice system;

d. political, legislative and strategic issues in juvenile justice; and

e. strategic options for the future.

7. In presenting the report, the Review will provide a comprehensive description of each element of NSW’s juvenile justice system. This provides the reader with a full understanding of each part of the system and the part it plays. While this has increased the size of the report and may not interest all readers, it provides a complete explanation of the system and the context for the report’s commentary and recommendations.

8. The report contains commentary based on analysis of interviews and workshops conducted by Noetic as well as academic reports and other publications and associated evidence. A conscious decision has been made to not reference individual stakeholder interview comments. Where appropriate, recommendations have been made throughout the report. A number of observations have also been made where a recommendation is not warranted, or it is outside the scope of the Review to recommend change. Where the Review has identified important trends these are highlighted separately in the text. To assist with the readers understanding of key concepts and ideas in the juvenile justice field, breakout boxes are provided to give explanation or more information.

9. Contributions and contributors to the Review are contained in the annexes. Annex A contains a list of stakeholders (individuals and organisations) consulted as part of the Review. Annex B contains a list of written submissions received by the Review. The Review team gratefully acknowledges those that took the time to assist through the provision of information and participation in interviews. Annex C contains a list of abbreviations used throughout the report. Annex D lists all Review recommendations grouped by the organisations leading and contributing to them.
Why Are Children and Young People Important?

“The solution to adult problems tomorrow depends on large measure upon how our children grow up today.”

Margaret Mead

10. Before reviewing the juvenile justice system, it is necessary to determine if children and young people (from 0-17 years of age) are both important and different to adults. By important it is meant that they are valuable, require investment and consideration. This context setting is significant because if it is not agreed that children and young people are both important and different to adults then there is little need to differentiate their needs separately from those of adults. If, however, they are seen as both important and different then there is a need to incorporate this view into policy development and implementation more broadly across government and for juvenile justice in particular. This is a fundamental issue as children and young people represent a significant proportion of NSW’s population.

11. In 2006, there were 1,569,181 children and young people aged between 0-17 in NSW. This makes up 23.9% of the state’s total population.¹ There are 90,000 children born in NSW each year, and this does not include children who arrive through migration.²

12. It is obvious but children are the future of the community. It is accepted that at least up to the age of 16 years that children will be protected by their parents (or if they are absent or judged ineffective – by the State) and provided with the necessities of life and prepared for life as an adult. This includes being provided with an education and care so that they become a functioning and contributing adult members of society. Beyond parenting, this requirement is met through a range of children and young people specific institutions and arrangements. The effectiveness of a child’s rearing will be felt by society for over 60 years.³ Consequently, failures of socialisation, healthcare, and education in the development of young people will have long term implications for the NSW community. Such failure manifests itself in anti-social behaviour, crime, family dysfunction, drug and alcohol addiction, and long term, chronic unemployment. The cost to society for this failure is substantial. It is estimated that for the United Kingdom the continuing cost of addressing these types of social problems over 20 years is almost £4 trillion.⁴

13. The importance of young people as the future may appear self-evident, however, Australia’s demographic trends means that each child will become more important to the community. As the Intergenerational Report 2007 clearly lays out Australia’s ageing population will see fewer people of working age supporting a greater number of retired and elderly Australians.⁵ As the median age

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increases there are going to be proportionally fewer children contributing to the NSW and Australian economies through labour force participation. Meeting this challenge will require the community to ensure that all children become effective and contributing members of society. As detailed in the NSW State Plan, this means providing them with the support to maintain good health, access to education and strong community networks. This will ensure that the burden of dysfunctional adults is minimised and their economic contribution maximised. Successive NSW state governments have recognised that children are important and this is most recently reflected in a number of important policy documents.

14. The first of these documents is the NSW State Plan which is the NSW Government’s long term plan to deliver the best possible services to the people of NSW. There are also policies and strategies such as the NSW State Plan, of which 34 of the outlined priorities have relevance to children and young people. Another document is the NSW Youth Policy 2002-2006 which provided the universal framework targeting young people and ensuring they are doing well. This policy is now three years out of date. There is also the NSW Youth Action Plan which identifies 44 specific actions focused on:

a. Belonging to Family and Community;

b. Learning and Earning;

c. Feeling Good and Staying Healthy;

d. Engaging in Culture, Sport and Recreation; and

e. Feeling and Being Safe.

15. Along with recognising children and young people’s importance, there is a need to determine if they are different from adults. If children and young people are not markedly different (particularly as they approach adulthood), that is that they are really just ‘little adults’, then it is appropriate that they not be treated differently. There is however, a growing body of scientific evidence on adolescent brain development that demonstrates that young people are significantly different to adults. The NSW Department of Education and Training (DET) for example has released information on the research and implications for teaching practices. It states that adolescence is a period of development, particularly in the ability to produce, establishing an individual identify and developing logical and rational thought processes. Importantly, the research has found:

a. that the ability to plan, consider, control impulses and make wise judgements is the last part of the brain to develop;

b. adolescents are built to take risks and it is simply part of their biology;

---

c. most adolescents know right from wrong, but the environment in which risk-taking and other behaviours occur can lead to inappropriate behaviour; and

d. adolescents are more prone to react with gut instincts and impulsive and aggressive behaviour.  

16. In the NSW Context, the NSW Youth Policy recognises that young people are different and that they are diverse group whose social and economic support needs vary greatly. There are several specific pieces of legislation addressing the needs of children and young people, including the Children and Young Persons (Care and Protection) Act 1998, Children (Criminal Proceedings) Act 1987 (C(CP)A) and Young Offenders Act 1997 (Young Offenders Act). The Future Directions for Juvenile Justice in New South Wales (the Green Paper) also recommended the following principle:

a. “Children and adolescents should be treated differently and separately from adults and according to their developmental needs”.  

17. Acknowledging that children and young people are different to adults does not in any way reduce the need for them to take responsibilities for their actions. Indeed, learning to take responsibility for one’s actions is a crucial element in functional development. The Review believes that children and young people must be accountable for their actions within the context of being important to the community and being different to adults.

18. That children and young people are both important and different may appear obvious, however, it is important to establish this at the beginning of the review. If it is agreed and recognised that children and young people are important, and that they need to be treated differently from adults, then government and the community must frame their responses to children and young people appropriately. This principle is summarised in Figure 1 below.

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**Figure 1: Logical Flow: Dealing with Children and Young People**

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<tr>
<th>Are Children and Young People important?</th>
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<td>YES</td>
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<th>Should Children and Young People be treated differently from Adults?</th>
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<tr>
<td>YES</td>
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Government and Community needs to frame responses to Children and Young People according to their unique needs

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Context

Juvenile Justice

19. The majority of children and young people in Australia experience a rich and fulfilling childhood and adolescence. There are however, a large number of children and young people who for a range of reasons come into some contact with the juvenile justice system through criminal behaviour. An Australian Institute of Criminology report\(^\text{14}\) found that engaging in some type of anti-social behaviour during adolescence is not uncommon. Further research by Weatherburn and Baker\(^\text{15}\) found that relatively few of these young people will go on to become persistent and prolific offenders. Recognising this fact, governments have generally adopted an approach of diverting children and young people away from the juvenile justice system and intervening with more serious and persistent offenders.

20. Children and young people who show more persistent and habitual offending behaviour generally have histories of neglect, low levels of educational attainment, histories of substance abuse and a tendency towards acts of physical aggression\(^\text{16}\). The risk factors associated with offending are well documented\(^\text{17}\) and are explored in the Children and Young People at Risk section of this report. Equally important are the protective factors such as the characteristics and circumstances of the child or young person. Good practice in responding to juvenile crime seeks to address the risk factors that led to the offending and strengthen the protective behaviours to increase the resilience of the child or young person. Enclosure 1 – Review of Effective Practice in Juvenile Justice of this report provides a comprehensive review of effective practice in juvenile justice based on international and Australian research.

21. Juvenile justice in Australia is a State responsibility and consequently there are different systems and legislation in each jurisdiction. There are, however, a number of mechanisms to promote quality juvenile justice services across the country.\(^\text{18}\) The Australasian Juvenile Justice Administrators (AJJA) is a Standing Committee of the Community and Disability Services Ministers’ Advisory Council with senior executive officers from each of the Australian state or territory agencies and New Zealand. It has developed national standards for the delivery of juvenile justice in the community and on custody arrangements. The AJJA Juvenile Justice Standards provide a mechanism for improving performance across the juvenile justice sector and establish a framework to deliver quality services throughout Australia.\(^\text{19}\)

22. Additionally, Australia is a signatory to Convention on the Rights of Children (CROC) and Beijing Rules. CROC is an international convention that protects the rights of children and young people. It has the following general principles:

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\(^{16}\) Mission Australia, *Young people and the criminal justice system: New insights and promising responses*, 2009

\(^{17}\) *ibid.*


a. the right to life;

b. survival and development;

c. the right not to be discriminated against;

d. the requirement that the best interests of the child be a primary consideration in all actions concerning children; and

e. the right of the child to be heard in all decisions that affect him/her.  

20 Beijing Rules further protects the rights of children and young people and is underpinned by a philosophy that young people who offend should be treated differently to adults.  

21 In addition to formal agreements and international instruments, there are a general set of principles for dealing with children and young people that are well understood amongst the juvenile justice community. The NSW Young Offenders Advisory Council provides an effective summary of these types of principles that should guide work with juvenile offenders in an unpublished Project Brief provided to the Review. It is important to note that these principles have no formal standing in the NSW juvenile justice system. They are outlined in Text Box 1 below.

**Text Box 1 – Summary of the NSW Young Offenders Advisory Council Project Principles**  

<table>
<thead>
<tr>
<th>Principle</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. It is recognised that offending by young persons has a wide spectrum of causal factors, beginning with the origins and background of the young person. Therefore, interagency partnerships may result in better outcomes for young offenders.</td>
</tr>
<tr>
<td>2. The design of any project will need to be founded upon a sound understanding of the principles of child and adolescent brain development.</td>
</tr>
<tr>
<td>3. Given the demonstrated effectiveness of diversionary projects in reducing recidivism, diversionary options and alternatives to custody will be the primary focus of the project.</td>
</tr>
<tr>
<td>4. Intervention options will build on those strategies that are evidence based and have been extensively evaluated for their effectiveness in assisting to reduce juvenile recidivism and producing cost savings to government.</td>
</tr>
<tr>
<td>5. Consideration must be given to the United Nations rules and conventions.</td>
</tr>
<tr>
<td>6. More intensive programs should be reserved for young offenders who are more at risk of re-offending.</td>
</tr>
<tr>
<td>7. At each point in their contact with the criminal justice system juvenile offenders should be screened to identify those most at risk of re-offending.</td>
</tr>
</tbody>
</table>

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21 ibid.

8. While the need to keep a number of young people in custody will continue, research indicates that this option is not useful in reducing recidivism. However, there may be programs that can assist in achieving a reduction in recidivism following release from custody.

25. Comparing juvenile justice systems is not a straightforward task and this is explored in some detail in Enclosure 1 – Review of Effective Practice in Juvenile Justice to this review. However, a frequently used measure to compare juvenile justice systems is the detention rate per 100,000 children and young people. Table 1 below provides a comparison of this measure amongst Australian state other some international jurisdictions.

Table 1 – Juvenile Detention Rates

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Number of young people in juvenile detention (per 100,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australian Jurisdictions (in 2007)</strong></td>
<td></td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Males</td>
</tr>
<tr>
<td></td>
<td>232.2</td>
</tr>
<tr>
<td>Western Australia</td>
<td>101.6</td>
</tr>
<tr>
<td><strong>New South Wales</strong></td>
<td>68.0</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>61.4</td>
</tr>
<tr>
<td>South Australia</td>
<td>64.0</td>
</tr>
<tr>
<td>Queensland</td>
<td>56.4</td>
</tr>
<tr>
<td>Tasmania</td>
<td>50.0</td>
</tr>
<tr>
<td>Victoria</td>
<td>16.8</td>
</tr>
<tr>
<td><strong>International Jurisdictions</strong></td>
<td></td>
</tr>
<tr>
<td>United States (in 2006)</td>
<td>295</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>23</td>
</tr>
<tr>
<td>France</td>
<td>6</td>
</tr>
<tr>
<td>Spain</td>
<td>2</td>
</tr>
</tbody>
</table>

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26 Ibid.
27 Ibid.
This table shows that NSW’s ratio of 38.0 children and young people in detention per 100,000 population is the third highest in the country behind the Northern Territory and Western Australia. Most notably, Victoria, which is arguably the most similar State in terms of population and demographics (noting there are distinct differences particularly in geographical size and Indigenous population\(^29\)), is 9.0 per 100,000. NSW is also amongst the highest when judged against comparable international jurisdictions, except the United States which is notably high at 295 per 100,000. Although this is only one of a number of measures that could be used and should be interpreted with caution\(^30\), it does indicate a high reliance on detention within NSW’s juvenile justice system. The costs and benefits of this approach are explored throughout the report.

Juvenile Justice in NSW

27. The NSW juvenile justice system generally encompasses the criminal justice response to children from ten to eighteen years of age that have allegedly committed, or have been found guilty of a criminal offence. This is because the criminal age of responsibility begins at ten, and a child is defined as a person under eighteen.\(^31\) The various roles of government agencies and non-government organisations (NGOs) are explored in the NSW Juvenile Justice System section below.

28. This section will provide an overview of significant developments in the NSW juvenile justice system and present emerging trends in regards to participation in crime, participation in the juvenile justice system and other relevant NSW and national trends.

Juvenile Justice History

29. Figure 2 below provides a timeline of significant developments in the NSW juvenile justice system over the past 20 years. These, and other, milestones are discussed in greater detail below.

**Figure 2: New South Wales Juvenile Justice Timeline: 1987-2009**

| 1987 | Separation of welfare and justice legislation |
| 1993 | Green Paper |
| 1994 | White Paper |
| 1994 | Young Offenders Act 1997 |
| 1997 | Court established |
| 2000 | Youth Drug Court established |
| 2003 | Young People in Custody Health Survey |
| 2005 | State Plan: A New Direction for NSW |
| 2006 | Young People on Community Orders Survey |
| 2008 | The Wood Report |
| 2009 | This Review |

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\(^{28}\) *Ibid.*

\(^{29}\) NSW’s Indigenous population is 2.2% of the state population and for Victoria the figure is 0.6%. Indigenous population is important because they are significantly overrepresented in the juvenile justice system. See Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*, [http://www.abs.gov.au/ausstats/abs@.nsf/mf/4705.0](http://www.abs.gov.au/ausstats/abs@.nsf/mf/4705.0) accessed 8 December 2009.

\(^{30}\) Due to the differences in data collection methods amongst jurisdictions (e.g. the age of criminal responsibility).

\(^{31}\) *Children (Criminal Proceedings) Act 1987 (NSW)* s 5.
30. A fundamental shift in the NSW juvenile justice system occurred in 1987 when justice matters were legislatively separated from welfare matters. This involved establishing the:

a. *Children’s Court Act* 1987;

b. *C(CP)A*;

c. *Children (Community Services Orders) Act* 1987;

d. *Children (Detention Centres) Act* 1987; and


31. The legislation enacted a range of changes including setting the age of criminal responsibility at 10. Recognising that children are different, it required the courts to ensure that children understood the proceedings and its outcomes. It also established a set of principles to guide police, lawyers and the Courts and provided stronger protections for statements, admissions, confessions and information disclosed by children in police interviews. These changes reflected a growing trend across juvenile justice systems internationally to separate justice and welfare models. The justice versus welfare debate is explored in further detail in *Enclosure 1 – Review of Effective Practice in Juvenile Justice*.

32. Australia became a signatory to CROC in 1989. As described earlier, this provides a focus on the rights of children. While Australia is a signatory, it is not directly part of NSW legislation. However, a High Court ruling means that decision makers must take its provisions into account.\(^\text{32}\)

33. The Youth Justice Coalition conducted a review of juvenile justice in 1990 which provided an extensive critique of the juvenile justice system and produced *A Blueprint for the 1990s*.\(^\text{33}\) It is understood that this review contributed to the commissioning of the Green Paper produced by the Juvenile Justice Advisory Council of NSW in 1993. The Green Paper first introduced the concept of ‘restorative justice’ and proposed a markedly different approach to juvenile justice which was focused on prevention, diversion, community-based programs and using detention as a last resort for the minimum period of time possible. The Green Paper’s aim was to raise issues for public discussion and consultation and to provide a basis for the development of *Breaking the Crime Cycle: New Directions in Juvenile Justice in NSW* (the White Paper) by the Government. This Green Paper formed the basis of the agenda for reform.\(^\text{34}\)

34. Many of the Green Paper’s recommendations were implemented through the White Paper. This became the government’s broad policy framework that was adopted in 1994. Key reforms included a Charter of Principles for Juvenile Justice in NSW. It also had bipartisan support for juvenile crime prevention and community alternatives to court processing. A key principle was to ensure that “all


35. In 1996, the NSW Ombudsman conducted an Inquiry into the operation of Juvenile Detention Centres and concluded the “conduct of the Department of Juvenile Justice to be unreasonable, oppressive and otherwise wrong”. A total of 239 recommendations were made on ways to improve the operation of detention centres. This included closing the Minda (Lidcombe) and Worimi (Broadmeadow) juvenile justice centres and the opening of Orana (Dubbo) and Acmena (Grafton) which occurred in 1999.\footnote{NSW Ombudsman, \textit{Inquiry into Juvenile Detention Centres}, 1996.}

36. The \textit{Young Offenders Act} came into effect in April 1998 and was based on extensive community consultation, the publication of a Discussion Paper and a large evidence base. The \textit{Young Offenders Act} is explored in greater detail in the \textit{Young Offenders Act} section of the report, however, it is a key piece of legislation for children and young people that provides a hierarchy of interventions, from warnings through to criminal proceedings. It also established the youth justice conferencing scheme which is also explored later in the report. Youth justice conferencing was established through legislation to ensure consistency, accountability, coordination and inter-agency co-operation. It was based on an underlying philosophy that young people should be held accountable for their actions and families and victims should be involved in the decision making process which is aimed to right any wrongs.\footnote{NSW Law Reform Commission, \textit{Report 104: Young Offenders}, December 2005.} Essentially, the \textit{Young Offenders Act} provides “a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings”.\footnote{\textit{Young Offenders Act 1997 (NSW) s 3(a)}.} It is interesting to note that the legislation was originally to be named the \textit{Minor Offenders Punishment Scheme} before the implementation committee renamed it. The committee was chaired by a senior crown prosecutor and included members from the youth sector, children’s court advocates and the NSW Police Service (now NSW Police Force).

37. In 1999, the then DJJ piloted the Australian Youth Level of Service Inventory which is a criminogenic risk assessment tool that categorises young people according to the risk of offending. It provides departmental staff with guidance about the nature and type of services that are required to address their offending behaviour.\footnote{NSW Department of Juvenile Justice, \textit{Juvenile justice advisory council: Juvenile justice in NSW - a snapshot}, \url{http://www.djj.nsw.gov.au/publications_ijac_snapshot.htm} accessed 8 December 2009.} The Youth Level of Service Inventory will be discussed in the \textit{Juvenile Justice} section of the report in relation to risk management and its relationship with case management processes.

38. The Youth Drug Court was established in 2000 following the NSW Drug Summit. It provides an opportunity for young offenders to participate in an intensive period of rehabilitation before being sentenced.\footnote{NSW Department of Justice and Attorney General, \textit{Youth Drug and Alcohol Court: About Us}, \url{http://www.lawlink.nsw.gov.au/lawlink/drug_court/l_drugcourt.nsf/pages/ydrcourt_aboutus} accessed 8 December 2009.} It has since been renamed the Youth Drug and Alcohol Court (YDAC). It is explored in the \textit{Children and Young People in Trouble} section of the report.

39. In 2001 and 2003, respectively, the Aboriginal Over-representation Strategic Plan, and Girls’ and Young Women’s Action Plan 2002-2004 were developed by Juvenile Justice. The Aboriginal Over-
representation Strategic Plan sought to address the situation where 38% of young people remanded in custody were Aboriginal and/or Torres Strait Islander and 43% of young people in custody were Aboriginal and/or Torres Strait Islander. Aboriginal and/or Torres Strait Islanders continue to be overrepresented in the remand, custody and community-based supervision system. This is explored further in the Indigenous Overrepresentation section of the report. The Girls’ and Young Women’s Action Plan 2002-2004 identified a range of issues faced by young women in contact with the juvenile justice system and provided a policy framework for response. The plan has since expired. The Girls’ and Young Women’s Action Plan 2002-2004 is explored further in the Young Women section of the report.

40. The administration and delivery of health services to young people in detention was transferred from DJJ to the Corrections Health Service within the Department of Health (Health) in 2003. In the same year, the Young People in Custody Survey was released. The Young People on Community Orders Survey was released in 2006. These surveys were conducted in partnership with the University of Sydney, Juvenile Justice and Justice Health, supported by an Australian Research Council Linkage Grant of more than $1 million in cash and in-kind contributions. The health surveys found that the majority of young people detained under orders are from vulnerable and disadvantaged groups. In particular, they identify issues such as mental health, intellectual disabilities, alcohol and other drug abuse and poor education as common factors for children and young people under community supervision and/or custody. These issues are also explored throughout this report. The next custody health survey (a joint partnership between Juvenile Justice and Justice Health.) is due to be released in 2010.

41. In 2004, the responsibility of Kariong Juvenile Justice Centre (Kariong) was transferred from DJJ to the then Department of Corrective Services (DCS). The Juvenile Offenders Amendment Act 2004 re-defined Kariong as a juvenile correctional centre and created juvenile inmates as a new category of detainee. The NSW Legislative Council’s Select Committee released its Inquiry into Juvenile Offenders in 2005 which examined the transfer of Kariong to DCS. The transfer of Kariong and the findings of this Inquiry are discussed in detail in the Children and Young People in Trouble section of the report.

42. The Bureau of Crime Statistics and Research (BOCSAR) released ‘The transition from juvenile to adult criminal careers’ in May 2005. It reviewed offending patterns of 5,476 young people appearing NSW Children’s Courts in 1995 over eight years. It found that 68% of those young people appeared in the NSW criminal court in the subsequent eight years. In the same year, the NSW Audit Office conducted a Performance Audit of DJJ and highlighted a number of improvement areas for improvement including data sharing, interagency collaboration, outcome monitoring and targeting of resources.

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42 ibid.
43 ibid.
44 ibid.
43. The ‘State Plan: A New Direction for NSW’ was launched in 2006 by the NSW Government. It is the foundation document for setting a series of priorities and targets for government services in NSW. There are a number of juvenile justice related priority areas, including:

a. R1: Reduced rates of crime, particularly violent crime;

b. R2: Reducing reoffending; and

c. R3: Reduced levels of antisocial behaviour.\(^{45}\)

44. The State Plan has proven to be a strong driver of behaviour in the NSW Government. A range of strategies driven by the State Plan will be explored throughout the report such as a focus on early intervention (e.g. the Intensive Supervision Program) and NSW Police Force (NSW Police) strategies for reducing rates of crime and re-offending (e.g. bail compliance).

45. More broadly, recent policy shifts have tended to focus on early intervention, reducing ‘anti-social behaviour’ and minimising the ‘risk of re-offending’. One of the major drivers of early intervention was the Honourable James Wood’s AO QC Special Commission of Inquiry into Child Protection Services in NSW (the Wood Report). The report recommends key reforms in a number of areas, including early intervention and prevention, and also explores a number of issues directly related to the juvenile justice system. However, only one recommendation on juvenile justice was made.\(^{46}\) The NSW Government accepted the majority of its recommendations and released its action plan – Keep Them Safe in 2009.\(^{47}\) The focus on reducing anti-social behaviour is demonstrated by the introduction of the anti-social behaviour pilot project and youth conduct orders which are both explored later in the report.

46. The NSW Government announced major structural reform to the NSW public sector in June 2009.\(^{48}\) One of the key reforms was the creation of the Department of Human Services which brought together a range of human service Departments including Aboriginal Affairs, Ageing, Disability and Home Care (ADHC), Community Services, Housing NSW and Juvenile Justice. Each of these are now known as ‘agencies’ and from herein, the Department of Juvenile Justice will be referred to as ‘Juvenile Justice’.

47. In July 2009, the Minister for Juvenile Justice announced this review of the juvenile justice system to:

“ensure that the juvenile justice system in NSW is reducing the cycle of crime by providing the best possible assistance to young offenders to become positive members of the community.”\(^{49}\)

48. The Terms of Reference for the review are detailed previously.


Children and Young People in NSW and their Participation in Crime

49. Before examining children and young people’s participation in the juvenile justice system, it is important to understand the NSW juvenile population and the prevalence of offending. It is estimated that there are 709,959 children and young people aged between 10 and 18 years in NSW. It is important to understand that a large number of children and young people who commit offences never come into contact with NSW Police, the courts or the juvenile justice system (i.e. they are not caught for their offence).

50. A BOCSAR study based on self-reporting surveys found that a large number of NSW secondary students offend, but generally do not offend very often. Amongst those students that admitted committing an offence, the median offending frequency was 1 to 2 times in the 12 months prior to the survey. The types of offences vary, with the most common being assault (27% of respondents), closely followed by malicious damage to property (25%). Other common offences include received or sold stolen good (15%), shoplifting (9%), break and enter (5%) and motor vehicle theft (5%). Males generally had higher rates of participation, and participation in each type of offence generally peaked around 14-16 years of age for males and females. This demonstrates that a large number of children and young people commit a range of offences. This is indicative of their developmental stage and tendency to test boundaries.

51. This section examines children and young people in NSW and their contact with the NSW Police, the Courts and Juvenile Justice.

CONTACT WITH POLICE

52. Children and young people’s first contact with the juvenile justice system will generally be with NSW Police. Juveniles made up 26 percent of all persons of interest (i.e. of all ages) proceeded against by NSW Police in 2006-07. Considering the large amount of unrecorded crime committed by children and young people (outlined previously), this means that a large percentage of crime in NSW is committed by juveniles. This demonstrates the importance of NSW Police’s ‘gate-keeping’ role in the juvenile justice system. While children and young people make up a large percentage of NSW Police persons of interest, it is important to understand that rates of offending have been declining for over 10 years. Of these offenders, the majority (81%) are male, and Indigenous juveniles are over-represented (17%, compared with 2.2% of the population). The types of offences vary, with property crimes (29%) being the most common, followed by crimes against the person (12%), assault (8%) and robbery (2%).

53. When NSW Police do come into contact with an alleged juvenile offender, they have a range of options available to them, including warnings, cautions, youth justice conferences and proceeding to court. Figure 3 below shows a break-up of these outcomes for 2007-08. The recorded data also contains ‘other’ (e.g. infringement notice) and ‘missing/unknown’.

56 Australian Institute of Criminology, Juveniles’ contact with the criminal justice system in Australia, 2009.
54. Further analysis of these outcomes shows some differences in outcomes depending on the sex, Indigenous status and age of the offender. Table 2 below first outlines the percentage for the total NSW population (as per Figure 3 above), then outlines the percentage for various demographics as a +/- figure of the likelihood of this group receiving this outcome (e.g. a “-2%” indicates that group is 2% less likely to receive this outcome and a “+1%” indicates that group is 1% more likely to receive this outcome.

Table 2 – Outcomes of police contact with recorded juveniles persons of interest, 2007-08, by outcome type, sex, Indigenous status and age

<table>
<thead>
<tr>
<th></th>
<th>Warning</th>
<th>Court</th>
<th>Caution</th>
<th>Other</th>
<th>Missing/unknown</th>
<th>Youth justice conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW Total</td>
<td>30%</td>
<td>26%</td>
<td>17%</td>
<td>19%</td>
<td>6%</td>
<td>3%</td>
</tr>
<tr>
<td>Male</td>
<td>28%</td>
<td>27%</td>
<td>15%</td>
<td>19%</td>
<td>6%</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>(-2%)</td>
<td>(+1%)</td>
<td>(-2%)</td>
<td>(+1%)</td>
<td>(-)</td>
<td>(+1%)</td>
</tr>
<tr>
<td>Female</td>
<td>33%</td>
<td>20%</td>
<td>21%</td>
<td>18%</td>
<td>6%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>(+3%)</td>
<td>(-6%)</td>
<td>(+4%)</td>
<td>(-1%)</td>
<td>(-)</td>
<td>(-1%)</td>
</tr>
<tr>
<td>Indigenous</td>
<td>18%</td>
<td>48%</td>
<td>14%</td>
<td>8%</td>
<td>8%</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>(-12%)</td>
<td>(+22%)</td>
<td>(-3%)</td>
<td>(+1%)</td>
<td>(+2%)</td>
<td>(+1%)</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>32%</td>
<td>21%</td>
<td>17%</td>
<td>21%</td>
<td>6%</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>(+2%)</td>
<td>(-5%)</td>
<td>(+2%)</td>
<td>(+2%)</td>
<td>(-)</td>
<td>(-)</td>
</tr>
<tr>
<td>10-12 year olds</td>
<td>45%</td>
<td>16%</td>
<td>22%</td>
<td>3%</td>
<td>9%</td>
<td>4%</td>
</tr>
</tbody>
</table>

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53 ibid.
55. It is important to understand that the outcomes from this data are likely to be strongly influenced by the seriousness of offence. However, it does however provide some valuable insights into the use of certain options by NSW Police. It shows that males and Indigenous juveniles (of either sex) are more likely to receive more severe outcomes (i.e. young justice conferencing and court) than females and non-Indigenous juveniles respectively. The data shows that younger age groups are more likely to receive warnings, cautions and youth justice conferences. Interestingly, a youth justice conference is the least likely outcome across all groups. That said, the majority of children and young people are being dealt with via diversionary measures (i.e. warning, cautions and conferences).

56. The use of Young Offenders Act options by NSW Police varies greatly depending on the Local Area Command. Figure 4 below shows the number of referrals to youth justice conferences by NSW Police Local Area Commands for the 2008/09 financial year. It highlights the large variance in the rate of referrals depending on the Local Area Command.

Figure 4: Number of Youth Justice Conference Referrals by Local Area Command, 2008/09

Source: Juvenile Justice data

57. Figure 5 below provides a longer term view of NSW Police outcomes from July 1998 to June 2009. It shows a significant decline in the percentage of outcomes resulting in court proceedings since the commencement of the Young Offenders Act in 1998. Since 2003 however, the percentage of outcomes resulting in court proceedings has risen from 17.1% to 23.2% in 2009. While the figure (23.2%) is significantly lower than in 1998 (39.4%), this upward trend is notable. The figure also shows that the percentage of warnings given remained relatively static between 2003 and 2008, however this dropped from 29.3% in 2008 to 14.1 in 2009%. The data also reveals an upwards trend in the use of youth justice conferences.
**Figure 5: All Responses as % of Total Responses July 1998 – June 2009**


**Trend.** The NSW Police Force are utilising diversionary options under the Young Offenders Act 1997 in 50% of all cases, however, the varied use of youth justice conferences amongst Local Area Commands (from 1 in a financial year, to 65) suggests that greater consistency is needed in the use of proven diversionary options.

58. NSW Police provide a preventive role in the juvenile justice system through the Police and Community Youth Clubs (PCYC) case managers and School Liaison Police. The role of these officers is explored in the Stakeholders in the NSW Juvenile Justice System section of the report. This preventative role is seen as important in reducing offending by young people. Text Box 2 below provides an overview of the important role of NSW Police.

**Text Box 2 – Importance of NSW Police Force Outcomes**

NSW Police play a crucial role as the ‘gate-keeper’ of the juvenile justice system. 26% of all persons of interest for NSW Police are juveniles, and an even greater number of children and young people commit unsolved offences. NSW Police have a range of diversionary options available to them, including warnings, cautions and youth justice conferences. These options are being utilised for the majority of contacts with NSW Police (30% warnings, 17% cautions and 3% youth justice conferences, totalling 50% of all outcomes). However, the variance in outcomes across Local Area Commands indicates that greater consistency is needed across regional areas. The recent increase in outcomes resulting in court proceedings is also of concern given the proven effectiveness of diversionary measures.

NSW Police are providing an important preventative role through the PCYC and School Liaison Police with approximately 150 officers dedicated to these important tasks. The effectiveness of these responses is discussed later in the report.

Specific issues relating to police practices are explored throughout the remainder of the report.

**CONTACT WITH THE CHILDREN’S COURT AS ALLEGED OFFENDERS**

59. Children and young people come into contact with the Children’s Court for a range of offences. Table 3 below provides an overview of the major offence types heard in the Children’s Court in 2007. Not all matters involving children and young people are dealt with in Children’s Courts. Many are dealt with by local magistrate’s courts sitting as Children’s Courts, particularly in regional NSW.
### Table 3 – Type of Offence\(^5^4\)

<table>
<thead>
<tr>
<th>Principal Offence</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acts intended to cause injury</td>
<td>1787</td>
</tr>
<tr>
<td>Theft and related offences</td>
<td>1202</td>
</tr>
<tr>
<td>Unlawful entry with intent</td>
<td>866</td>
</tr>
<tr>
<td>Public order offences</td>
<td>621</td>
</tr>
<tr>
<td>Property damage and environmental pollution</td>
<td>572</td>
</tr>
<tr>
<td>Robbery, extortion and related offences</td>
<td>549</td>
</tr>
<tr>
<td>Road traffic and motor vehicle regulatory offences</td>
<td>328</td>
</tr>
<tr>
<td>Offences against justice procedures, government security and operations</td>
<td>233</td>
</tr>
<tr>
<td>Miscellaneous offences</td>
<td>192</td>
</tr>
<tr>
<td>Illicit drug offences</td>
<td>175</td>
</tr>
<tr>
<td>Deception and related offences</td>
<td>157</td>
</tr>
<tr>
<td>Dangerous or negligent acts endangering persons</td>
<td>113</td>
</tr>
<tr>
<td>Sexual assault and related offences</td>
<td>80</td>
</tr>
<tr>
<td>Weapons and explosives offences</td>
<td>47</td>
</tr>
<tr>
<td>Abduction and related offences</td>
<td>6</td>
</tr>
<tr>
<td>Homicide and related offences</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6933</strong></td>
</tr>
</tbody>
</table>

60. Of these children and young people that came before the Children’s Court: 55% had no prior conviction recorded; 26% had a prior conviction for a different type of offence; 23% had been convicted of the same offence and were not sentenced to detention; and 6% had the same type of offence and were sentenced to a control order\(^5^5\). This demonstrates that the majority of children and young people appearing before the Children’s Court had no prior convictions, which reflects the focus on diverting juveniles from the juvenile justice system.

\(^5^4\) ibid.
\(^5^5\) ibid.
61. Figure 6 below details the sentencing outcomes for children and young people with a proven offence in the Children’s Court for 2007.

![Pie chart showing sentencing outcomes for children and young people in the Children's Court for 2007]

Figure 6: Persons With An Offence Proven In Children's Court Appearances Finalised: Penalty For Principal Offence

- Dismissed with Caution, 1183
- Bond, 2387
- Fine, 653
- Probation Order, 1434
- Community Service Order, 305
- Control Order, 788
- Other proven outcomes, 623

Source: BOCSAR NSW Criminal Courts Statistics 2008

62. This figure shows that a number of children and young people found guilty of an offence will receive a penalty under the Young Offenders Act. This is because 16% of children and young people will receive a caution, and an unknown number of the ‘Other proven outcomes’ (totalling 8%) will comprise referrals to youth justice conferences. This suggests that approximately one fifth of children and young people who come before the Children’s Court could have been diverted before entering the formal court process.

CONTACT WITH CORRECTIONS SYSTEMS
63. This section will explore trends in juvenile offenders under community based supervision and detention in NSW. Figure 7 below shows the numbers of community based supervision orders commencing over a six year period. It shows a significant increase in the numbers of orders issued.
64. Admissions to detention have been growing steadily in NSW as demonstrated by Figure 8 below. However, a slight decrease in remand, and increase in control orders, can be observed in 2008/09. It shows that in 2008/09, 711 juveniles were sentenced to detention and 4,634 were admitted on remand (i.e. were held in custody because they were bail refused or unable to meet conditional bail). The substantial growth in the remand population over 2006/07 to 2007/08 is significant. The average stay for juveniles sentenced to detention was 177 days, and the median was 124 days. The length of detention figures have remained relatively consistent over the previous 4 years.56

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65. The increase in admissions to juvenile justice centres has resulted in a steady increase in the average daily number of children and young people in custody. Figure 9 below shows that the average daily number of young people in custody in 2008/09 was 427.

![Figure 9: Average Daily Number of Young People in Custody](source: NSW Department of Juvenile Justice Annual Report 2008/09)

66. Some of the key characteristics of children and young people in detention in NSW include:

- a. The average number of detainees in each age-group increases with age (i.e. detainees who are 17 years old comprise the largest group and those aged 11 years old the smallest).\(^{57}\)
- b. Males make up the majority of the sentenced detainee population (92.8%) and the remand population (81.5%).\(^{58}\)
- c. Indigenous young people make up 48.5% percent of the sentenced detention population. They also comprise 35.8% of those remanded in custody. Indigenous young people are therefore heavily overrepresented in the juvenile justice system as they only comprise 2.2% of the total NSW population. The overrepresentation of Indigenous children and young people in the juvenile justice system is further explored in the Indigenous Overrepresentation section of the report.

67. The average daily number of juveniles held on remand has steadily increased in recent years. The average number of young people on remand was lower than the sentenced detention population in November 2007, however, in June 2008 the number of young people on remand far exceeded the numbers sentenced to detention.\(^{59}\) This trend was reversed in May 2009 as demonstrated by Figure 10 below due to an increase in control numbers, and slight reduction in remand numbers. The growth in overall remand numbers in recent years however has significant impacts on the children and young people for a range of reasons, including:

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\(^{57}\) Australian Institute of Criminology, Juveniles’ contact with the criminal justice system in Australia, 2009.


a. 78.3% of young people on remand did not go on to receive a sentenced detention order within twelve months. This figure is consistent with previous years.\textsuperscript{60}

b. 855 young people were remanded in custody despite being granted conditional bail but were unable to meet these conditions. The average number of days in detention for this group was 9 days.\textsuperscript{61}

\textbf{Conclusion}

68. A range of departments play a role in the NSW juvenile justice system. The NSW Police are central to the system and play an important role in the diversion of young offenders. The data shows that 50% of all NSW Police contacts result in the use of diversionary options under the \textit{Young Offenders Act}. However, this varies greatly across Local Area Commands. More recently, there has been a decline in the use of warnings and an increase in outcomes resulting in court proceedings. The majority of cases heard before the Children’s Court involve children and young people with no prior conviction, and a significant number (more than 16%) will receive a diversionary penalty, either a caution or referral to a youth justice conference. Despite juvenile crime rates remaining relatively stable over the past five years\textsuperscript{62}, the increased number of court proceedings has resulted in steady increases to the numbers of children and young people on community based supervision, sentenced detention and remand. It is understood that this is putting significant strain on the NSW juvenile justice system as the average number of children and young people in detention in 2008/09 was 427, while the capacity

\textsuperscript{60} NSW Department of Juvenile Justice, \textit{Annual Report 2008/2009}, 2009.
\textsuperscript{61} ibid.
\textsuperscript{62} Over the five years from January 2004 to December 2008 the number of juveniles aged 10 to 17 years proceeded against in some way by NSW Police fell for two major categories, rose for five and remained stable for the other nine categories. See Bureau of Crime Statistics and Research, \textit{Crime Fast Fact 03: Is juvenile crime increasing?} http://www.bocsar.nsw.gov.au/lawlink/bocsar/tt_bocsar.nsf/pages/bocsar_fastfact_03 accessed 8 December 2009.
of juvenile justice centres is 424 children and young people. Of particularly concern, 48.5% of the sentenced population are Indigenous juveniles, despite Indigenous people comprising only 2.2% of the NSW population.

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63 Unpublished information provided by Juvenile Justice.
Stakeholders in the NSW Juvenile Justice System

69. This section introduces the stakeholders involved in the NSW juvenile justice system by describing the government agencies involved in the juvenile justice system, and the role of the community and NGOs. It will concentrate on describing the role and primary activities of the stakeholders, not exploring any issues associated with their responses (that will occur in Issues for Discussion section of the report). It is not intended to be a complete description of statutory roles, but a brief overview of their role in the juvenile justice system. It is important to understand the range of responsibilities across the juvenile justice continuum and the dependencies between stakeholders (e.g. Juvenile Justice is dependent on programs and services delivered by other agencies such as the Department of Health). Other elements of the juvenile justice system such as legislation, strategies and programs will also be explored in the Issues for Discussion section.

Department of Human Services

70. The role of the following Divisions of the newly formed Department of Human Services will be explored in this section:

a. Juvenile Justice;

b. Aboriginal Affairs;

c. ADHC;

d. Community Services; and

e. Housing.

Juvenile Justice

71. Juvenile Justice provides youth justice conferencing, community-based services and youth justice custodial services.

72. Youth justice conferences bring together the young offender (and their family) and the victim (and their support group) to hear about the harm caused by the offence and for the offender to take responsibility for their actions. Conference attendees agree together on suitable outcomes that are documented in an Outcome Plan. These outcomes can include an apology, reasonable reparation to the victim and steps to link the young offender back into the community. Conferencing is based on restorative justice principles whereby the young offender takes steps towards directly repairing the harm that was caused by the offence.64

73. Young offenders can be referred to a youth justice conference by the NSW Police, the Children’s Court or the Office of the Director of Public Prosecutions (ODPP).65 Youth justice conferencing is a sentencing outcome available under the Young Offenders Act. It is a scheme aimed to divert young

65 ibid.
offenders from formal court processes. As with all penalties under the Young Offenders Act, it is only available if the offence is covered by the Act, the offender is aged between 10 and 18, the young person has admitted the offence and agreed to participate, and a warning or caution is not appropriate due to the seriousness of the offence, degree of violence, harm caused to the victim or the offender’s criminal history.  

74. Juvenile Justice is responsible for the administration of youth justice conferences. Juvenile Justice manages the conferencing process and outcomes. Conferences are convened by members of the local community who are engaged to facilitate the conference on an as needed basis.  

75. Issues associated with youth justice conferencing and its utilisation are contained in the Young Offender Act section of the report.  

76. Juvenile Justice’s Community Services officers work with juvenile offenders to address their offending behaviour and supervise them in meeting their legal obligations. The services provided include:  

a. preparing assessment reports for the Children’s Court to assist in sentencing;  

b. court directed supervision for good behaviour bonds, probation, community service or parole orders;  

c. ensuring compliance with court ordered conditions;  

d. interventions for young people seeking bail or remanded in custody;  

e. proving programs such as counselling and development programs (e.g. alcohol and other drug misuse, generalist counselling, group work and living skills) and specialist programs such as the Sex Offender Program and Violent Offender Program;  

f. psychological testing and assessment;  

g. the provision of counselling and developmental programs as an alternative to detention with a focus on alcohol and other drug misuse, generalist counselling, group work and living skills and the provision of forensic and other psychological testing and assessment; and  

h. specialist programs including a Sex Offender Program and Violent Offender Program.  

77. Issues associated with community services, including community-based supervision, are explored in the Children and Young People in Trouble section of the report.  

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78. The Custodial Services directorate aims to provide secure and safe care of young offenders who are sentenced to custody or are remanded in custody. There are eight juvenile justice centres across NSW. This includes a detention centre for young women offenders.\(^7\) It does not include Kariong which is operated by Corrective Services.

79. All juvenile justice centres, except the Broken Hill Juvenile Justice Centre which only provides short term accommodation\(^7\), provide education, recreational, vocation, specialised counselling and personal development programs. Individual case management is also provided for all detainees focused on reintegration into the community and establishing relationships with NGOs post-release.\(^7\)

80. Issues associated with community services are explored in the *Children and Young People in Trouble* section of the report.

81. A range of other programs are provided by Juvenile Justice, including:

a. The **Intensive Supervision Program** which is currently being piloted in the Hunter area and western Sydney. It involves intensive work with children and young persons and their families to deal with multi-systemic issues such as substance abuse, reengagement in education and vocational pursuits, health and welfare issues, housing needs, family conflict and negative peer pressure, for those juveniles with a history of committing serious offences and/or repeat offending, or whose severe anti-social behaviour puts them at risk of incarceration.\(^7\) This program is discussed further in the *Children and Young People in Trouble* section of the report and in Enclosure 1 – *Review of Effective Practice in Juvenile Justice*.

b. **Accommodation Support Programs** to assist young people secure and maintain appropriate accommodation.

c. **Local Offender Programs** to assist young people at risk of offending or re-offending access education and vocational pathways.

d. **Employment Skill Program** to assist young people access relevant education, vocational training and employment pathways through establishing links with the community.\(^7\)

e. Stage 1 of the **Alcohol and Other Drug Program Treatment Pathway** has been developed and implemented.\(^7\)

f. **Changing Habits and Reaching Targets** (CHART) is a new cognitive-behavioural approach that helps young people change their thinking and decision-making processes and ultimately, their offending behaviour.

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\(^7\) ibid.

\(^7\) ibid.


\(^7\) ibid.

g. **Our Journey to Respect** is a group work program for young, male, Aboriginal offenders that aims to reduce the incidence of inter-generational violence.\(^{76}\)

h. **Dthina Yuwali** is a group work program for Aboriginal young people with substance related offending. The program focuses on the relationship between substance use and pathways to offending.\(^{77}\)

i. A range of **community based programs** including the Youth Pathways to Education, Employment and Training, Shoalhaven Safe Community Aboriginal Partnership, Targeted Youth Support Program, Community Intervention Team (Northern Region) and Western Region Family Intervention Model.\(^{78}\)

j. A range of **juvenile justice centre specific programs** such as Transport and Logistics, Assistance Dog Program, Family Matters Program, Get That Job, Aboriginal Culture programs, Aboriginal Auntyies and OTEN education program.\(^{79}\)

**Aboriginal Affairs**

82. Aboriginal Affairs' role is to promote the interests of Aboriginal people in NSW by reducing the inequity they continue to experience as a result of colonisation.\(^{80}\)

83. The leading strategic document is *Two Ways Together* which outlines NSW’s 10 year plan (2003-2012) to improve the lives of Aboriginal People and their communities. The seven priority areas for action contained within the plan are health, housing, education, culture and heritage, justice, economic development, and families and young people.\(^{81}\) Regional reports are published that contain data about Aboriginal people and government services for each of the priority areas identified above. This involves reporting on information such as the rate of diversion, bail and remand, imprisonment and victimisation.\(^{82}\)

84. It is understood that Two Ways Together is currently being reviewed and is undergoing significant community consultation. The Review was advised that the next version will contain a stronger focus on justice, particularly given the recent announcement to disband the Aboriginal Justice Advisory Council.

85. Indigenous overrepresentation in the juvenile justice system is explored in detail in the *Indigenous Overrepresentation* section of the report.

\(^{76}\) ibid.

\(^{77}\) ibid.

\(^{78}\) ibid.

\(^{79}\) ibid.


Ageing, Disability and Home Care

86. ADHC provides services to older people and people with disabilities and their carers, ensuring that they are valued, live independent lives and have the opportunity to participate fully in community life. Recent studies focusing on young people in NSW indicate that approximately 13% of those in custody and 11% on community orders could have an intellectual disability.

87. ADHC may come into contact with a child or young person involved in the juvenile justice system because a service request is made for someone who has come into contact with the juvenile justice system, or a potential or existing service user:

a. is going through court as an alleged offender;
b. has been sentenced to a community based order;
c. has a previous history of offending; or
d. has been recently released from custody.

88. Support services provided by ADHC may include:

a. assisting children and young people to understand the juvenile justice process and rights and responsibilities;
b. assisting children and young people to access legal representation;
c. providing information to the Children’s Court;
d. support to attend a police interview or Court;
e. coordinating support services; and
f. working with Juvenile Justice for a young person in custody.

89. A detailed Criminal Justice Resource Manual was developed to assist ADHC staff to provide services to people with an intellectual disability who are in, or at risk of, contact with the criminal justice system. Additionally, a Justice Service Policy provides an overarching framework for disability service providers to ensure responsive and appropriate service provision, improve access to services, provide a policy context for the Criminal Justice Resource Manual and implement ADHC responsibilities under the NSW Interagency Service Principles and Protocols.

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86 A service request my be made to ADHC when it is thought a person has an intellectual disability and their offending behaviour might be linked to the need for support services.
88 ibid.
89 Ageing, Disability and Home Care, Justice Services Policy, 2009.
90. It is understood that ADHC also provides intensive case management support (e.g. behaviour intervention, accommodation support etc.) for people who have an intellectual disability through the Criminal Justice Program. At time of developing this report, 12 out of the 105 people on the program were children or young people. This program is currently being evaluated.

Community Services

91. Community Services aims to promote the safety and wellbeing of children and young people and build stronger facilities and communities. They particularly help those who are vulnerable and most in need. There are well known relationships between the care system and the juvenile justice system and these are explored in the Children and Young People at Risk section of the report.

92. In addition to out-of-home care and children protection, one of the major services provided by Community Services that impacts the juvenile justice system is that of prevention and early intervention. Brighter Futures is the Community Services early intervention program that provides support to vulnerable families to prevent problems from escalating. It aims to promote healthy development in children, promote strong, functional well-supported families and reduce child abuse and neglect. For juvenile justice, effective prevention activities by Community Services will remove children and young people from pathways that lead to offending.

93. Community Services also has Intensive Support Service teams/networks established in the Metro and Rural and Remote Regions. Intensive Support Services is a case management service for children and young people in Out-of-Home Care who have high and complex needs. It is highly likely that these children and young people will be known to other agencies because their problems will cross a range of responsibilities (e.g. health, education etc.). There is also an Aboriginal Intensive Family Based Service which provides intensive, time-limited, home-based support for more than 175 children and families. It aims to reduce the number of Aboriginal children being placed in out-of-home care and reunites children with their families. An evaluation of the program in December 2007 found reduced child protection reports and economic benefits that outweighed the costs of delivering the program.

94. The links between the child protection system and juvenile justice are explored in the Children and Young People at Risk section of the report. Early intervention and prevention strategies are a regular theme throughout the report.

Housing

95. Housing NSW manages the NSW Government’s housing portfolio and develops broader housing strategies in a range of areas including public housing, community housing, Aboriginal housing, rental assistance, home purchase assistance, affordable housing, community regeneration and social

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housing policy.\textsuperscript{93} Housing NSW’s highest priority is to target assistance to those with the greatest needs and to work with other agencies to support individuals and other communities.

96. There are well established links between homelessness and juvenile justice and these are explored in the \textit{Children and Young People at Risk} section of report. Housing NSW has developed \textit{A Way Home: Reducing Homelessness in NSW – NSW Homeless Action Plan 2009-2014}. It provides a new approach to reducing homelessness which includes working more closely with the non-government sector. It contains a number of actions and strategies relevant to juvenile justice, including:

a. Projects that will assist young people leaving juvenile justice centres to be released under a ‘no exit into homelessness’ policy. This will be met through discharge plans that address the housing and accommodation needs of the individual.

b. The Juniperina Shared Access Trial will provide long-term support and accommodation for young women with a history of offending or at risk of re-offending. The Joint Tenancy Assistance Program model will also be expanded to support young women on the Juniperina Shared Access Trial.

c. Transitions Program for Aboriginal people will provide a range of accommodation and support services for Aboriginal young people exiting the juvenile justice system.

d. Projects that will deliver accommodation and intensive support services linked to education, training and employment for young people.

a. The Inner City Supportive Housing and Support for Young People Project will provide coordinated case management and supportive housing for young people who are homeless or at risk of homelessness.\textsuperscript{94}

97. Access to suitable accommodation and homelessness issues are explored further in the \textit{Children and Young People at Risk} section of the report.

\section*{Police and Emergency Services NSW}

98. The role of the NSW Police as part of the newly formed Police and Emergency Services NSW will be explored in this section.

\section*{NSW Police Force}

99. NSW Police aim to protect the community and property by preventing, detecting and investigating crime, monitoring and promoting road safety, maintaining social order and performing and coordinating emergency and rescue operations.\textsuperscript{95}


100. As noted earlier in the report, juveniles made up 26 percent of all persons of interest proceeded against by NSW Police in 2006-07. There is also a large amount of unsolved crime committed by children and young people. Consequently, the NSW Police has formed a Youth Command. Youth Command is not responsible for all police officers who are involved with children and young people. The roles that police perform with regard to children and young people are:

e. Youth Case Managers;

f. School Liaison Police (SLP);

g. Youth Liaison Officers (YLO); and

h. Specialist Youth Officers (SYO).

101. The NSW Police Youth Command works in partnership with the PCYC to case manage over 450 children and young people in the community. There are currently 109 Youth Case Managers (sworn police officers who cannot be deployed for general duties) working at 59 PCYC locations across the state. Their primary responsibility is to case manage young offenders (or those at risk of offending) and delivering a range of programs to address their criminal behaviour and reduce re-offending (e.g. returning to education, personal health etc.). The Youth Command is currently facilitating 92 programs in PCYCs throughout NSW. An independent assessment found a 66-70% reduction in offending from 3 months before case management, to 3 months afterwards.  

102. School Liaison Police. SLPs reside in the NSW Police Policy area and deliver a range of programs focused on crime prevention, reducing violence and general safety (e.g. stranger danger, bullying etc.) to schools around NSW. There are approximately 40 SLPs working with over 1,000 high schools and 100,000 students. In 2007/08, SLPs conducted 7,876 visits to schools, delivered 2,622 crime prevention presentations and responded to more than 1,323 school related matters. As part of its Crime Prevention Plan, SLPs worked with high school teachers to develop programs aimed to reduce violence and anti-social behaviour. It is understood that these programs have improved intelligence available to NSW Police and enhanced local relationships between NSW Police and young people. Additionally, there are three police officers seconded to the School Safety and response Unit within DET who are responsible for coordinating and reporting on action plans for incidents in schools across the state.  

103. Youth Liaison Officers. YLOs are the administrators of the Young Offenders Act for NSW Police. As part of their duties they are responsible for delivering cautions and referring children and young people to youth justice conferences. They are the primary point of contact between NSW Police and Juvenile Justice. Additionally, they work with SYOs (who are qualified to make determinations under the Young Offenders Act and accept juvenile charges) with matters relating to children and young people. There is one YLO at each of the 80 Local Area Commands across NSW.

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96 Unpublished information provided by NSW Police Force.
104. **Specialist Youth Officers.** SYOs are appointed under the *Young Offenders Act* to make determinations about whether a youth justice conference should be held, a caution administered or proceedings be commenced (following approval from an investigating official).\(^99\)

105. The NSW Police Youth Policy Statement (originally dated 2001-2005) provides a number of objectives and actions for the way in which it deals with juvenile crime:

a. Reduce youth crime – this includes working with the community, business and relevant agencies to reduce participation in crime and escalation in juvenile offending. Actions include development of performance indicators and self assessment systems within a legislative and rights framework, and improving the effectiveness of detection, arrest and diversion of young offenders.

b. Divert young people from crime – the NSW Police will increase diversion rates under the *Young Offenders Act* by reviewing and modifying training, promotion of the Legal Aid Commission (Legal Aid) Hotline and corporate scrutiny of diversionary statistics.

c. Prevent youth crime – this will be achieved through the development of a model for youth crime prevention. It will identify responses to particular crimes and identify the role of police and other agencies.

d. Build partnerships with other government agencies, local councils, business organisations and community groups – projects include strategies for dealing with young people with intellectual disabilities or mental illness, ensuring state wards are not disadvantaged, and meeting the needs of Indigenous and culturally and linguistically diverse young people.

e. Enhance relationships between NSW Police and young people – the Positive Contact Program will provide a forum for NSW Police and young people to discuss common issues. Training will also be reviewed.

106. The NSW Police Youth Policy Statement states that youth issues will be incorporated into various local, regional and specialist command planning cycles rather than creating additional infrastructure. It also states that the implementation and ongoing monitoring of the Policy will be undertaken by the Youth Issues Working Party.\(^100\)

107. Across NSW Police, there are a number of initiatives and programs focused on the needs of young people, these include:

a. The Cabramatta YLOs and Cabramatta Street Team aims to improve NSW Police and youth relations in the Cabramatta area. It engages adolescents who are at risk of being homeless and/or drug dependent and engages them in positive physical activity, identifies positive role models and promotes and fosters amicable relationships.

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\(^99\) *Young Offenders Act 1997* (NSW) s 38.

b. A number of crime prevention initiatives aimed to develop relationships between children and young people and NSW Police, including Blue Reeler Movie nights, discos and regionally based police camps.

c. Your Choice provides guest lecturers to discuss the harmful effects of alcohol, peer group pressure and goal setting with children and young people. NSW Police also work with parents to help understand their legislative requirements and how they can assist to provide a safe environment for children. Your Choice is currently being implemented in Sutherland and Miranda Local Area Commands.\textsuperscript{101}

108. NSW Police is also responsible for select transportation and incident management for young offenders in juvenile justice centres.

109. The role of NSW Police is explored throughout the report, including specific issues in relation to the \textit{Bail Act 1978 (NSW)} (the \textit{Bail Act}) and police practices.

\textbf{Department of Justice and Attorney General}

110. The role of the following Divisions of the newly formed Department of Justice and Attorney General (DJAG) will be explored in this section:

a. DJAG;

b. Corrective Services;

c. ODPP;

d. Legal Aid;

e. Children’s Court;

f. BOCSAR; and

g. YDAC.

\textbf{Department of Justice and Attorney General}

111. DJAG assists the NSW Government, Judiciary, Parliament and the community to promote social harmony through programs that protect human rights and community standards, and reduce crime. DJAG administers and develops a just and equitable legal system, assists the NSW Attorney General and provides support services to enable the Attorney’s legislative and advisory responsibilities.\textsuperscript{102}

112. DJAG is responsible for the overall operations of the \textit{Young Offenders Act}. As such, they work closely with Juvenile Justice and NSW Police as other departments with responsibilities under the Act to


ensure it is achieving its objectives. They are also responsible for administering the NSW court system which includes the Children’s Court.

113. The Crime Prevention Division and Legislation, Policy and Criminal Law Review Division within DJAG both have juvenile justice responsibilities. The Crime Prevention Division leads the development of evidence-based policies and programs to prevent crime and reduce re-offending, including the juvenile justice system. This includes the Aboriginal Justice Plan which aims to address the underlying causes of crime in Aboriginal communities across NSW. This plan was developed by the Aboriginal Justice Advisory Council which has since been disbanded. The Legislation, Policy and Criminal Law Review Division provides advice regarding criminal law and develops the legislative program of the NSW Attorney General, including juvenile justice legislation.

114. Issues associated with legislation are explored in the Legislation section of the report.

**Corrective Services**

115. Corrective Services delivers professional correctional services to reduce re-offending and enhance community safety. In 2004, the then DCS assumed responsibility for Kariang from Juvenile Justice. Kariang is the most secure juvenile justice facility and accommodates offenders 16 years of age who are considered to be the most serious offenders and those who are unable to be managed in other juvenile justice centres because of their behaviour. The transfer of responsibility and ongoing management of Kariang is discussed in the Children and Young People in Trouble section of the report.

**Office of the Director of Public Prosecutions**

116. ODPP conducts matters involving offences under the laws of NSW in every jurisdiction in the State and in the High Court. ODPP arbitrates matters between NSW Police and Juvenile Justice should there be a disagreement regarding the course of action for a young person under the Young Offenders Act. The number of referrals has been steadily decreasing since the commencement of the Act. A specific issue about children’s proceedings and ODPP’s involvement is discussed in the Legislation section of the report.

**Legal Aid Commission**

117. Legal Aid provides specialist lawyers to represent children and young people in a wide range of matters (welfare and criminal proceedings). Legal aid and other legal services are generally provided to disadvantaged people, however, there is no means or merit testing for children and young

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people.  

112. Services are available for a range of matters, including criminal matters, restorative justice programs (e.g. youth justice conferencing), informants in criminal matters, appeals, committal proceedings, and trials and sentence matters.  

113. Legal Aid operates a Youth Hotline to provide young people with legal advice before making a formal statement. This was setup to meet the requirement of the Young Offenders Act that children are entitled to legal advice. The Youth Hotline is staffed by Children’s Legal Service solicitors and provides free, confidential legal advice to people under 18 and their family. Legal Aid is also involved in crime prevention through initiatives such as the production of a DVD entitled Burn. It portrays the seriousness of ‘in presence offences’ and has been shown at schools and detention centres. Broader community legal education is provided at schools and youth centres. The Children’s Visiting Legal Service operated by Legal Aid provides legal assistance to children and young people in detention.  

Children’s Court  

119. The Children’s Court deals with criminal matters concerning young people who are under 18 years, or were under 18 years at the time of the alleged offence. They also deal with care and protection matters.  

120. The C(CP)A governs the commencement, conduct and outcome of court proceedings against children and young people (if they are not eligible to be dealt with under the Young Offenders Act). The Children’s Court does not have jurisdiction to hear and determine proceedings for Serious Children’s Indictable Offences (i.e. murder and offences punishable by imprisonment for life or 25 years) or traffic offences. The Children’s Court has considerable flexibility in deciding penalties, ranging from caution and dismiss through to a control order. The range of orders is set out in section 33 of the Act.  

121. There are 13 specialist Children’s Magistrates whose role it is to consider the evidence put before the court and make a determination based on it, the relevant legislation and case law. Children’s Magistrates are appointed for three year terms and sit in specialist Children’s Courts, Local Courts and regional locations as needed. Children’s Magistrates undergo specific training and meet tri-annually to discuss issues and receive jurisdiction specific training.  

122. Issues associated with the operation of the Children’s Court are discussed in the Children and Young People in Trouble section of the report.

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118 Children (Criminal Proceedings) Act 1987 (NSW) s 33.  
119 Children (Criminal Proceedings) Act 1987 (NSW) s 33(1)(g).  
Bureau of Crime Statistics and Research
123. BOCSAR is a statistical and research agency that aims to identify factors affecting the distribution and frequency of crime, identify factors that affect the effectiveness, efficiency and equity of the NSW criminal justice system, and ensure that information on these factors and on crime and justice trends is available and accessible to their clients. BOCSAR achieves this by publishing regular reports, research and statistics to the public. It also provides specific reports and statistical information upon request.  

Youth Drug and Alcohol Court
124. As described earlier, YDAC provides an opportunity for young offenders to participate in an intensive period of rehabilitation before being sentenced. It operates within the C(CP)A and is supplemented by Practice Directions. Ongoing case management is provided which involves treatment schedules, regular appointments with the court, and assistance with health, housing and education needs.

125. Young people are referred to the YDAC by a Children’s Magistrate if they meet the criteria for entry into the program. This includes pleading guilty, the offence is with the Children Court’s jurisdiction, demonstrable drug or alcohol problem, within geographic area, not eligible for caution or youth justice conference, suitable for treatment and rehabilitation and agrees to participate on bail. Participants are initially screened for eligibility by the YDAC Magistrate (to ensure that they are not eligible for a caution or youth justice conference and the offence is so severe that the young person would be sentenced to a control order). A detailed assessment of their needs is then conducted by the Joint Assessment and Review Team comprising Community Services, Education, Juvenile Justice and Health. A Program Plan is then developed based on this need assessment that detailed the activities, responsibilities and interventions proposed.

126. Upon entry to the program, the YDAC Magistrate will adjourn the matter no less than 6 months and set a sentencing date. Participants are initially sent to the Residential Induction which is a dedicated six bed unit. It is run by a NGO and introduces the participants to the program and its constraints. They then enter a three month residential rehabilitation program unless they have employment or a very supportive home. At all times on the program they will follow their Program Plan which could include supervision, counselling, educational or vocational programs, health related assessments or interventions, recreational programs, random urinalysis and YDAC Report Back sessions. Report Back sessions provide a regular intensive monitoring process and supervision of progress against the Program Plan. They are not conducted in open court, but do involve the YDAC Court Team and other support persons such as family members.

127. When a young person completes or exits the program, the YDAC Magistrate will sentence the child in accordance with Section 33(1) of the C(CP)A. The Magistrate is to take into account the participation of

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121 Department of Justice and Attorney General, Bureau of Crime Statistics and Research: About Us,  
122 Department of Justice and Attorney General, Youth Drug and Alcohol Court: About Us,  
123 Department of Justice and Attorney General, Youth Drug and Alcohol Court: Policy and Programs: Legal eligibility - who can get involved?,  
124 The Children’s Court of New South Wales, Practice Direction No. 27: Practice Direction for the Youth Drug and Alcohol Court, 2007.
in the Program and impose a sentence that cannot be more punitive that that which may have been imposed had they not participated in the Program.\footnote{125}

128. Issues associated with the YDAC are explored in the \textit{Children and Young People in Trouble} section of the report.

**Department of Health**

129. The role of Justice Health (part of the Department of Health) will be explored in this section.

**Justice Health**

130. Justice Health provides health care to people in the adult correctional system, to those in courts and police cells, to juvenile detainees and to those within the NSW forensic mental health system and in the community.\footnote{126} The Adolescent Health Directorate within Justice Health provides healthcare to young people in juvenile justice centres and Karijini. Services include nursing, general practitioners, psychiatric, dental and optometry.\footnote{127} They have recently commenced the following programs:

a. Adolescent Court and Community Team – This team provides community based assessments, court liaison and diversion, discharge planning for those in custody or occupying a mental health inpatient bed, and case management.

b. Community Integration Team – Currently operating in the Orana region, this program aims to improve continuity of care for drug and alcohol, mental health, and general health upon release from custody.\footnote{128}

131. Additionally, Justice Health operates the Statewide Forensic Mental Health Service which provides mental health care services to children and young people in the juvenile justice system. All young offenders undergo a comprehensive assessment upon entering the justice system and can be referred to specialist mental health services.\footnote{129}

**Department of Education and Training**

132. DET delivers public education and training at pre-school, primary education and senior secondary education. It also provides TAFE NSW courses, migrant English programs, post-secondary art courses and advice to the NSW Government on higher education.\footnote{130}

133. Substantial evidence indicates that disengagement with the education system is a key marker for juvenile offending (this is discussed in greater detail in the \textit{Children and Young People at Risk} section).

of the report). DET provides a range of specialist support services for students exhibiting disruptive behaviour. This support includes conflict resolution, mentoring, values education counselling and talking with parents. Additionally, school counsellors, support teachers behaviours, home school liaison officers and student welfare and disability program consultants are available to schools. Students can also be referred to separate learning environments such as behavioural schools and tutorial centres for intensive support.131

134. Anti-bullying strategies are in place across NSW, with all schools implementing an Anti-bullying Plan which identifies specific strategies for identifying, reporting and dealing with bullying. It is a key part of planning for student wellbeing and effective learning and forms part of each school’s Student Welfare and Discipline Policies.132 Enclosure 1 – Review of Effective Practice in Juvenile Justice presents the effectiveness of anti-bullying programs as a means of preventing anti-social behaviours such as vandalism, fighting, theft and truancy.

135. DET are also responsible for the operation of education and training units within juvenile justice centres.

Department of Premier and Cabinet

136. The Department of Premier and Cabinet (DPC) is the central policy agency providing leadership and direction in the NSW public sector as well as support to the Government and Members of Parliament. DPC has a leadership role on the ‘big Government’ issues.133

137. DPC is leading a number of initiatives related to juvenile justice, including:

a. Coordinating the implementation of the NSW State Plan which aims to reduce rates of crime, particularly violent crime, reduce re-offending, and reduce levels of antisocial behaviour.134 This is discussed further in the Strategic Approach to Children and Young People section of the report.

b. Development of a Crime Prevention Framework that coordinates activities at State and local levels which aim to reduce crime levels, deter criminal activities, increase community safety, and minimise the occurrence of anti-social behaviour for both children and young people and adults. It seeks to deliver the previously mentioned State Plan priorities through Crime Prevention Partnerships and Anti-Social Behaviour Pilot Projects. It is operated through a Crime Prevention Steering Committee made up of DJAG, NSW Police and DPC.135

c. Coordinating the implementation of Youth Conduct Orders which provide a multi-agency approach to addressing the underlying causes of anti-social behaviour, restricting the behaviour and movement of a young person, and direct them to perform certain tasks or activities to reduce

their risk of re offending. Youth Conduct Orders are discussed further in the *Children and Young People in Trouble* section of the report.\textsuperscript{136}

d. Coordination the implementation of Anti-Social Behaviour Pilot Project which intends to improve case coordination across agencies regarding the management of complex cases and crisis cases involving children, young people and families. The Anti-Social Behaviour Pilot Project is discussed further in the *Children and Young People in Trouble* section of the report.\textsuperscript{137}

e. Overseeing the implementation of ‘Keep Them Safe: A shared approach to child wellbeing’.\textsuperscript{138} This is discussed further in the *Children and Young People at Risk* section of the report.

**NSW Ombudsman**

138. The NSW Ombudsman is an independent and impartial watchdog that ensures NSW departments fulfil their functions properly and improve their delivery of services to the public.\textsuperscript{139} The NSW Ombudsman undertakes regular visits to juvenile justice centres to ensure complaints or issues are appropriately dealt with. There is also a telephone in juvenile justice centres that allows children and young people to directly contact the Office of the Ombudsman. Additionally, Juvenile Justice is required to notify and report all allegations of assault, ill-treatment or neglect of a child to the NSW Ombudsman.\textsuperscript{140} The NSW Ombudsman receives approximately 50 formal complaints, 200 enquiries and 90 formal children protection notifications a year on Juvenile Justice.\textsuperscript{141}

**Commission for Children and Young People**

139. The Commission for Children and Young People reports directly to the NSW Parliament on ways to make NSW a better place for children and young people. This can include promoting ways for children and young people to participate, providing input into legislation and policy development, undertaking research, promote awareness about kids’ issues, building child-safe and child-friendly organisations and producing publications about kids’ issues. Some specific services include undertaking research for the NSW Child Death Review Team, implementing and monitoring the Working With Children Check, and Administering the Child Sex Offender Counsellor Accreditation Scheme.\textsuperscript{142}

\textsuperscript{138} NSW Department of Premier and Cabinet, *Keep them safe: a shared approach to child wellbeing*, 2009.
\textsuperscript{141} NSW Ombudsman, *Submission of NSW Ombudsman to Wood Special Commission of Inquiry into Children Protection Services in NSW*, 2009.
The Community and Non-Government Organisations

The Community
140. The community has a crucial role in the juvenile justice system. Once a child or young person gets in trouble, the community continues to play an important role, for example, independent members of the community are used to facilitate youth justice conferences and fulfil visitor roles at juvenile justice centres.

Non-Government Organisations
141. There are a number of different types of NGOs involved in the juvenile justice system, including:

a. Service providers – NGOs are involved in the provision of services within the juvenile justice system. Services may include early intervention (e.g. home visiting, nursing), case management (e.g. a case worker), post-release support (e.g. brokerage, housing assistance) and legal services (e.g. solicitors). These NGOs are generally funded by a combination of government funding and public donations. There are exceptions such as private law firms who may provide pro bono legal representation.

b. Academics/research organisations – Universities and research based organisations provide thought leadership on juvenile justice issues. NSW has a number of tertiary institutions that focus on juvenile justice related issues and research.

c. Representative groups – There are a range of organisations that represent certain groups of people and/or young people. For example;

(1) the Youth Justice Coalition is a network of youth workers, children’s lawyers, policy workers and academics who work to promote the rights of children and young people in NSW and across Australia\(^{143}\);

(2) the Council of Social Service of New South Wales (NCOSS) is a peak body for the social and community services sector in NSW\(^{144}\); and

(3) the Law Society of NSW is a representative body for solicitors in NSW and has a Juvenile Justice Committee.\(^{145}\)

142. The role of the NGO sector and associated issues are explored throughout the report.


ISSUES FOR DISCUSSION

143. By the very nature of a review, the issues for discussion will concentrate on aspects of the system that require improvement. There are a range of positive strategies, policies and programs to reduce juvenile offending and these have been discussed in detail previously. This section will concentrate on identifying issues and making recommendations for improvement. Figure 11 below outlines the Review Framework that will be used to discuss the range of identified issues. Each of the elements contained within the Review Framework is a heading within the Issues for Discussion section. The Review Framework has been structured so that the highest strategic level issues are discussed first, they will be a primary drivers of the remaining issues (e.g. political decision-making and legislation will drive responses at the service delivery level).

Figure 11 – Review Framework

![NSW Juvenile Justice Review Framework](image)
Political context

“In general, decisions affecting the treatment of young offenders in Australia have been based on personal and political ideologies and untested assumptions, rather than on information about how the various systems actually work.”

Seymour, 1988: 430

144. Seymour made this quote over 20 years ago, however, it remains a pertinent observation today despite significant improvement in the NSW juvenile justice system since that time. The reasons for this will be discussed in this section of the report. There has been a growing body of evidence on effective ways to deal with juvenile offending and there is now an opportunity to utilise this evidence to improve the juvenile justice system, starting at the political level. As Government sets the policy direction for Juvenile Justice, this section will explore bipartisanship, evidence based policy making and political dialogue with the community.

Bipartisanship

145. Law and order is an important element of the political discourse in NSW. The community has a strong interest in public safety and providing a safe environment is a core responsibility of government. Nonetheless, there is considerable agreement that much of the discourse on law and order in NSW has increasingly focussed on a ‘get tough on crime’ approach. It has resulted in what is often labelled as a ‘law and order auction’, which it is argued commenced in the early 2000s.146 Evidence for this is provided in Figure 12 which shows the number of significant amendments to the Bail Act – a key legislative instrument in law and order administration. A sharp increase in the number of amendments per year appears from 2001 onwards. These changes were generally ‘tougher’ on crime and as will be explored later in the report, have had a range of impacts on children and young people involved in the juvenile justice system.147 It is the Review’s opinion that a number of these Bail Act changes and other legislation have had unintended consequences for children and young people. These causes and consequences will be explored in Evidence Based Policy and Legislation section of the report.

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While much of the ‘get tough on crime’ agenda is aimed at adult crime, there were a number of specific initiatives directed towards children and young people such as graffiti, rock throwing etc. In 2001 amendments were made to the Young Offenders Act which invoked a ‘three strike’ policy for cautions. This means that children and young people who receive three cautions are no longer able to be cautioned by NSW Police and automatically referred to a youth justice conference or placed before the court. This change is discussed in more detail in the Young Offenders Act section of the report. The underlying rationale and supporting evidence for this change could not be found by the Review. This would indicate a shift away from the diversionary nature of the Young Offenders Act and an increased focus on more punitive measures.

It would appear that the increasing emphasis on law and order issues has had both intended and unintended consequences on the NSW juvenile justice system. If it is agreed that children and young people are both important to the community and different to adults, children and young people should be specifically excluded from the law and order debate. This is not to suggest that children and young people are not held accountable for their actions and youth crime not addressed. Rather that any debate is measured, separate from adult issues, evidence based, and recognises that early intervention and diversion are the underpinning principles of the NSW juvenile justice system.

In the Review’s consultation with the Victorian Government, it was apparent that a bipartisan approach is a key driver of that state’s successful outcomes in the juvenile justice area. Those involved in Victoria’s juvenile justice system (both government and non-government) acknowledge the benefits of successive Labor and Coalition Government supporting their system. A bipartisan approach has ensured a focus on evidence based policy, rather than ‘scoring political points’ by criticising the opposing party’s stance on juvenile justice issues. More information on Victoria’s juvenile justice system can be found at Enclosure 1 – Review of Effective Practice in Juvenile Justice.

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149. Achieving a bipartisan approach in NSW could be based around agreement of the following key issues:

a. recognition that children and young people are both important to the community and different to adults;

b. that law and order discourse will exclude children and young people;

c. that rehabilitation and diversion of children and young people underpin the State’s approach to juvenile justice while maintaining that they take responsibility and are held accountable for their actions; and

d. Parliamentary debates on juvenile justice issues will be on evidence rather than an emotive basis.

150. Such an agreement would not be intended to lock a government into specific strategies or policies, but rather, ensure a considered and measured approach by politicians. In looking towards a developing a bipartisan approach to juvenile justice, it is interesting to note that BOSCAR is currently conducting a study to investigate the community’s willingness to pay to rehabilitate young offenders. This will provide important context to support the rationale for a bipartisan approach. It is important to remember that the 1994 Green Paper had bipartisan support which proves it can and has been achieved previously.

Recommendation 1: The major political parties in NSW develop a bipartisan approach to juvenile justice that sets out the underpinning philosophy and principles of the NSW juvenile justice system.

Evidence Based Policies and Legislation

151. As noted in the previous section, in responding to community concerns or specific high profile incidents, new legislation, changes to existing legislation and new policy can have significant consequences for children and young people, both intended and unintended. These consequences can be much greater for children and young people, as they are more vulnerable by their very nature and less likely to be in control of their own environment. Children and young people are also in a period of their lives when their development is at its most rapid, therefore what may seem insubstantial amount of time in detention for example, can have impacts on their development (e.g. through disconnection with education, employment, family etc.).

152. An example of how changes to legislation can have unintended consequences is the change to the Bail Act that commenced operation in 2008. This change meant that the court cannot proceed with a second bail hearing unless the applicant had no legal representation the first time an application for bail was made, or the court can be satisfied that new facts or circumstances have arisen since the previous application. A BOSCAR evaluation found the juvenile remand population grew by 32% between 2007 and 2008, and found that this change to the Bail Act was a contributing factor to the

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growth in remand numbers.\textsuperscript{150} During the Second Reading Speech for this change to the \textit{Bail Act}, there was no mention of the potential impact on children and young people, instead they were grouped into the same category as adults. It is also understood that Juvenile Justice were not consulted as part of this legislative change to assist in understanding the potential implications. While this change may have had the desired impact on adults’ accused of offences, it has had a range of negative consequences on children and young people with no discernable reduction in youth crime.\textsuperscript{151}

153. It is essential that the Government considers the impacts of legislation and policy on children and young people before it is developed and implemented in order to minimise unintended consequences. As with any development of good public policy, it is also important that any changes are based on a body of evidence that support the proposed change and its intended benefits. While there already exists robust mechanisms for developing legislation and policy in NSW\textsuperscript{152}, there appears to be an insufficient focus on assessing the impacts on children and young people. An extension of the existing mechanisms would appear to be the most effective way to ensure that these impacts are understood and accounted for in both new legislation and policy, and amendments to existing legislation and policy. It is suggested that a children and young persons’ impact statement needs to be incorporated into the NSW legislation and policy development processes to ensure that their needs and the consequences of the changes on this group are fully understood as part of decision making.

1 Recommendation 2: The NSW Government and the Legislation Review Committee of the NSW Parliament introduce a children and young person’s impact statement into legislation and policy development and amendment processes.

154. As noted previously, the introduction of new legislation, policy or programs should be prompted by a sound evidence-base. The use of evaluated pilot programs is a useful way to test new ideas and develop an evidence base for consideration. It would appear that the development of new legislation affecting children and young people is not always supported by a comprehensive evidence base. For example, the recent introduction of tougher knife laws which according the NSW Attorney General will mean that a first time offender may be sent to jail for up to two years if they are in possession of a knife in a public place or school without reasonable excuse.\textsuperscript{153} While there may be community concern in relation to knife crime, the evidence is that most knife related crime is either static or falling in NSW.\textsuperscript{154}

155. In NSW a large number of pilot programs related to juvenile justice issues have been undertaken in recent years. It is unfortunate that many of these pilots have not had an evaluation framework.

\textsuperscript{154} NSW Minister for Police, Police Continue Knife Crackdown as Hot Spots Named, \url{http://www.police.nsw.gov.au/about_us/?a=164275} accessed 8 December 2009. There was a 8.2% reduction in offences involving the use of knives and other sharp weapons across NSW over the past two years.
incorporated into the funding arrangements or the outcomes of any evaluation undertaken acted upon subsequently. For example, the YDAC was established in 2000 as a pilot and is still remains a pilot program despite two evaluations. Additionally, the Anti-Social Behaviour Pilot Project (discussed later in the Children and Young People in Trouble section of the report) was funded as a pilot and went without an evaluation framework until the Youth Conduct Order program was funded and the evaluation process was combined. The Review came across a number of other examples where the NSW Government has funded pilot programs, some without evaluations. The lack of robust evaluation and an overall coordination framework means that the Review could not make judgements on the effectiveness and value of many of these programs.

1 Recommendation 3: No juvenile justice pilot program be approved without an evaluation framework and associated funding.

156. The United States Department of Justice (Office of Juvenile Justice and Delinquency Prevention) has developed a Model Programs Guide which can be used to assist in the implementation of evidence based programs across the entire continuum of youth services including prevention, interventions and re-entry. It includes a tool and database used to evaluate programs using a common rating system that considers:

a. the conceptual framework of the program;

b. the program fidelity;

c. the evaluation design;

d. the empirical evidence demonstrating the prevention or reduction of problem behaviour; the reduction of risk factors related to problem behaviour; or the enhancement of protective factors related to problem behaviour.156

157. It is suggested that the NSW Government would benefit from a similar model that provides a common method of evaluating programs. It would enable decision makers to compare the range of children and young people focused programs and pilots and make decisions based on common criteria. The research and development associated with developing such a framework could have applicability across a range of government service delivery areas.

1 Recommendation 4: A common evaluation framework for all programs and pilots related to juvenile justice is developed.

Political Dialogue with the Community

158. Responding to community concerns and reflecting the community’s wishes on issues is an important role and responsibility of an elected government. Helping to ensure that there is a balanced and informed debate on issues that attract community attention is a part of this responsibility. This can be

difficult when issues become inflamed, particularly when elements of the media focus on specific cases or issues. Notably, a number of studies and surveys have found that the public often overestimate the possibility and extent of juvenile crime.157 The reality is that a large number of children and young people commit offences, however, they do not offend very often.158 Furthermore, juvenile crime rates have remained relatively stable over the past five years.159 This misconception then plays an important role in shaping the law and order policy debate as the often misleading negative views of young people and their involvement in crime focus public thinking. This wrongly diverts the policy discussion towards more punitive approaches, rather than what is suggested by the substantial evidence base.

159. It would appear that there is a great role for Government to engage with the community to provide them with information on the evidence base on juvenile justice and what will provide the best long term outcomes for the community. Recent research suggests that people are supportive of the rehabilitation of young offenders160 and they do recognise that children are different. Developing and maintaining a well informed and rational public debate on juvenile justice between politicians and the public is a key challenge in building a safer community and better juvenile justice system in NSW. It is understood that the NSW Government has conducted a number of sentencing information forums to raise greater awareness of crime and sentencing rates to break down some of existing misconceptions. The Government has acknowledged that perceptions of crime and justice are often shaped without people hearing the full details of a case.161 The Review fully supports community forums on criminal justice, and recommends that the Government maintains its commitment to engaging with the community, specifically focused on juvenile crime and to better educate the community on all elements of the juvenile justice system (e.g. diversion, courts, sentencing, detention, post-release etc). The Government also needs to shape public knowledge and understanding through the use of positive media strategies.

1 Recommendation 5: The NSW Government conduct community forums to better educate the public on all aspects of the juvenile justice system.

It is important to understand the political context in NSW and its influence on the juvenile justice system. The government led response to juvenile justice begins at the political level and is driven by the legislation set by the Parliament. The findings and recommendations of this section are therefore of the upmost importance.

159 Over the five years from January 2004 to December 2008 the number of juveniles aged 10 to 17 years proceeded against in some way by NSW Police fell for two major categories, rose for five and remained stable for the other nine categories. See Bureau of Crime Statistics and Research, Crime Fast Fact 03: Is juvenile crime increasing? http://www.bocsar.nsw.gov.au/lawlink/bocsar/l_bocsar_nsf/pages/bocsar_fastfact_03 accessed 8 December 2009.
159 Unpublished information provided by Juvenile Justice.
160 It is understood that BOCsAR is in the process of validating a study conducted in the United States which found that the public was willing to pay as much or more taxes for rehabilitation programs than for longer periods of incarcerations for serious juvenile offenders. See MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, Do People Value Punishment More than Rehabilitation, www.adjj.org accessed 8 December 2009.
Legislation

Legislative Framework
160. The NSW Children’s Court criminal jurisdiction is a ‘benevolent’ jurisdiction where the penalties are generally lower than those available in adult courts, and this is in recognition of the developing nature of children. The age of criminal responsibility is conclusively set at 10 years old.162 This is consistent with the minimum age recommended in CROC, however, it is lower than most other comparable jurisdictions around the world where the average age is 13 years.163 Although, presumption of doli incapax provides protection against the rigors of criminal proceedings for any child aged between 10 and 13. Doli incapax requires proof that a child or young person between 10 and 13 understood their act or omission to be wrong.

161. The following section provides an overview of each of the key pieces of legislation, the next section examines the interrelationships between legislation and the subsequent sections provide analysis and commentary on each of the individual pieces of legislation.

OVERVIEW
162. The Young Offenders Act establishes a scheme that provides an alternative to court proceedings for dealing with children who commit certain offences. The Act uses diversionary options to achieve this through youth justice conferences, cautions and warnings164. These options can only be used if it is a summary offence165, indictable offences triable summarily under the Criminal Procedure Act 1986 (NSW) or other law prescribed under the Young Offenders Act itself. The term ‘gatekeepers’ is commonly used to describe the people who make determinations about whether the Young Offenders Act will be used and what option to proceed with. It is their role to ensure the most appropriate option is used and court is avoided where a Young Offenders Act diversionary option is available. These gatekeepers are:

a. investigating officials (i.e. police);

b. Specialist Youth Officer;

c. ODPP; and

d. Children’s Court magistrates.166

163. The Bail Act provides the comprehensive code for both judicial officers and police to assess persons applying for bail.167 It applies to both adults and children, however, there is a section which requires the court to take into consideration any “special needs” which arise from the fact that person is under

162 Children (Criminal Proceedings) Act 1987 (NSW) s 5.
164 Young Offenders Act 1997 (NSW) s 3(a).
165 Children (Criminal Proceedings) Act 1987 (NSW) s 8(1).
18 years of age.\(^{168}\) Bail is defined as the authorisation to be at liberty under the Act instead of in custody, subsequent to being charged with a criminal offence.\(^{169}\) The right of the person to be presumed innocent (and granted bail) needs to be balanced against the need to protect the community against offending while on bail and ensuring the accused appears in court.\(^{170}\) A bail decision can be made by a police officer or the court and will result in one of four possible outcomes:

a. dispense with bail and release the young person (subject to the requirement to appear at a later date);

b. grant bail with the requirement that an amount of money is provided as surety;

c. grant bail with conditions governing the young person’s liberty prior to reappearing in court; and

d. refuse bail and hold on remand.

164. The C(CP)A sets out the proceedings of the Children’s Court, including the commencement of proceedings, hearings and penalties available. The range of penalties under the C(CP)A consists of cautions, good behaviour bonds, fines, probation, community service orders, control orders and detention.\(^{171}\)

165. There are other pieces of legislation that apply to children and young people, however, these have not been included for discussion as they are outside of the terms of reference for a strategic review of juvenile justice. These include:


e. Children’s (Detention Centre) Regulation 2005.


h. Children’s Court Rule 2000.

i. Crimes Act 1900.


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\(^{168}\) Bail Act 1978 (NSW) s 32(1)(b)(v).

\(^{169}\) Bail Act 1978 (NSW) s 4(1) and Part 3.

\(^{170}\) New South Wales, Parliamentary Debates (Hansard), Legislative Council, 9 May 2002. Speech of the Hon H Sham-Ho at 1888 on the Bail Amendment (Repeat Offenders) Bill.

\(^{171}\) Children (Criminal Proceedings) Act 1987 (NSW) s 33.

RELATIONSHIP BETWEEN THE YOUNG OFFENDERS ACT 1997 AND THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

166. The Young Offenders Act and C(CP)A are the two fundamental pieces of legislation in the sentencing of children and young people. The Young Offenders Act provides options for diversion away from the formal court process, while the C(CP)A provides the mechanism by which children and young people are sentenced in the Children’s Court. There is some overlap as a Children’s Court Magistrate can use cautions and youth justice conferences from the Young Offenders Act if the child or young person is eligible.

RELATIONSHIP BETWEEN THE BAIL ACT 1978 AND THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

167. The Bail Act prevails over special children’s criminal legislation where there is an inconsistency, which means that the Bail Act takes precedence over the C(CP)A. The principles for dealing with young people outlined in the C(CP)A do not apply to the determination of bail. It also means that changes to the Bail Act, whether intended for adults or children, will have an impact on children and young people without considering their specific needs. This is different to Victoria, where the Children, Youth and Families Act 2005, prevails over the Bail Act.

168. There is a strong case to be made that changes made to the Bail Act have had unintended consequences on children and young people. This case is laid out in the Bail Act section of the report. It is the opinion of the Review that these unintended consequences on children and young people can best be overcome by having the C(CP)A take precedence over the Bail Act. This will ensure that the specific principles for dealing with children and young people are considered for the determination of bail.

Recommendation 6: Amend the Children (Criminal Proceedings) Act 1987 (Section 50) and Bail Act 1978 (Section 5) to reverse the precedence so that children specific legislation applies to all aspects of bail proceedings.

169. It is the intent of Recommendation 6 to recognise that children and young people are different and need to be treated as such in all criminal matters (including bail determinations). Some other Australian jurisdictions have achieved this by incorporating child specific criteria into their bail legislation to acknowledge their special circumstances. In its submission to the 2005 Law Reform Commission review, the Children’s Court recommended a similar approach. The Law Reform Commission supported this position and recommended:

“The special needs of young people would be better addressed if the Bail Act listed separate criteria, consistent with the principles contained in s 6 of the CCPA, to be applied to young people. The application of such criteria would deter unnecessary refusals of bail and the imposition of harsh and inappropriate conditions.”

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170. The Review understands that giving the C(CP)A precedence over the Bail Act will achieve the Law Reform Commission’s intent of addressing the specific needs of young people and reducing unnecessary refusals of bail and imposition of inappropriate conditions. A second option would be to introduce a separate criteria for young people in the Bail Act as per the Law Reform Commission’s recommendation.

**Recommendation 7:** If Recommendation 6 is not accepted, then amend the Bail Act 1978 to introduce separate criteria for young people, consistent with the principles in Section 6 of the Children (Criminal Proceedings) Act 1987.

### The Young Offenders Act 1997

171. As described earlier, the *Young Offenders Act* commenced in April 1998 based on an extensive consultation process involving cross-government and NGO collaboration. The Act established the general principles of least restrictive sanction, rights to legal advice, victim entitlement to information, and family and community involvement. The *Young Offenders Act* also sets out a hierarchy of diversionary options for juvenile offending comprising warnings, cautions and youth justice conferences. Table 4 below briefly outlines the requirements and process for each of these options.

**Table 4 – Young Offenders Act 1997 Options**

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<th>Option</th>
<th>Details</th>
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<tr>
<td>Warning</td>
<td>Investigating officers can issue a warning for summary offences that do not involve violence. Warnings do not require an admission of guilt.</td>
</tr>
<tr>
<td>Caution</td>
<td>Investigating officers can issue cautions for summary offences and indictable offences that can be dealt with summarily if:</td>
</tr>
<tr>
<td></td>
<td>+ the investigating officer is satisfied the young person meets the criteria set out in the Act;</td>
</tr>
<tr>
<td></td>
<td>+ the young person admits to the offence; and</td>
</tr>
<tr>
<td></td>
<td>+ consents to a caution. Cautions are generally issued by Youth Liaison Officers.</td>
</tr>
<tr>
<td>Youth justice conference</td>
<td>Investigating officers will refer a matter to a Specialist Youth Officer if they are not satisfied that the offence can be dealt with by way of warning or caution.</td>
</tr>
<tr>
<td></td>
<td>Specialist Youth Officers will then refer the matter to a youth justice conference or commence criminal proceedings.</td>
</tr>
<tr>
<td></td>
<td>Youth justice conferences are referred to Conference administrators within Juvenile Justice. Conference administrators can challenge referral decisions. If both parties fail to agree on the outcome, the</td>
</tr>
</tbody>
</table>

175. *Young Offenders Act 1997* (NSW) s 7 and 34.

matter is referred to the ODPP who makes the final decision.
If criminal proceedings are commenced, the Children's Court Magistrate can administer a caution or refer the matter for a youth justice conference if:
+ the offence is one for which a conference may be held;
+ the child admits the offence;
+ the child consents to a caution / conference; and
+ the court considers a conference should be held.

172. Issues associated with each of these options will be discussed in this section, along with the overall effectiveness of the Act and other strategic issues such as expansion to other offences, governance, diversionary targets and the requirement for an admission of guilt.

173. Text Box 3 below outlines the principles outlined in the section 7 of the Young Offenders Act.

Text Box 3 – Young Offenders Act 1997 Principles

1. The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.

2. The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.

3. The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.

4. The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.

5. The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.

6. The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children.

7. The principle that victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act.

8. The principle that the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of youth justice conferences, cautions and warnings.

177 Young Offenders Act 1997 (NSW) s 7.
WARNINGS
174. A child or young person can be dealt with by way of warning if they have committed, or is alleged to have committed, a summary offence. They cannot however be dealt with by warning if the circumstances of the offence involve violence or in the opinion of the investigating office, it is more appropriate to deal with by another means. The fact a child or young person has previously committed offences or has been dealt with under the Young Offenders Act cannot preclude the issuing of a warning. 178

175. A warning cannot have any conditions attached or impose any sanction on the child or young person. 179 Amendments to the Act and Regulations were introduced that requires the investigating officer to record the child’s name, gender, time and place of warning, and nature of the offence into the COPS database. This information cannot be included in the criminal history of the young person. 180

176. A review of the Young Offenders Act in 2005 found that section 17 which requires the investigating officer to record warnings was not always complied with. This was evidenced by the fact that more warnings were issued than were recorded. This was highlighted as a problem by Youth Liaison Officers as the young person’s record of warnings impacts the officer’s judgement about the most appropriate course of action for future offences. 181

177. No evidence was produced as part of this review that highlighted any systemic problems with warnings under the Young Offenders Act.

CAUTIONS
178. A child or young person is entitled to be dealt with by way of caution where a warning is not appropriate, unless the investigating officer is of the opinion that it is not in the interests of justice for the matter to be dealt with by giving a caution. 182 The child or young person must also admit to the offence and consent to a caution (otherwise the young person may decide to have the matter dealt with by a court). 183 A written notice is to be provided to the child or young person prior to receiving the caution 184, and the caution should be given at a Police Station not less than 10 days and not more than 21 days after the notice of caution. 185 The Children’s Court can give cautions, and this regularly occurs where a child or young person has exercised their right to silence at a Police Station and did not make the required admission of guilt and the court deems the matter eligible for a caution. 186

179. Changes were introduced in 2002 that legislated that a child or young person is not entitled to be dealt with by caution if they have already received three or more cautions. This is regardless of who administered the caution and whether or not the offence was for the same or different kind of offence. 187 Prior to this amendment, there was no limit on the number of cautions that could be given

178 Young Offenders Act 1997 (NSW).
179 Young Offenders Act 1997 (NSW) s 15.
181 ibid.
182 Young Offenders Act 1997 (NSW) s 20(1) & 20(2).
183 Young Offenders Act 1997 (NSW) s 25(1) & 19.
184 Young Offenders Act 1997 (NSW) s 24.
185 Young Offenders Act 1997 (NSW) s 26.
187 Young Offenders Act 1997 (NSW) s 20(7).
to a child or young person. The Law Reform Commission review in 2005 surmised that these amendments increased the severity of the response to the offence by diverting matters to conferencing or court proceedings. The review did support limiting the number of cautions, but was not aware of any evidence that suggests the changes are causing injustice. They recommended that the Juvenile Justice monitor the impact of these changes.\textsuperscript{188}

180. The effectiveness of cautioning as a diversionary option is highlighted by the fact that 58% of children and young people who were cautioned in 1999 did not re-offend within five years. Only 20.3% had at least one proven Children’s Court appearance, and 33.1% had a proven appearance in the adult court, in the five years following the caution. Only 5.2% went on to receive a custodial penalty within the follow-up period.\textsuperscript{189}

181. Given the effectiveness of cautions in diverting children and young people from the criminal justice system, it would appear as though the amendment to limit the amount of cautions was made without an appropriate evidence base. Although as the Law Reform Commission highlighted, no evidence has been produced to suggest that is has caused injustice. Given the inconclusive evidence on this issue there would appear a need to continue to monitor the effectiveness of cautioning as a diversionary option and the impact of the 2002 amendments.

\textsuperscript{1} Recommendation 8: The Department of Justice and Attorney General monitor the effectiveness of cautioning and any unintended consequences caused by limiting the amount of cautions that can be received.

\section*{YOUTH JUSTICE CONFERENCING}

182. Youth justice conferencing provides a community based approach to juvenile offending that brings offenders, their families and support face to face with their victims and their support people. In line with the restorative justice principles it is based on, the conference aims to agree on a suitable outcome that can include an apology, reasonable reparation to victims and steps to link the young person back into the community.\textsuperscript{190}

183. Section 34(1)(a) of the \textit{Young Offenders Act} outlines the principles and purposes of conferencing, including:

\begin{itemize}
  \item a. promoting acceptance and responsibility for the offending behaviour;
  \item b. strengthen the family group of the child concerned;
  \item c. provide developmental and support services that will enable the child to overcome the offending behaviour;
  \item d. enhance the rights of victims;
  \item e. provide culturally appropriate responses wherever possible; and
\end{itemize}

\textsuperscript{189} NSW Bureau of Crime Statistics and Research, \textit{Reoffending among young people cautioned by police or who participated in a youth justice conference}, 2006.
f. have due regard for the victims interests.

184. The purpose of the conference is to develop an outcome plan which outlines decisions and recommendations for the child who is subject to the conference.\textsuperscript{191} During the conference, the victim is able to respond to what happened, voice their feelings about the crime, and suggest outcomes with which they are satisfied. The outcome plan must contain outcomes that are realistic and appropriate, and cannot be more severe than those that a court may impose. It must set out a timeframe for implementation and cannot impose community service obligations greater than the maximum amount outlined in the \textit{Children (Community Service Orders) Act 1987}.\textsuperscript{192}

185. Conferences can be referred to Conference Administrators (within Juvenile Justice) by either the NSW Police or the Children’s Court. If the Conference Administrator deems a conference will meet the criteria specified in the \textit{Young Offenders Act}, they will engage a convenor to facilitate the conference. Convenors are recruited from the community and are statutory office holders appointed by the Director General. They are required to complete competency-based training to be eligible for appointment as a convenor. Juvenile Justice works with conference participants nominated as monitors, community members, NGOs and other government agencies to monitor the completion of outcome plans.\textsuperscript{193}

186. In 2008/09, Juvenile Justice received 1915 referrals for conferences and 1441 were facilitated. It is understood that this difference can be a result of multiple referrals for a single conference, joint conferences held for co-offenders or referrals withdrawn by either police or court. Figure 13 below outlines the number of conferences referred and facilitated since 2003/04. It shows the number of conferences referred and facilitated has remained relatively static over the past five years.\textsuperscript{194}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure13.png}
\caption{Referrals to Conferences and Conferences Facilitated}
\end{figure}

\textbf{Source:} NSW Department of Juvenile Justice Annual Report 2008/09

\textsuperscript{191} \textit{Young Offenders Act 1997} (NSW) s 34(2).
\textsuperscript{192} \textit{Young Offenders Act 1997} (NSW) s 52.
187. Over the same period, Figure 14 shows the number, and percentage of, outcome plans completed.

![Figure 14: Number of Outcome Plans Completed and Percentage of Outcome Plans Completed](image)

Source: NSW Department of Juvenile Justice Annual Report 2008/09

188. This figure shows a decrease in the percentage of outcome plans completed over four years, and a significant drop from 2006/07 to 2007/08. This trend will be discussed later in this section of the report.

189. Some other important statistics regarding conferences include:

a. 50% of conferences with identifiable victims in 2008/09 had the victim or representatives in attendance. This declined from 53.8% in 2007/08 and 60.7% in 2006/07.

b. 99.5% of conferences in 2007/08 resulted in agreed outcome plans by the victim and young offender.

c. 43% of conferences in 2008/09 were referred by NSW Police (compared with 57% by the Children’s Court). This fell from 44% in 2007/08 and 49% in 2006/07.

d. 20.5% of conferences in 2007/08 were for Aboriginal and Torres Strait Islander young offenders. This declined from 28.6% in 2007/08.\(^{195}\)

190. There have been a number of evaluations of conferencing since its introduction, including a BOCSAR study in 2000 which examined whether the specific statutory requirements have been met (i.e. conference attendees and timeframes) and participants’ satisfaction with the process and outcome

plans. It found that most victims, offenders and support persons were satisfied with the conference, and the majority of conferences achieved the legislative intention of including victims and their immediate families. However, only 8.1% of conferences were held within the 21 day timeframe from referral and between 11 and 21 days after written notification to the offender. Overall, the evaluation strongly endorsed the value of conferencing and its restorative justice principles.\textsuperscript{196}

191. BOCSAR conducted another review in 2006 which examined re-offending after participation in conferences. It found that 58% re-offended at least once in the five years after their conference. This compares with 63% of young people who re-offended after court appearances before the introduction of conferences.\textsuperscript{197} Another study examining re-offending found a reduction of up to 15-20% in re-offending across different offence types and regardless of the gender, criminal history, age and Aboriginality of the offenders.\textsuperscript{198}

192. Despite these evaluations which support the effectiveness of conferencing, there are a range of issues that need to be addressed to further improve its utilisation. As identified previously, there has been a steady decrease in the percentage of outcome plans completed over the previous four years. It is understood that the decrease can partly be accounted for by the six month lag in the completion of outcome plans over the reporting period. However, the decrease (totaling 11.2% over a four year period) is significant enough to represent a systemic issue. Given the effectiveness of youth justice conferencing, and the importance of outcome plans as the principle output from this process, remediation of this issue is required. No information was provided to the Review to explain this trend. Juvenile Justice should work to investigate the decrease in completion numbers and actively seek to improve the percentage of outcome plans completed.

Recommendation 9: Juvenile Justice incorporate targets for the improvement of completion of outcome plans into its Strategic Plan.

193. One of the major concerns is the low referral rate by NSW Police (43%, compared with 57% from the Children’s Court). One of the major principles of the Young Offenders Act is its diversionary nature, however, when children and young people are referred by the Children’s Court, they have not been diverted from the formal court system. It is acknowledged that a number of these Children’s Court referrals may arise because the child or young person did not make a guilty admission at the Police Station. That said, figure 15 below shows the number of referrals to conferences by NSW Police Local Area Commands for the 2008/09 financial year. It highlights the large variance in the rate of referrals depending on the Local Area Command. This suggests that the leadership of individual NSW Police Local Area Commanders plays a large role in determining outcomes for children and young people. While the exact circumstances of individual cases are not known, it is highly unlikely that only 1-2 children and young people were appropriate for conferencing in 28 Local Area Commands in a year. The data suggests that there are a number of Local Area Commands in NSW that utilise conferencing quite heavily, however, the majority are under-utilising it. Improving

\textsuperscript{197} NSW Bureau of Crime Statistics and Research, Reoffending among young people cautioned by police or who participated in a youth justice conference, 2006.
\textsuperscript{198} NSW Bureau of Crime Statistics and Research, Reducing Juvenile Crime: Conferencing versus Court, 2002.
governance of conferencing, and Young Offenders Act options more broadly, is discussed later in this section which will seek to address this issue.

**Figure 15: Number of Youth Justice Conference Referrals by Local Area Command, 2008/09**

![Graph showing number of youth justice conference referrals by local area command, 2008/09](image)

Source: Juvenile Justice data

194. Another area of concern is that only 50% of conferences with an identifiable victim had that victim or a representative in attendance in 2008/09. The evaluations of conferencing described previously identify that participants’ satisfaction with the process and the outcome plans is one of the major benefits of the conferencing process. It is an issue that only just over half of conferences will realise this benefit. It is understood that it can be a very daunting process for a victim to face the offender, however, it is one of the principles of restorative justice that makes the process so successful. Gaining greater victim participation in conferencing leads to better outcomes and there is a need to actively encourage participation.

Recommendation 10: Juvenile Justice, with the assistance of NSW Police and the Children’s Court, explicitly incorporate the improvement of participation of victims in youth justice conferencing into their Strategic Plan.

195. The timeliness of facilitating a conference from the time an offence was committed was earlier highlighted as an issue. The Young Offenders Act does not stipulate the maximum timeframe after the offence within which the conference must be held, it does however stipulate a 28 day timeframe from referral and between 11 and 28 days after written notification to the offender. It is argued that the emotions of the offenders and victim can change over time, and a substantial delay can reduce the effectiveness of the conferencing process. Since the introduction of the Young Offenders Act, the mean number of days from the offence to a conference rose from 102.1 to 129.9 days. Referrals from NSW Police averaged 112.5 days and the Children’s Court 143.4 days. In the interests of both victims and offenders, these delays require remediation by Juvenile Justice in conjunction with NSW

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Police and the Children's Court. A plan to reduce delays including the recruitment and training of additional conference convenors, the monitoring of timeframes and a governance framework requires development by Juvenile Justice.

Recommendation 11: Juvenile Justice, in conjunction with the NSW Police Force and the Children's Court, develop a plan to reduce delays in the conduct of youth justice conferences in order to meet the timeframes stipulated by the Young Offenders Act 1997.

196. One of the challenges for Conference Administrators and convenors is balancing the opportunity to intervene in a child or young person's progression towards more serious offending, against the restorative justice based principles upon which conferencing is established that promotes diversion and not intervention. It is understood that there is a general screening process for known risk factors such as physical health, mental health, intellectual disability, homeless etc. It is not however the convenor's role to influence the conference process or outcome plan based on this screening. The more screening and intervention that is incorporated into an outcome plan, the less it is about diversion, and the more it is about drawing them into the justice system. That said, there is a definite opportunity to collect information about a child or young person and steer those at serious risk away from further, or more serious, offending.

197. Further systems (i.e. people, process and technology) therefore need to be established within Juvenile Justice to collect information on the needs of the child or young person while staying true to the conferencing process. This can be achieved through conference conveners conducting a more detailed risk and needs assessment during the conference, and forwarding the outcomes to an area of Juvenile Justice that can intervene if it is deemed necessary. This will ensure that the conferencing process will remain true to its restorative justice principles, but improved information is available to respond to the needs of children at the local level, resulting in more individuals and families receiving earlier support.

Recommendation 12: Juvenile Justice strengthens the youth justice conferencing process to incorporate an improved risk and needs assessment. This will involve the establishment of necessary systems (people, process and technology) to allow information to be gathered, and where appropriate, action taken to provide additional support to individuals and families.

198. The Review has identified a range of recommendations to improve conferencing. Despite making these recommendations, the evidence and general feeling amongst the juvenile justice community is that conferencing is highly effective and worth preserving and strengthening. It the primary diversionary mechanism in the NSW juvenile justice system and it is important to acknowledge it is not a soft option. It is also important to understand it is not a 'silver bullet' that will prevent all children and young people from re-offending. It is valuable for a range of reasons, including:

a. the needs of victims are addressed and their rights protected;

b. it holds young people accountable for their actions, but also seeks to address the causes of offending;

c. evaluations have shown it reduces re-offending by between 15-20% compared to court proceedings;
d. it recognises the effectiveness of diverting young people away from formal justice approaches; and

e. it contributes to the State Plan priorities of reducing rates of crime and rates of re-offending; and more harmonious communities through increased community participation.\(^{200}\)

OFFENCES COVERED BY THE YOUNG OFFENDERS ACT 1997

199. As outlined previously, the *Young Offenders Act* covers summary offences, indictable offences that can be dealt with summarily under the *Criminal Procedure Act 1986* (NSW) or other law prescribed under the *Young Offenders Act* itself.\(^{201}\) Specific offences that are not covered by the Act include traffic offences (if the offender is old enough to hold a permit or a licence), offences resulting in death, most sexual offences, breaches of apprehended violence orders and serious drug offences\(^{202}\).

200. A number of stakeholders have argued that the offences covered under the *Young Offenders Act* should be expanded to cover more serious offences. The Law Reform Commission looked at this issue specifically and was of the view that the diversionary options in the *Young Offenders Act* ought to be made applicable to all offences except those that cannot appropriately be made the subject of diversionary options (especially conferencing). This was based on the objects and principles of the *Young Offenders Act* and their clear commitment to diversionary options, and the appropriate involvement of victims in the criminal justice system where possible and appropriate. The Law Reform Commission went on to make a series of recommendations regarding exclusions and inclusions of specific offences.\(^{203}\) It is not within the scope of a strategic review to examine individual types of offences, however, we do agree with the principle of expanding the *Young Offenders Act* to deal with more serious offences where there is an evidence base to suggest that diversionary options would be suitable.

Recommendation 13: The Department of Justice and Attorney General review the Law Reform Commission’s recommendations regarding specific exclusions and inclusions of offences covered by the *Young Offenders Act* 1997.

GOVERNANCE

201. The Youth Justice Advisory Committee was established as part of the *Young Offenders Act* implementation to advise the then Attorney General’s Department and Director-General of Juvenile Justice on the making of regulations, the preparation and guidelines and criteria for the operation of youth justice conferences, and the review and monitoring of the legislation.\(^{204}\) The ongoing review and monitoring function brought together DJAG, NSW Police and Juvenile Justice with independent community and legal representatives. It is understood that the Youth Justice Advisory Committee would meet regularly and monitor the response to the Act, and specifically the utilisation of youth justice conferences, cautions and warnings. It would compare these *Young Offenders Act* diversionary options with court appearances, and examine their use by region to ensure that they were being used appropriately. Where issues were identified, it was noted and followed up within


\(^{202}\) ibid.

\(^{203}\) ibid.

respective agencies. The consensus at the time was that this was a very effective mechanism, partially due to the fact that the committee was legislatively based.

202. There was also Juvenile Justice Advisory Council of NSW which reported to the Minister for Juvenile Justice on concerns raised by council members. Unlike the Youth Justice Advisory Committee, the Juvenile Justice Advisory Council of NSW was not legislatively based. Both the Juvenile Justice Advisory Council of NSW and Youth Justice Advisory Committee were disbanded in 2006/07 and replaced with the Young Offenders Advisory Council which was established in 2008. Its terms of reference are to advise Ministers on issues relating to the reduction of re-offending by young offenders. The scope of the Council has been in effected reduced, and as a result, the focus on monitoring the overall utilisation of the Young Offenders Act no longer exists. As a result, Juvenile Justice, NSW Police and DJAG all perform their own monitoring, however, there is no oversight of the overall effectiveness of the Act. Additionally, there is no mechanism to hold these agencies accountable for the operation of the Act.

203. The terms of reference for the Young Offenders Advisory Council needs to be refocused on monitoring the overall effectiveness of the juvenile justice system, most notably, the operation of the Young Offenders Act, emerging trends and the targets discussed in the following section. In order to give the Council the required standing it requires, it is recommended that the Terms of Reference be established under legislation. This will ensure the Council has formal standing, is consistently attended by senior Government stakeholders and has the power to respond to identified issues. The Council should still respond to requests from Ministers, however, this would prioritised alongside its monitoring function. Departments responsible for operating the Act need to be held accountable by the Council and ensure that the intent of the legislation is being met. An independent representative would be required to ensure integrity of the Council is maintained. It is therefore recommended that the members of the Young Offenders Advisory Council be reduced to:

- Chief Executive, Juvenile Justice;
- a senior DJAG representative;
- Director, BOCSAR;
- President of the Children’s Court;
- Spokesperson for Youth, NSW Police; and
- a senior NSW Ombudsman representative.

204. This reduced number of participants, and an increase in the levels of seniority, are likely to result in a better functioning Council. It will also improve the ability to resolve issues identified in specific departments/agencies.

Recommendation 14: The Young Offenders Advisory Council establish a modified terms of reference in legislation to include a monitoring role of the juvenile justice system, including the use of diversionary options available under the Young Offenders Act 1997.
Recommendation 15: The number of members on the Young Offenders Advisory Council is reduced to organisations directly involved in the juvenile justice system (as per paragraph 203) and they be appropriately represented by senior Government representatives.

DIVERSIONARY TARGETS

205. As discussed above, there is little monitoring of the overall effectiveness of the Young Offenders Act and its diversionary measures. The general feeling amongst the stakeholders consulted as part of the review was that the rate of diversion could be improved. As such, introducing diversionary targets has been suggested by a number of stakeholders, including the Youth Justice Advisory Committee in 2001 who stated that inter-jurisdictional comparisons were a reasonable means of establishing these goals.205 This would be consistent with NSW’s primary strategic document, the State Plan which uses targets as its basis. A recent report published by the Youth Justice Coalition also recommended that benchmarks be established for referral rates to diversionary options and that these measures should be incorporated into the NSW State Plan.206 The Law Reform Commission review explored this issue and concluded that targets would not provide an effective means of measuring the success of the Young Offenders Act.207

206. Similar to the Law Reform Commission, the Review supports the position that each case should be dealt with according to its individual circumstances, however, legislation dictates that each case must dealt with on its individual merits. This does not negate the benefits of establishing system-wide targets. Setting targets will allow periodic assessments of how diversion is being used across NSW. It is envisaged that will drive positive behaviour and the rate of diversion will be improved. As such, there is a strong case that diversionary targets be established and monitored by the Young Offenders Advisory Council. Any variations to the targets should be discussed in the Council and explanations provided. Diversionary targets should also be incorporated to the next review of the NSW State Plan.

Recommendation 16: The Young Offenders Advisory Council establish and monitor diversionary targets for the NSW juvenile justice system. These targets should be reviewed and incorporated into the next version of the NSW State Plan.

IMPACT OF OTHER LEGISLATION ON THE YOUNG OFFENDERS ACT 1997

207. The Law Reform Commission examined the effectiveness of warnings, cautions and youth justice conferences as detailed earlier. It also raised a concern that the effective regulation of police discretion has been undermined by subsequent legislation. The review used the ‘reasonable directions’ powers which allows NSW Police to “give reasonable direction in public” powers as an example.208 The principal purpose of the powers are to enable police to deal with anti-social behaviour which, while falling short of criminal behaviour, may yet cause harassment, intimidation or fear to others. Before these powers were introduced, NSW Police made the requests to move on informally or threatened with arrest of breach of peace.209 The Law Reform Commission review examined Part 5 of the Summary Offences Act 1998 which gives NSW Police increased powers to

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206 Youth Justice Coalition, Bail Me Out: NSW Young Offenders and Bail, 2009.
208 Summary Offences Act 1988 (NSW) S 28(F)
search without warrant for knives and other dangerous implements. The Law Reform Commission believes this was further evidence of the erosion of the Young Offenders Act. More recently, knife laws were again strengthened and a first time offender may be sent to jail for up to two years if they are in possession of a knife in a public place or school without reasonable excuse.

210. It is important to understand the impact of these legislative changes will have on the Young Offenders Act, and the juvenile justice system more broadly, before making them. The Review agrees with the Law Reform Commission that the introduction of new legislation (including the aforementioned examples) that bypasses the diversionary options contained in the Young Offenders Act is a concern. These changes are a direct result of the ‘law and order auction’ described previously and it is unlikely the changes were based on considered law reform and long-term trends. Therefore, previous recommendations regarding the political context, making evidence based policy and considering the impact of all changes on children and young people should assist in better considering legislation of this nature and its impact on the Young Offenders Act in the future.

Observation: Since the commencement of the Young Offenders Act 1997, other legislation has been introduced that erodes the intent of the Act. The implementation of this Review’s recommendations should reduce the likelihood that this will occur in the future.

OVERALL EFFECTIVENESS OF THE YOUNG OFFENDERS ACT 1997

209. There have been a number of evaluations of the Young Offenders Act since its inception, including a statutory review of the Act’s implementation and the Law Reform Commission review in 2005. The statutory review of the first three years of the Act’s operation found that its implementation had been largely successful. While there was some concern from police and magistrates, there was general acceptance of the Act. It found a substantial increase in the use of cautions (from 18% three years before implementation, to 36% three years after implementation) and warnings (3,000 in Year 1 to nearly 10,000 in Year 3), and a decline in the use of court proceedings (from 83% three years before implementation, to 59% three years after implementation). The analysis showed that Indigenous young people were more likely to be taken to court, and less likely to be cautioned, however, there was a substantial reduction in Indigenous overrepresentation. A steady decline in the average number of young people in custody since the introduction of the Young Offenders Act was also observed.

210. Overall, the Young Offenders Act provides a robust framework for the diversion of children and young people from the formal criminal justice system. Recent data from the Australian Institute of Criminology shows that approximately 50% of children and young people are diverted from formal prosecutions in NSW. This demonstrates a general commitment to the principles of the Young Offenders Act notwithstanding the range of issues previously identified. Overall, the Review is of the opinion that the Young Offenders Act is an effective piece of legislation, however, its utilisation could be improved in a number of areas.

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213 Australian Institute of Criminology, Juveniles’ contact with the criminal justice system in Australia, 2009.
The Bail Act 1978

INTRODUCTION

211. The Bail Act provides the code for the Court and NSW Police to assess persons applying for bail. Bail is the authorisation to be a liberty instead of in custody subsequent to being charged with a criminal offence. A persons’ right to be presumed innocent needs to be balanced against protecting the community against further offending and ensuring the accused appears in court. As described earlier, the following outcomes can result from a bail consideration: dispense with bail and release the young person; grant bail with conditions (including the possibility of monetary surety); unconditional bail; and refuse bail and hold on remand.

212. In 2006, bail was dispensed with or not required for 37% of children and young people whose matters were finalised in the Children’s Court. Of the remainder, 49% were granted bail and 13% had bail refused. It should be noted that children and young people were rejected bail at twice the adult rate (6%). However, the proportion that were granted bail was higher than the proportion of adults (27.6%).²¹⁴ For the 49% of children and young people that were granted bail, the bail is nearly always conditional. Bail conditions will be discussed later in this section. It is important to understand that less than 2% of children and young people failed to appear at court or had arrest warrants issued in the same period.²¹⁵ This demonstrates that the risk of a young person not returning to court is very low.

213. The following issues associated with the Bail Act will be explored in this section:

a. bail determination;

b. bail conditions;

c. impact on sentencing; and

d. remand.

BAIL DETERMINATION

214. Bail determinations can be made by either the NSW Police or the Children’s Court and can result in the four outcomes described previously. If bail is dispensed with, the child or young person can remain at liberty until they are required to appear before a court without any impositions. It should be uncommon that a child or young person will have bail dispensed with, because those that that are proceeded with via arrest will generally have a history of non-compliance, or be appearing for a serious offence. In 2006 however, bail was dispensed with or not required for 37% of children and young people whose matters were finalised in the Children’s Court.²¹⁶ The Bail Act does not apply when bail has been dispensed with.²¹⁷

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215. The criteria that must be applied in considering whether to grant bail is outlined in Section 32 of the *Bail Act*. It includes:

a. the probability of whether or not the person will appear in court in respect of the offence for which bail is being considered;

b. likelihood of the defendant committing further offences;

c. the interests of the person;

d. the protection of certain specified types of person; and

e. the protection and welfare of the community.

216. The two criteria that apply specifically to children and young people are any special needs arising from their age and the relevance of not living with a parent or guardian. The legislation does not define what ‘special needs’ means which requires the judicial officer to interpret the requirement on a case-by-case basis.\(^{218}\)

217. As previously noted, the Review does not in the first instance support the creation of specific bail criteria for children and young people. Instead, giving the C(CP)A precedence over the *Bail Act* should ensure that the special needs of children and young people are considered in bail determinations.

218. In making bail determinations, the Children’s Court requires the necessary background information to make an appropriate decision (e.g. whether the child or young person has suitable accommodation). In the 2005 Law Reform Commission review, the Children’s Court submitted that there is insufficient time for the court or duty solicitor to obtain the information required to contest a bail application. It is understood that Juvenile Justice Officers develop comprehensive reports for bail hearings, however, it is recognised that their capacity is limited.\(^{219}\) It is apparent that there is currently no easy way to source the required information for bail applications, and as a result, some children and young people are held on remand. The newly formed Department of Human Services provides an opportunity to improve the ability of Juvenile Justice Officers (or equivalent) to source the information required to make more informed bail decisions. The improved information sharing arrangements established as part of *Keep Them Safe* will assist in this regard. There should therefore be no requirement to have intake officers from every Human Services agency present at court. Instead, the information sharing protocols need to be established and/or improved so that an intake officer at the Children’s Court can easily source the necessary information from a range of sources (e.g. community services, housing, health etc.) and provide it to Magistrates and solicitors. This will ensure that at the time of determination, the court is able to make a fully informed decision.

\*Recommendation 17: Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.\*

\(^{218}\) Ibid.

\(^{219}\) Ibid.
BAIL CONDITIONS

219. When a child or young person is released on bail, they are required to make an undertaking in writing that they will appear in court on a specified date.\(^{220}\) Although there is a general presumption of unconditional bail\(^ {221}\), this undertaking will normally involve bail conditions for children and young people. The legislative reasons for granting bail conditions are to:

a. promote effective law enforcement;

b. protect the welfare of anyone who is ‘specially affected’;

c. protect the welfare of the community; or

d. reduce the likelihood of further offences being committed by promoting the treatment or rehabilitation of the accused.\(^ {222}\)

220. These conditions should not be more onerous than what is required by the nature of the offence, the protection and welfare of anyone who is ‘specially affected’, or the circumstances of the accused.\(^ {223}\) Importantly, any conditions must be “reasonably and readily able to be entered into”.\(^ {224}\)

221. Despite a general presumption of unconditional bail, stakeholder interviews and other sources (such as reports and journal articles) have suggested that unconditional bail, particularly for children and young people, is a “thing of the past”.\(^ {225}\) Bail conditions can include, but are not limited to, curfews, reporting to a Police Station, area restrictions, non-association orders, reside in bail accommodation, financial surety, acknowledgement from an acceptable person and participation in rehabilitation / intervention program.\(^ {226}\) A recent report published by the Youth Justice Coalition examined the types of bail conditions imposed on children and young people and found that the most common conditions were focused on addressing behaviour (e.g. curfew, obeying reasonable directions, non-associations, report to police) and welfare (e.g. reside as directed\(^ {227}\), attend school).\(^ {228}\) These findings, and the views of a range of other stakeholders\(^ {229}\), suggest that bail conditions are being imposed above and beyond the legislative reasons for conditions outlined previously. Magistrates and NSW Police need to ensure that they understand the legislative basis for bail conditions and as suggested by the Law Reform Commission and Children’s Court, ensure that bail conditions are no more onerous than is required by the Bail Act.\(^ {230}\) Bail conditions also need to be commensurate with the offence, for example, a curfew should not be imposed for an offence that has no discernable link to the offence or will impact on the likelihood of attendance at court at a later date.

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\(^{220}\) Bail Act 1978 (NSW) s 34(1)(a).

\(^{221}\) Bail Act 1978 (NSW) S 37(1).

\(^{222}\) Bail Act 1978 (NSW) s 37(1) and (2).

\(^{223}\) ibid.

\(^{224}\) Bail Act 1978 (NSW) s 8(2)(b)(ii).


\(^{227}\) A magistrate can impose a condition to reside as directed by either the Department of Juvenile Justice or by the Department of Community Services. This order requests either department to find appropriate accommodation for the young person.

\(^{228}\) Youth Justice Coalition, Bail Me Out: NSW Young Offenders and Bail, 2009.

\(^{229}\) The Children’s Court of New South Wales, Submission to NSW Law Reform Commission, Report 104: Young Offenders, 2005.

The Bail Act provides appropriate guidance for the NSW Police and Children’s Court Magistrates to set appropriate bail conditions (i.e. commensurate with the offence and are no more onerous than is required). Recommendations 6 and 7 will also assist by ensuring that bail conditions are set cognisant of a child or young person’s individual circumstances. To ensure that these changes are working, DJAG and the NSW Police need to establish (or incorporate into existing) mechanisms the requirement to monitor the appropriateness of bail conditions being imposed on children and young people. Along with ongoing monitoring through these mechanisms, DJAG and NSW Police should provide regular reports to the Bail Working Party. This is because it is understood this working party is currently investigating issues around bail including research into the nature and impact of conditions of bail imposed on young people by the NSW Police and courts.

Recommendation 18: The NSW Police Force and Department of Justice and Attorney General establish ongoing monitoring arrangements to ensure that appropriate bail conditions are being imposed on children and young people (i.e. bail conditions that are commensurate with the offence and are no more onerous than is required by the Bail Act 1978). The NSW Police Force and the Department of Justice and Attorney General provide regular reports to the Bail Working Party to inform its research.

A range of stakeholders commented that more onerous conditions are being imposed on children and young people compared to adults (e.g. curfews). In making their bail undertaking, children and young people are required to acknowledge their bail obligations and consequences of a breach. There is a general concern that they do not fully understand their conditions and may unintentionally breach bail. This is likely to be influenced by a recent study which found that 67% of young people received three or more bail conditions. By law, the Court must consider the capacity of children and young people with an intellectual disability to understand and comply with bail conditions. It would seem appropriate that this consideration be applied for all children and young people (not just those with an intellectual disability). This should also address the issue of children and young people who are unlikely to comply with certain bail conditions, for example the challenge some children and young people face in complying with non-association orders, area restrictions and curfews, and those with reside as directed orders, despite having no home or cannot return to home.

The systems and protocols need to be established so that NSW Police and the Children’s Court can be assured that children and young people have the capacity to understand and comply with bail conditions.

Recommendation 19: The systems and protocols are established to ensure that all children and young people have the capacity to understand and comply with bail conditions before they are imposed.

The issue of the breaching of bail conditions by children and young people will explored in the Children and Young People in Trouble section of the report.

IMPACT ON SENTENCING

221 In October 2008 the Criminal Justice Chief Executive Officers Group established the Bail Working Party – an interagency Working Group to examine the issues and possible causes of the increase in the juvenile remand rate.
233 Youth Justice Coalition, Bail Me Out: NSW Young Offenders and Bail, 2009.
235 Youth Justice Coalition, Bail Me Out: NSW Young Offenders and Bail, 2009.
225. The bail assessment process can have a significant impact on whether a young person progresses further into the juvenile justice system, or is successfully diverted from it. Research has found that it can have an impact on the content and severity of a sentence. This can be influenced by a range of factors including fewer resources available to prepare a defence, the higher likelihood of making a less favourable impression in court and they have had no opportunity to demonstrate they are able to meet bail conditions and appear before the court. There is also some evidence to suggest that judicial officers may feel obliged to justify pre-trial custody by guiding the outcome towards a guilty verdict. A bail outcome may also influence sentencing as time spent on remand can be seen as an “interim sentence”. This is contrary to the purposes of bail described previously.

REMAND

226. A child or young person is considered to be on remand when they are held in a juvenile justice centre but have not yet been sentenced. As described previously, this could be because they have been refused bail, or because they are unable to comply with the bail conditions imposed upon them. The number of children and young people on remand has grown steadily since 2003. Significantly, between 2007 and 2008, the remand population increased by 32%, from an average of 181 per day to 239 per day. The number of children and young people held on remand decreased from 5,081 in 2007/08 to 4,643 in 2008/09. This still represents a significant increase in numbers over a five year period. This section will explore the impact of growing remand numbers, its contributing factors, and options to reduce the number of children and young people on remand.

Trend. The numbers of children and young people on remand has grown significantly since 2003. Importantly, only 18.3% of remandees will go on to receive a custodial penalty at sentencing, and less than 2% of children and young people granted bail fail to appear at court or have arrest warrants issued.

227. Text Box 4 below provides some important context by summarising international research on the impact of remand.

Text Box 4 – International Research on the Impact of Remand

Before the impacts of this trend are examined, it is important to highlight some of the findings of Enclosure 1 – Review of Effective Practice in Juvenile Justice. It found that time spent in a remand facility is the “most significant factor in increasing the odds of recidivism”. It also highlights that remanded detainees often feel isolated and frustrated or as if they have already been found guilty, adding stress on family relationships and disruption to education for young people. Excessive use of remand can result in overcrowding of detention centres and unsatisfactory conditions for detainees. International research shows that custodial remand should be used as last resort and bail should be granted to youth wherever possible.

IMPACT OF GROWING REMAND NUMBERS

236 G Brignell, Bail: An Examination of Contemporary Issues, 2002.
228. The impact of growing remand numbers highlighted above is significant. It represents a fundamental shift for Juvenile Justice as children and young people on remand require a different range of services. Others have commented that children and young people on remand tend to be “warehoused”, rather than receiving rehabilitative programs. This is because the average number of days for young people in custody after being granted conditional bail (but unable to meet conditions) for 2007/08 was 10 days, compared with the average length of stay for people on control orders (119 days). This means that Juvenile Justice has a very limited capacity to address any offending behaviour for young people on remand.

229. Concerns have also been raised that only 18.3% of children and young people held on remand will go on to receive a custodial penalty at sentencing. Although stakeholders have posited that Magistrates will take time spent on remand into account when sentencing. Regardless, a substantial number of children and young people are spending time in a juvenile justice centre unnecessarily. Research has found that time spent in remand is the most significant factor in increasing the likelihood of recidivism. Furthermore, BOCSAR recently found no significant effect on the likelihood of re-offending for juveniles given a custodial penalty compared to a non-custodial penalty. Given the lack of evidence that detention acts as a deterrent, and its potential negative effects, the study recommended custodial penalties ought to be used very sparingly with juvenile offenders. While this study examined juveniles given custodial orders (i.e. not on remand), it indicates that time spent in detention is unlikely to reduce the risk re-offending. It is therefore a concern that approximately 3,750 children and young people were held in detention in 2007 and did not go on to receive a control order. This suggests that they were unnecessarily exposed to a custodial environment which is unlikely to reduce their risk of re-offending, and will have negative short-term and long-term effects.

230. The NSW Ombudsman also observed that juvenile detention centres are experiencing overcrowding. This is evidenced by detainees being accommodated in holding rooms and on mattresses on the floors of other detainee’s rooms. This is clearly an inappropriate form of accommodation for children and young people.

231. Importantly, there is no evidence to suggest that holding children and young people on remand is reducing crime. In fact, a recent BOCSAR report has found that it has not reduced property crime for example. It should be noted that this may not be a true indicator of crime generally, however, this is issue is explored later in the Children and Young People in Trouble section of the report. The research that shows that holding children and young people on remand increases the risk of re-offending further suggests it may actually increase the risk of crime over time.

244. The Audit Office of New South Wales, Performance audit : addressing the needs of young offenders : Department of Juvenile Justice, NSW Police Force, 2007
245. NSW Ombudsman, Submission of NSW Ombudsman to Wood Special Commission of Inquiry into Children Protection Services in NSW, 2009.
232. In response to the increase in remand numbers, the Government has increased the capacity of juvenile justice centres, and in some cases transferred some young people to adult prisons. This strategy has not only had negative impacts on children and young people as described above, the cost of keeping juveniles on remand rose from $36.7 million to $47.2 million in the last year. It is estimated that the daily cost for detention (control order or remand) is $556 per person per day.

CONTRIBUTING FACTORS TO GROWING REMAND NUMBERS

233. A recent BOCSAR publication examined the influence of police enforcement of bail laws and changes to the Bail Act that restricted repeat applications of bail on growing remand numbers. It showed that both factors are contributing to the growth in the number of juveniles remanded in custody. NSW police enforcement of bail conditions are explored in the Children and Young People in Trouble section of the report. The changes referred to by BOCSAR are amendments to Section 22A which means the court will not be able to proceed with a second bail hearing unless the applicant had no legal representation the first time he/she made an application for bail, or the court can be satisfied that new facts or circumstances have arisen since the previous application. In the NSW Attorney General’s reading speech, the amendment was aimed to safeguard against unnecessary and repeated bail applications. The review could find no evidence that children and young people were making unnecessary bail application.

234. The amendments have been in place for over 24 months and have been heavily criticised for contributing to the growing remand numbers. Since their introduction, there has been a significant increase in the number of children and young people in remand, however, the same trend has not been observed in the adult population. The fact that there was no direct mention of children and young people in the aforementioned reading speech suggests that the impact on children and young people is an unintended consequence. It is apparent that these changes were not made on the basis of long standing evidence, and do not recognise the unique needs and circumstances of children and young people. It is anticipated that the implementation of Recommendation 6 that gives the C(CP)A precedence over the Bail Act (or alternatively Recommendation 7) will reduce remand numbers arising from these circumstances given that Victoria has the same legislative precedence and similar bail laws.

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247 See ID, PF and DV v Director General, Department of Juvenile Justice and Anor [2008] NSWSC 966. The Supreme Court of New South Wales (Johnson J) has provided some clarity on the boundaries of the broad discretionary power of the Director General of the Department of Juvenile Justice to transfer juvenile detainees to adult prisons.


249 The Audit Office of New South Wales, Performance audit : addressing the needs of young offenders : Department of Juvenile Justice, NSW Police Force, 2007


251 Bail Act 1978 (NSW) s22(a).

252 New South Wales, Parliamentary Debates (Hansard), Legislative Council, 6-7 November 2007, debate on the Bail Amendment Bill 2007.

253 See Bail Me Out, Releasing the Pressure on Remand, Locked into remand: Children and young people on remand in New South Wales.

254 NSW Department of Corrective Services, Facts and Figures, 2009.

255 Victoria Consolidated Legislation, Bail Act 1977, S18(4). “Where application is made under subsection (1) or (6B) to a court in respect of an order made by a court or bail justice, the first-mentioned court shall not proceed to hear the matter of the application unless the applicant was not represented by a legal practitioner when the order was made or the applicant satisfies the court hearing the application that new facts or circumstances have arisen since the making of the order.”
235. Also contributing to this trend is the growing number of children and young people on remand because they do not have stable accommodation or are unable to return home because of family breakdown or safety or neglect risks. A recent review of remand cases over a 3 month period undertaken by Juvenile Justice found that 90% of children and young people on remand were unable to meet bail conditions in the first instance. 95% of these cases had court imposed ‘reside as directed’ bail conditions. This means that these young people were unable to return to their usual place of residence due to instability, safety or homeless issues. The court is effectively requesting that Community Services or Juvenile Justice find appropriate accommodation, not proposing the young person is remanded in custody. This indicates that the majority of children and young are held on remand due to a lack of suitable accommodation for children and young people.

236. The number of remand interventions (e.g. finding suitable accommodation) conducted by Juvenile Justice increased from 2006/07 (5303) to 2007-08 (6,775), however reduced to 6121 in 2008/09. Juvenile Justice supports children and young people to find suitable accommodation by funding a range of services and programs, including:

a. Stay Safe – a program for 12-17 years olds referred who are in need of accommodation and support in order to reduce the risk of re-offending.

b. Intensive Bail Support Program – a program that aims to use outreach support to assist young people in meeting their bail conditions. In response to growing demand, Juvenile Justice has received additional funding to expand weekend bail court services, bail supervision and brokerage services to divert young people from custody.

c. Juniperina Shared Access Trial – a partnership between Community Services, Housing NSW and Juvenile Justice to provide housing and support to young women 16-21 years who are at risk of re-offending (includes young women on bail orders).

d. Joint Tenancy Assistance Program – a joint project between Juvenile Justice, Housing NSW, BridgeHousing and CatholicCare that aims to stabilise homeless young people (16-18 years) with complex needs away from offending lifestyles and supporting young people’s transition from enmeshment in the juvenile justice system to independent living.

237. Despite the range of programs outlined above, Juvenile Justice has no legislative obligation to provide or arrange accommodation for children or young people on remand. In fact, they cannot place

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256 It is noted that amendments to the s22A, which were passed by Parliament in the Spring Sitting 2009. It is uncertain if they will change the situation described in this Section of the Report.


258 ibid.

259 UnitingCare Burnside, Locked into Remand: Children and young people on remand in New South Wales, 2009.


261 UnitingCare Burnside, Locked into Remand: Children and young people on remand in New South Wales, 2009.

262 ibid.


264 UnitingCare Burnside, Locked into Remand: Children and young people on remand in New South Wales, 2009.

children under 16 in accommodation without parent’s, legal guardians’ or authorised carers’ (where they are under the parental responsibility of the Minister of Community Services) consent.\textsuperscript{266} As such, Juvenile Justice is required to obtain Community Services consent for accommodation placements for children and young people not under the care of the Minister. Community Services do not have sufficient capacity to deal with this group of children and young people. Furthermore, the Minister for Community Services has the statutory responsibility to ensure adequate and appropriate accommodation is available for the purposes of placement of persons on bail.\textsuperscript{267} It would seem that for the reasons of administrative simplicity and accountability that Juvenile Justice should assume the legislative responsibility (and associated funding) for obtaining accommodation for children and young people who have been released on bail. This will negate the requirement to obtain Community Services referrals for this group of young people, and provide additional funding to support effective bail support programs which will further increase the diversion of children and young people from detention. The availability of accommodation services to refer children and young people to is discussed later in this section of the report.

Recommendation 20: Juvenile Justice assume the legislative responsibility for placing children and young people in suitable accommodation when they are given reside as directed bail conditions. Juvenile Justice be appropriately funded through the Keep Them Safe reforms to undertake this responsibility in conjunction with the community sector.

238. Overall, accommodation options for the placement of children and young people are limited, and virtually non-existent in rural NSW.\textsuperscript{268} It is understood that it can be very difficult to obtain any form of accommodation (e.g. youth hostels) for offenders due to their past criminal history, and it is almost impossible to find accommodation for sex offenders, violent offenders and females. Faced with no other option, detention is often used as an accommodation option for those children and young people who cannot obtain suitable accommodation. Holding children and young people in detention because they do not have suitable accommodation is inappropriate and does not lead to good long term outcomes for either the individual or the community. In order to give appropriate priority to these children and young people, it is recommended that a statutory requirement be introduced that requires the situation of every young person remanded in detention because of a lack of suitable accommodation to be reviewed every 48 hours by Juvenile Justice to ascertain whether an option has become available. This will ensure that every child and young person spends as little time as possible in remand when they have been granted bail.

Recommendation 21: Juvenile Justice review the situation of every child and young person remanded in custody because of a lack of suitable accommodation every 48 hours to ascertain whether an accommodation option has become available.

239. The Wood Report recommended an after hours bail placement service be established by Juvenile Justice. Juvenile Justice was allocated funding for the operation of a Bail Hotline for young people under 18 being held by police to reduce the number of young people remanded in custody. While the details of the operation of the Bail Hotline are not fully known as yet, it is understood it will be based

\begin{thebibliography}{9}
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on the Victorian After Hours Bail Placement Service – a model which the Review supports. To ensure the success of the Hotline, Juvenile Justice and NSW Police will need to work closely together during its implementation.

Recommendation 22: Juvenile Justice work closely with the NSW Police Force as part of the implementation of the Bail Hotline to ensure its ongoing utilisation and success.

240. A number of stakeholders have suggested the use of ‘bail houses’ to accommodate young people released on bail. It is argued that they would provide alternative options for Courts to place children and young people that do not have a stable home to go to, or a sufficient support network to ensure their appearance at their court hearing. UnitingCare Burnside has proposed a Residential Bail Support Program to increase the limited accommodation and support options for children and young people and increase referral options for the Bail Hotline. The proposed program will target children and young people who are homeless, under the care of Community Services and/or receive a reside as directed order. It is proposed that it be funded by the NSW Government and delivered by the non-government sector. Along with accommodation, children and young people would receive case management and be provided with appropriate support while on bail and leading into the court process. It is anticipated that a program for four to five children and young people (aged between 12-17) would cost $875,000 per annum. This is comparable to the costs of remand detention, however, it is argued that it will return better short and long term benefits.  

241. While the proposed Residential Bail Support Program is a better alternative than holding children and young people in custody, the Review believes that expanding the current Juvenile Justice model of funding existing accommodation providers to guarantee beds provides better value for money. It is understood that there have been several attempts at Residential Bail Support Programs or ‘bail hostels’ that have previously failed. Some of the reasons behind the failures include grouping several at risk young people together, highly resource intensive (less than custody, but more so than funding existing service providers) and there is often a lack of critical mass to sustain the program, especially in rural areas. It is therefore recommended that the NSW Government fund Juvenile Justice to expand the existing model of establishing service level agreements (SLA) with existing providers of accommodation (e.g. youth hostels) to guarantee placements for children and young people who would otherwise be held on remand. The SLAs should provide provisions for both an individual to assist in supervision and a bail support officer to provide advice on the court process and provide support during their bail hearing. Juvenile Justice needs to be funded to establish SLAs with an adequate number of providers to ensure that there are sufficient places to meet current demand. This may require additional funding to ensure that service providers will guarantee places for children and young people who are sex offenders, violent offenders, female and from rural or remote areas.

Recommendation 23: Juvenile Justice establish service level agreements with existing accommodation service providers to guarantee placements for children and young people who would be held on remand if they were unable to find suitable accommodation. Sufficient funding be provided to ensure that current and future demand is met.

269 NSW Ombudsman, Submission of NSW Ombudsman to Wood Special Commission of Inquiry into Children Protection Services in NSW, 2009.
270 UnitingCare Burnside, Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales, 2009.
Recommendation 24: As part of the service level agreements described in Recommendation 23, Juvenile Justice provide personnel for additional supervision requirements and advice on court processes and support during bail hearings.

CONCLUSION
242. The Bail Act has emerged as a key piece of legislation affecting juvenile justice in NSW. It would appear that changes to the Act have not sought to disadvantage children and young people, but it is apparent that they have had unintended consequence. Practices in relation to bail determinations have also shifted, as judicial officers seek to address welfare and behaviour concerns, rather than ensuring attendance at court, reducing the risk of re-offending etc. As a result, children and young people are being increasingly refused bail, or granted bail, but held on remand. The Government’s current response of increasing juvenile justice centre capacity to deal with this trend is resulting in a more expensive system that produces poorer outcomes (e.g. increasing the risk of re-offending). It is not consistent with its own commitment to CROC and utilisation of detention as a last resort. The recommendations made by the Review on bail will address this situation.

Children (Criminal Proceedings) Act 1987
243. The C(CP)A sets out the proceedings of the Children’s Court, including the commencement of proceedings, hearings and penalties available. Text Box 5 below outlines the principles contained within the C(CP)A.

Text Box 5 – Children’s Criminal Proceeding Act Principles

1. That children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them.

2. That children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance.

3. That it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption.

4. That it is desirable, wherever possible, to allow a child to reside in his or her own home.

5. That the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind.

244. The Review earlier recommended that the C(CP)A take precedence over the Bail Act to ensure that all children and young are treated according to their age and in line with the principles outlined above. A range of other issues associated with the C(CP)A will be explored below.

245. The C(CP)A establishes that Court Attendance Notices (CAN) should generally commence proceedings for children and young people (as opposed to charge and arrest). The exceptions to

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272 This text box does not include all principles of the Children (Criminal Proceedings) Act 1987 (NSW)
this are outlined in section 8(2) of the Act. In 2004, 22% of proceedings in the local court (for all offenders) were commenced by charge and arrest, compared to 52% in 1995. This indicates that there has been improved compliance with the legislative requirements in recent years. In the 2005 Law Reform Commission review, Legal Aid, Shopfront Youth Legal Centre and ODPP all submitted that NSW Police sometimes use arrest and charge when it would be more appropriate to proceed via CAN. One of the possible reasons put forward was that NSW Police use arrest and charge so that they can impose bail conditions. Some of the benefits for using CANs included avoiding unnecessary time in custody, availability of a ‘cooling off period’, and increased available investigation time. The Law Reform Commission concluded that no amendment to the legislation is required as it is clear that proceedings should commence via CAN and the decreasing use of arrest and charge in recent years demonstrates the legislation is having its desired effect. It did suggest that any action required to improve the use of CAN should be addressed through education.

The Review agrees with the findings of the Law Reform Commission.

246. It is understood that a Magistrate can hear a child or young person’s matter in a Local Court and once all the evidence is heard, the Magistrate can then determine it is too serious and will refer it to ODPP for the District or Supreme Court. There is no mechanism for ODPP to deal with matters from the outset should it be clear that the matter will proceed to the District or Supreme Court (e.g. indictable offences are directed to ODPP automatically). This creates a potentially distressing situation where a victim may be required to give evidence twice. This is a particular concern for sexual offences and the impact on victims. It is also an unnecessary duplication of resources and time to hear matters twice. It is understood that ODPP has made a submission to DJAG who has commenced a consultation process on the issue. The Review supports ODPP’s submission in principle.

247. Where a young person is old enough to hold a driving permit or licence (16-17 year old), traffic offences can only be heard in the Children’s Court if the matter is in conjunction with another offence. Otherwise, a young person charged with a traffic offence must be heard in a Local Court. A Local Court can however deal with a guilty traffic offence in accordance with the C(CP)A, thereby exercising the sentencing functions of the Children’s Court. Given that NSW recognises that children and young people are important and different, it would seem reasonable that traffic offences be heard in the Children’s Court. It is understood that this legislation is based on the presumption that young person old enough to drive are old enough for adult law. This does not align with the principles of the C(CP)A and does not recognise that children and young people are different. However, given that there is no data available regarding the number of children appearing before Local Courts for traffic offences, or whether they are consistently sentenced according to the provisions of the C(CP)A, it is not possible for the Review to recommend any legislative change. A study to understand the consequences of amending the legislation so that all children and young people go before the Children’s Court for traffic offences would appear warranted. This study should pay particular attention to impacts such as the additional time and resources required by the Children’s Court.

Recommendation 25: A study is conducted on the impacts of amending legislation to hear traffic offences for children and young people in the Children’s Court.

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276 Children (Criminal Proceedings) Act 1987 (NSW) s28(2).
277 Criminal Procedure Act 1986 (NSW) s 210.
A STRATEGIC REVIEW OF THE NEW SOUTH WALES JUVENILE JUSTICE SYSTEM

A Strategic Approach to Children and Young People

248. This section explores the strategic approach to children and young people, including:

a. strategic level documents and plans (e.g. State Plan, Youth Action Plan, Keep Them Safe, Juvenile Offender Compact) related to children and young people in NSW;

b. developing a whole-of-government approach to children and young people; and

c. developing a whole-of-community approach to children and young people.

Children and Young People Action Plans

THE STATE PLAN

249. The State Plan was launched in November 2006 by the NSW Government. It outlines a series of priorities and targets for government services in NSW. The State Plan describes investing in children and young people as a key priority for NSW. Some of the priorities in the State Plan are related directly to children and young people, for example, there are a range of priorities such as ‘increased proportion of children with skills for life and learning at school entry’ under the Early Intervention to Tackle Disadvantage goal. There are also a range of priorities that indirectly focus on children and young people, such as ‘Improved health and education for Aboriginal people’ which applies to both adults and children.\(^{278}\)

250. There are a number of priority areas relating to juvenile justice, including:

a. R1: Reduced rates of crime, particularly violent crime. The targets are to reduce the incidence of property crimes against households by 15 per cent by 2016, and reduce the incidence of violent crimes against individuals by 10 per cent by 2016.

b. R2: Reducing reoffending. The target is to reduce the proportion of offenders who re-offend within 24 months of being convicted by a court or having been dealt with at a conference by 10 per cent by 2016.

c. R3: Reduced levels of antisocial behaviour. The target is to reduce the proportion of the NSW population who perceive problems with louts, noisy neighbours, public drunkenness or with dangerous, noisy, hoon drivers.\(^{279}\)

251. It is generally agreed the State Plan has proven to be a strong driver of behaviour in the NSW Government. A range of strategies driven by the State Plan will explored throughout the report, including early intervention (e.g. the Intensive Supervision Program) and NSW Police strategies for reducing rates of crime and re-offending (e.g. bail compliance checks).

252. A revised State Plan was released in November 2009 which retained around 75% of previous targets. Some changes were introduced in response to emerging priorities and needs. Some of the changes

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\(^{279}\) ibid.
that relate to the juvenile justice system include a new priority to reduce the number of people who are
homeless, a new set of targets and actions focused on early intervention to keep children safe, and a
new focus on improving the efficiency of the court system. The 2006 priorities outlined above were
retained and the targets remained the same (with some minor changes to wording). The only addition
was a new target under the ‘Reduced rates of crime, particularly violent crime’ which aims to ‘reduce
alcohol related crime’.  

253. Importantly, the State Plan outlines a number of actions to reduce re-offending, including:

a. widening the use of early intervention programs, particularly to reduce juvenile crime and re-
offending, for example, the Intensive Supervision Program that works with young offenders and
their families on the reasons they commit crime;

b. reducing court appearances by young people through better use of warnings, cautions and youth
justice conferencing;

c. introducing a 24 hour bail hotline to assist young people who are at risk of being remanded in
custody because they can’t meet their bail conditions;

d. improving the way Government agencies share information and services to manage repeat
offenders in an integrated way;

e. providing support programs which divert offenders to appropriate alternative programs, for
example Magistrates Early Referral in Treatment (MERIT) and Court Referred Eligible
Defendants into Treatment (CREDIT);

f. expanding specialised early intervention aimed at keeping Aboriginal offenders out of prison, and
which address the offending behaviour in a culturally effective manner; and

g. creating Community Compliance Groups to better monitor high risk offenders.  

254. It is understood that the creation of Community Compliance Groups will not extend to juveniles.
Corrective Services currently manages Community Compliance Groups for adult offenders to monitor
offenders in the community using methods such as compliance checks, electronic monitoring and
writing of assessment reports. Furthermore, they conduct unannounced home visits at any hour of
the night or day, alcohol and drug testing, risk profiling and surveillance. There is also some case
management of very serious, high-risk offenders, such as those on extended supervision orders. The
evidence indicates that creating Community Compliance Groups for juvenile offenders would be
counter-productive, the Review therefore supports the view that Community Compliance Groups not
be applied to children and young people.

255. Additionally, the State Plan outlines that NSW Police will reduce crime and anti-social behaviour
through high visibility policing operations like Operation Viking. The statistics on Operation Viking

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281 ibid.  
do not differentiate between young people and adults, but cite a 250% increase in the numbers of people arrested for outstanding warrants and/or breach of bail from 2003/04 to 2007/08. While NSW Police practices are explored later in the Children and Young People in Trouble section of the report, it is worth noting that no evidence has been made available to the Review that shows that the monitoring, arresting and detaining of young people on bail or in the community reduces crime or re-offending amongst juvenile offenders. In fact, breaching young people brings them back into custody which has proven to increase the risk of re-offending, along with other negative consequences. More flexible approaches to bail compliance are required that do not draw children and young people into the formal justice system. This is discussed in the Children and Young People in Trouble section of the report.

256. It should also be observed that the State Plan contains a positive focus on improving child wellbeing, health and safety. It describes early intervention and prevention programs that will aim to better manage problems at an early stage. Programs include nurse home visits, mental health assessments for new mothers, parenting education, 2 days a week of early education before starting kindergarten, expansion of the Brighter Futures early intervention program and Keep Them Safe – Government’s response to the Wood Report. These investments are all supported by the Review and align with the concept of Justice Reinvestment discussed later in the report. It is understood that Priority Delivery Plans are developed for each identified priority in the State Plan and they aim to identify the actions and strategies required to deliver that priority. The concept of Justice Reinvestment as a cost neutral means of improving outcomes for children and young people should be incorporated into any subsequent development of Priority Delivery Plans for early intervention, prevention and juvenile justice related priorities. It should also be incorporated into the next iteration of the State Plan.

Recommendation 26: The findings of this Review be incorporated into relevant State Plan Priority Delivery Plans and subsequent reviews of the State Plan.

257. Issues associated with the NSW Police’s application of State Plan strategies is discussed in the Police Practice section of the report.

NSW YOUTH ACTION PLAN

258. The NSW Youth Action Plan (2006-2010) sets out the NSW Government’s plans to support young people over a four year period. It contains 44 actions, all with agency accountabilities and relationships to State Plan priorities. Yearly Progress Reports are made publicly available that outline the progress of each of the 44 actions. It contains actions across the range of government services, including:

a. Belonging to Family and Community.

b. Learning and Earning.

c. Feeling Good and Staying Healthy.

d. Engaging in Culture, Sport and Recreation.

ibid.
e. Feeling and being Safe.

f. Working Together. ²⁸⁵

Table 5 below shows a summary of progress made against a range of actions related to juvenile justice as at 30 June 2008.

**Table 5 – Youth Action Plan Progress as at 30 June 2009** ²⁸⁶

<table>
<thead>
<tr>
<th>Action</th>
<th>Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support the Tirkandi Inaburra Cultural and Development Centre (Tirkandi Inaburra) – a youth residential cultural ‘outstation’ centre for Aboriginal young men who offend or who are at risk of offending</td>
<td>Since the program’s commencement in 2006, 49 participants have graduated, including 10 from the first term in 2008. Of the 49 participants, 37 are in schools in their community, 4 are in fulltime employment, 7 are actively looking for work and 1 is in detention.</td>
</tr>
<tr>
<td>Provide diversionary programs for Aboriginal boys with intellectual or mental disabilities to avoid re-offending.</td>
<td>Comprises youth justice conferencing and the Justice Health Adolescent Court and Community Team (including Court Diversion Program, community-based assessments, discharge planning from detention and case management).</td>
</tr>
<tr>
<td>Develop a booklet <em>What Now for Youth</em>, a resource for young people regarding services and entitlements they can obtain to recover from the effects of being the victim of a crime.</td>
<td>The booklet, which is now called &quot;Are You a Victim of Crime?&quot;, has been reprinted due to high demand since the initial print run occurred.</td>
</tr>
<tr>
<td>Develop COURTWISE, an interactive website to help young people understand the legal processes they may face as victims/witnesses in court.</td>
<td>COURTWISE was launched by the NSW Attorney General at the National Victims Conference held in October 2007 in Sydney.</td>
</tr>
<tr>
<td>Over the next two years, deliver the Young Offenders Act training program to 24 Aboriginal Community Justice Groups to provide an introduction to cautions and youth justice conferencing.</td>
<td>The Aboriginal Programs Unit has negotiated access to the Young Offenders Act training at a local level, in partnership with NSW Police Local Area Commands.</td>
</tr>
<tr>
<td>Create stronger links between police and schools and prevent problems before they take hold, with 40 School Liaison Police in NSW high schools.</td>
<td>The School Liaison Police Program is and will continue to be a successful program</td>
</tr>
</tbody>
</table>

Adapt the Integrated Case Management program to assist Local Area Commands to enhance relationships with specific culturally diverse communities where there are young people at risk of offending or re-offending.

The finite funding sources have ceased, and the project coordinators reallocated, the project parameters were amended to create one generic model that has been applied for all at-risk youth, and able to be utilised in any Local Area Command.

Develop a family work model and crisis accommodation supports for young people with complex needs in the juvenile justice system

Includes Intensive Bail Supervision Program, Juvenile Justice Centre Release Treatment Scheme and Intensive Supervision Program.

260. All the actions and progress outlined in Table 5 above are examples of effective juvenile justice practices in NSW. There are also other activities outlined in the Youth Action Plan that relate indirectly to juvenile justice such as the development of sporting facilities to keep children and young people active and out of trouble. While the range of actions contained within the plan address known risk factors associated with offending (e.g. education, homelessness, mental illness, intellectual disability etc.), it is not clear why these actions were chosen or their broader context. The actions are mapped to State Plan priorities, yet this is another action focused document, not a broader strategic framework for children and young people. This does not mean that the actions outlined in the Youth Action Plan are not beneficial, however, it does increase the likelihood of gaps in the Action Plan. The NSW Youth Action Plan needs to form part of broader strategic approach to children and young people detailed in the following section of the report. Action plans that are not linked to broader strategic direction often create onerous reporting requirements and achieve little.

Observation: The Youth Action Plan identifies a range of actions consistent with effective juvenile justice practice, however, the plan would be better placed within a broader strategic framework (the strategic framework should be developed first, then appropriate action plans developed).

KEEP THEM SAFE

261. Keep Them Safe is the NSW’s Government’s Action Plan to ensure all children in NSW are healthy, happy and safe, and grow up belonging to families and communities where they have opportunities to reach their full potential. The plan was developed in response to the Wood Report which investigated the changes needed for the child protection system to provide more effective services to protect children and to meet future levels of demand. There are seven elements to the Action Plan:

a. The universal service system – Providing essential services to all families.

b. Strengthening early intervention and community-based services – Preventing the need for children to enter the child protection system.

c. Better protection for children at risk – Concentrating statutory intervention on only those children who requirement intervention in their lives to protect them from harm.

d. Changing practice and systems – Connecting children and families with the right services.

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262. A key element of Keep Them Safe is increased investment in prevention and early intervention. Preventing children and young people from entering the care system will have a substantial flow on effect to the juvenile justice system, as 28% of male and 39% of female juvenile detainees between 2003-2006 had a history of being placed in care.288

Observation: The implementation of Keep Them Safe is likely to have a positive effect on juvenile justice in NSW. The Review strongly supports the rapid implementation of these reforms.

A Whole-of-Government Approach to Children and Young People

263. There are a range of NSW Government documents focused on identifying actions and projects such as the State Plan, Youth Action Plan and Keep Them Safe. The Review is not aware of any strategic plan or framework that sets out a philosophical approach, long term goals, and brings together the range of services, projects, programs etc. available for children and young people generally (i.e. from building youth friendly infrastructure to juvenile justice centres). As a result, there are a range of agencies involved in delivering services and programs to children and young people, but there is no collective understanding of all the elements and their relationships. Additionally, there is no mechanism for agencies to understand their ongoing roles and responsibilities and how they contribute to the strategic approach to children and young people in NSW.

264. Additionally, the majority of publications tend to be public facing documents rather than providing guidance on roles and responsibilities to young people and the mechanisms by which departments/agencies will work together to delivery whole-of-government outcomes. The lack of such a framework means that children and young people can ‘fall through the cracks’ because programs and services are delivered along Departmental lines, rather than through a whole-of-government understanding of service delivery for children and young people.

265. Juvenile Justice is in the process of establishing a Juvenile Offender Compact which provides a framework for more coordinated and enhanced collaborative management of young offenders through the provision of targeted services to those young people who are typically the most challenging high-needs clients of two or more agencies. It utilises Partnership Agreements between Juvenile Justice and signatory agencies to support the overarching framework and facilitate cross agency

288 NSW Department of Premier and Cabinet, Keep them safe: a shared approach to child wellbeing, 2009.
management of young offenders in a coordinated manner. The process is currently in abeyance pending the outcomes of this review.

266. The Juvenile Offender Compact provides a good model for the delivery of juvenile justice services, but once again, it does not fit into a broader strategic approach to children and young people. It reinforces the siloed approach to service and program delivery within the NSW Government. A strategic approach to children and young people is required that outlines the specific services and programs that will be delivered, by who and how interagency issues will be resolved. Specific plans can then be developed for specific services or streams that require detailed agreements such as Juvenile Justice.

267. A strategic approach to children and young people would have benefits for all Departments involved in working with children and young people. It would be particularly important for Juvenile Justice as the majority of, if not all, children and young people who come into contact with the juvenile justice system will be known to another Department already, or require involvement from a range of Departments to address their offending behaviour. For example, a young person might come into contact with juvenile justice after being in the care system, or they might be referred to a conference and their offending behaviour is related an intellectual disability, mental health problem or drug problem. Additionally, Juvenile Justice only has a short duration to work with the child or young person (i.e. the period of the court ordered supervision). It is therefore essential that Juvenile Justice link the young person into other departmental services and programs to support sustainable solutions to addressing offending behaviour. The importance of whole-of-government collaboration is evident across the entire juvenile justice continuum, from integrated case management at the first signs of risk, to post-release services.

268. An overall strategic approach to children and young people should provide a means to achieve this collaboration, and ultimately provide a system where no child or young person can ‘fall through the cracks’. Individual operational level plans should underpin the strategic approach by providing a mechanism to draw commitment from a range of organisations on the delivery of specific services and programs, and associated resources. Operational level plans could exist for a range of children and young people related services such as health, education, juvenile justice etc. A juvenile justice related operational level plan would seek to bring together a range of areas for increased whole-of-government collaboration such as prevention and early intervention services, diversionary programs, joint case management, accommodation support for young offenders, disability support and health services. It is recommended that the strategic approach to children and young people be agreed to by Government to ensure the highest level commitment to children and young people.

1 Recommendation 27: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

269. A juvenile justice focused operational level plan as per Recommendation 27 will deliver the long term approach to whole-of-government collaboration for the juvenile justice system. There is however a shorter term requirement to develop a whole-of-government response to this report to begin the

290 NSW Department of Juvenile Justice, Juvenile Offender Compact Consultation Draft, 2009.
process of reform. Similar to the Wood Report response, *Keep Them Safe*, the Government should develop a plan with high-level endorsement that outlines actions, accountabilities, timeframes, resourcing etc. This would include the essential detail on the mechanisms for interagency collaboration. This will ensure that all organisations involved in the juvenile justice system commit to a common response to the identified issues. To support this, a detailed economic appraisal of the accepted recommendations (that form the government response) should also be conducted to ensure that the resource implications and costs (including life-time costs) are known and factored into the plan.

**Recommendation 28:** The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.

270. In June 2009, the NSW Government announced 13 new departments from the previous 160 state agencies.\(^{291}\) This included a new Department of Human Services, comprising:

a. Aboriginal Affairs;

b. ADHC;

c. Community Services;

d. Housing NSW;

e. Juvenile Justice;

f. NSW Aboriginal Housing Office; and

g. NSW Businesslink Pty Ltd.

271. Some of the work being undertaken to improve collaboration within the Department include a Chief Executives meeting on a fortnightly basis and the development of a human services delivery plan. The plan will outline how the Department will meet its priorities and provide more integrated services for their clients.\(^{292}\) It is too early to comment on the effectiveness of this change, however, it does provide an important opportunity to improve whole-of-government responses to children and young people.

**Observation:** The creation of the new Department of Human Services provides an opportunity to enhance services for children and young people. This includes the diversion of children from crime and a reduction in re-offending.


IN INVOLVEMENT OF CHILDREN AND YOUNG PEOPLE

272. In June 2007, the then Premier of NSW released a Premier’s Memorandum on Best Practice Principles for Youth Participation. It acknowledges NSW’s commitment to encouraging and supporting young people to participate in Government decision-making, implementing the NSW State Plan and proving input into the development of programs and services that impact on their lives. While the Best Practice Principles provide a good foundation for involving children and young people, there is no mechanism to ensure that Departments are involving children and young people as per the prescribed principles. It is therefore recommended that children and young people be involved in decisions that affect them through the strategic approach to children and young people discussed previously.

273. Recommendation 29: The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

A Whole-of-Community Approach to Children and Young People

274. This section will explore the role of the community in the juvenile justice system, focusing on the role of NGOs as community representatives.

NON-GOVERNMENT ORGANISATIONS

275. NGOs are a key partner in the juvenile justice system, from working with children and young people at risk of offending, through to assisting them reintegrate into the community post-detention. NGOs have a number of roles and responsibilities, including the delivery of specific services (e.g. case management, delivery of programs, legal representation), as a source of information on trends and issues, engaging with the community on juvenile justice issues and advocating on behalf of children and young people.

276. As part of the Keep Them Safe reforms, the NSW Government is increasing its focus on developing partnerships with NGOs and building an enhanced role for the NGO sector. Building the capacity of the NGO sector will be critical to increasing the role of NGOs. Some of the key actions outlined in the plan include defining:

a. the precise areas where NGOs are best placed to undertake contracted roles;

b. clear service accountabilities that will be used to drive the delivery of outcomes; and

c. the coordination mechanisms to be used to engage the NGO sector and NSW and Commonwealth Government agencies.

277. The NSW Government will develop a five year plan outlining how the Government will work with the NGO sector to build their capacity, and another plan for children and family service workforce development. Keep Them Safe also acknowledges the importance of building capacity in the Aboriginal NGO section recognising their knowledge base of how to work with individual, local


294 NSW Department of Premier and Cabinet, Keep them safe: a shared approach to child wellbeing, 2009.
Improvements in the community services sector will have direct benefits to the juvenile justice system, most notably by reducing the numbers of children and young people entering the justice system, particularly those with complex needs.

It is understood that the juvenile justice NGO sector is included in the NSW Government’s plan currently being developed for working with the NGO sector and workforce development/capacity building. The Review will therefore not re-examine the juvenile justice NGO sector and ways to build its capacity. Instead, the Review reinforces that capacity needs to be built in the NGO sector for dealing with complex needs children and young people, including those involved in the juvenile justice sector. In building this capacity, specific development is required in a range of areas including people, organisation, systems, processes and knowledge. People are perhaps the most fundamental input into NGO capacity and the Government therefore needs to work with NGOs to ensure there are sufficient numbers of appropriately skilled people to meet Juvenile Justice demand.

Recommendation 30: The NSW Government plans currently being developed for working with the NGO sector reinforce that capacity needs to be built to work with children and young people with complex needs, including those that are, or have been, involved in the juvenile justice system.

Noting it is slightly outside of the Review’s terms of reference, the following section makes a number of brief observations regarding the juvenile justice NGO sector due to the importance of its role.

As a general observation, the NGO sector has a shared vision, but not always a shared response. Limited Government funding, reduced donations and more tender processes have resulted in an increasingly competitive environment between NGOs. However, it is noted that NGOs do come together for joint responses, for example, a range of NGOs developed a partnership for the provision of mobile phones to children and young people reintegrating into the community. Additionally, the Working Together for NSW Agreement provides a framework to help ensure the quality of human services delivery for NSW. Its primary focus is strengthening the ability for the NSW Government and NGOs to deliver better outcomes for individuals, families and communities, however, it does provide a consistent framework for increased NGO cohesiveness. It is observed that NCOS is increasing its focus on juvenile justice issues, however, perhaps it could concentrate more effort on assisting the NGO sector collaborate and deliver better whole-of-community outcomes. This demonstrates the NGO sector needs to be more cohesive in realising its shared vision.

The NGO sector has an important role in providing advocacy for the interests of children and young people in the juvenile justice system. One of these roles is engaging in a community dialogue about what works and mitigating ill-informed or baseless comments that occur in the public forum. The NGO sector in NSW has taken a proactive approach and released reports addressing specific issues. While these provide useful information and discussion, they do not actively engage with the community. It is suggested publications should be supported with others means such as contributing to forums such as talk-back radio, writing thought pieces for newspapers, using influential members of their boards and adapting their language for different audiences (e.g. using the economic benefits of different approaches, not just the social and humanitarian arguments). Rigorous and widespread
discussion on juvenile justice issues is important in shaping good policy outcomes and this Review encourages the NGO sector to more actively engage in this discussion.

282. It is noted that the Productivity Commission has released a Draft Research Report on the Contribution of the Not-for-Profit Sector (including NGOs). Its focus is on improving the measurement of the sector’s contributions and on removing obstacles to maximising its contributions to society. It is not within the scope of this review to critically analyse the findings of this report focused on the Australian not-for-profit sector, however, it could have a significant impact on all community service NGOs. It is therefore observed that the report should be considered by the Keep Them Safe NGO reforms, as well as NCOSS as a coordinator and leader for the non government social and community services sector in NSW.

Observation: The NGO sector has an important role to play in contributing to the community’s understanding of the issues surrounding juvenile justice and shaping public policy. A more active and comprehensive approach to this role will benefit the community, government, the bureaucracy and young people.

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Young People and Children – The Juvenile Justice Continuum

283. This review has taken a linear approach to describe juvenile justice. This continuum is compromised of the following elements:

a. Children and Young People at Risk – the stage before children and young people enter the juvenile justice system.

b. Children and Young People in Trouble – contact with the juvenile justice system, from contact with police to detention.

c. Children and Young People Reintegrating into the Community – the support received during post-release from juvenile justice centres to reduce re-offending.

Children and Young People at Risk

284. Juvenile offending does not exist in isolation, there are well established causal risk factors that lead to offending behaviour. The interplay of these risk factors and resulting complexity means that there are no simple solutions for preventing juvenile offending. As is detailed Enclosure 1 – Review of Effective Practice in Juvenile Justice, the evidence base suggests that addressing risk factors, intervening early and preventing children and young people from entering the juvenile justice system is the most cost effective approach.

285. It is not possible to have a meaningful understanding or discourse on juvenile justice without consideration of these factors. Text Box 6 below provides a summary of some of the relevant research on the risk factors associated with juvenile participation in crime (including both offending and re-offending).

Text Box 6 – Risk Factors Associated with Offending Behaviour

| NSW Young People in Custody Health Survey and the Young People on Community Orders Health Survey297 |
| + Young offenders are often from disadvantaged backgrounds, characterised by poor educational attainment, disrupted families and engagement in regular risk-taking behaviour. |

| BOCSAR – Screening Juvenile Offenders for Further Assessment and Intervention298 |
| + The key risk factors are those associated with school attendance/behaviour and past contact with the criminal justice system. Not being at school, having been suspended or expelled from school and having had several prior contacts with the criminal justice system all independently increase the likelihood of another conviction. |


The risk factors that are prescriptive of juvenile re-offending include education, criminal lifestyles and associates, alcohol and other drug misuse, accommodation problems, relationship problems including family dysfunction, mental health, intellectual disabilities, distorted and irrational thinking including pro-criminal attitudes, and lack of structured leisure and recreational pursuits.

The Wood Report[299]

+ Preventing children and young people from entering the care system will have a substantial flow on effect to the juvenile justice system, as 28% of male and 39% of female juvenile detainees between 2003-2006 had a history of being placed in care.

286. With this understanding of children and young people at risk of offending in mind, the following issues are explored in this section:

a. links to the child protection system;

b. early intervention;

c. sustained involvement in the education system;

d. access to suitable accommodation; and

e. intellectual disabilities.

LINKS TO THE CHILD PROTECTION SYSTEM

287. The relationship between the child protection system and entry into juvenile justice are well known. The Wood Report recently identified that 28% of male and 39% of female juvenile detainees between 2003-2006 had a history of being placed in care. Further analysis showed that an additional 1,000 neglected children would result in another 256 juveniles involved in crime, and another 1,000 poor families would result in 141 juveniles involved in crime. It is evident that prevention and early intervention for children and young people at risk (e.g. neglected or part of a poor family) will have significant benefits for the community through a reduction in juvenile crime alone. This provides a positive basis for policy development, however, it would appear that emerging trends from the child protection system will adversely impact upon the juvenile justice system before the Keep Them Safe reforms will deliver benefits.

288. Given that over a quarter of juvenile detainees had a history of being placed in out-of-home care, current and future trends for children coming into care is an important indicator for future entry into juvenile justice. It is understood that the number of children and young people entering out-of-home care has increased by 38.8% since 2004/05. Furthermore, the Wood Report highlighted increasing complexity in the dysfunction of children and young people coming into contact with Community Services.

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300 ibid.
301 Community Services, Integrated Substitute Care Database statistical extract and KIDS/MDS: Corporate Information Warehouse annual data, 2009.
Services. For example, it found increasing numbers of re-reported children and young people, child protection reports involving multiple reported issues, concentration of reports in sibling groups and increases in the substantiation rates of child protection reports over time.\(^{302}\) This was supported in discussions with Community Service staff, particularly in the 7-10 years of age bracket, although no documentation is currently available to support these observations.

\(\Rightarrow\) **Trend:** The increasing number of children and young people involved in the child protection and out-of-home care systems, and well established relationships between these systems and entry into the juvenile justice system, suggests that there will be an increasing number of children and young people at risk of entering the juvenile justice system in coming years.

289. This suggests that there is likely to be an increase in the number of children and young people involved in the juvenile justice system in coming years. The equation of course is much more complex than this, however, it does indicate growing future demand on Juvenile Justice services in NSW. Juvenile Justice Centres are currently at capacity, and future trend analysis shows that the number of children and young people coming into custody will exceed capacity by 309 in 2015/16.\(^{303}\) Lead indicators, not just from the child protection and out-of-home care systems, but from the range of known risk factors, need to be developed to inform future demand for Juvenile Justice services. This will provide Juvenile Justice with the ability to better forecast requirements for detention amongst other things, and avoid the current situation where juvenile justice centres are at capacity.

\(\Rightarrow\) **Recommendation 31:** The Department of Human Services develop lead indicators to inform trends for the demand of juvenile justice services and programs.

**EARLY INTERVENTION**

290. Early intervention aims to prevent or lower the incidence or prevalence of specific problems or issues in a population or sub-population.\(^{304}\) As described in Enclosure 1 – Review of Effective Practice in Juvenile Justice, it is one of the most cost-effective ways of dealing with children and young people at risk, and as a result reduces entry into the juvenile justice system. As described earlier, early intervention is a key government strategy and features predominately in the State Plan and Youth Action Plan.

291. The NSW Government’s primary investment in early intervention is Community Services’ Brighter Futures program which provides early intervention services that reinforce family relationships, increase resilience, promote healthy child development and prevent child abuse and neglect. It provides a range of services to vulnerable families such as quality child care, case management, parenting programs and home visiting. The program is targeted at vulnerable families with children aged 0-8, with priority for 0-3 year olds. Brighter Futures comprised $260 million of the 2002 $1.2 billion Community Services reform package. It involves 14 non-government lead agencies who work

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\(^{303}\) See the Control Orders section of the report.

with more than 400 service providers. An additional 350 caseworkers within Community Services are also provided. The program assists over 6,000 children a year.  

292. The Keep Them Safe reforms commits the Government to increasing investment in prevention and early intervention. It will support up to an additional 200 families in Brighter Futures and will review future enhancements based on the outcomes of an evaluation currently underway, and expected to be completed in 2010. Initial results of the evaluation suggest a high level of participant satisfaction and that its significant achievements should continue and be expanded.

293. Of particular concern is that Brighter Futures is not available for children aged 9 – 14 years old. The Wood Report points out “investment in the middle childhood years still gives considerable individual and economic returns”. Government’s response to this concern is outlined in Keep Them Safe:

“The Government notes the Inquiry’s finding to consider extending early intervention services to 9-14 year olds. The Department of Community Services will examine the evidence base to develop an appropriate service model for this client group, including priority access for Aboriginal children and their families.”

294. The Review welcomes the Government’s commitment to developing early intervention services for this group of children and young people. Evidence contained with Enclosure 1 – Review of Effective Practice in Juvenile Justice should be considered in developing this model. The Review supports the expansion of Brighter Futures. The relationship between the risk factors identified at the beginning of this section and the initial achievements of the program indicates that future investment in Brighter Futures is likely to reduce the number of children and young people entering the juvenile justice system.

295. It is important to note that there are a range of other early intervention services and programs in NSW outside of Brighter Futures program (albeit for older age groups). For example, Mission Australia runs a number of programs focused on providing pathways to more positive outcomes and working with young people, their friends and families to build upon their strengths and build the capacity of influential others. An example of a successful program run by Mission Australia was the Pasifika Support Services which works with young Pacific people at risk of ongoing involvement in anti-social, risk-taking and criminal behaviour. An independent evaluation found that it reduced rates of offending in the short and medium-term following participation in the program. Other examples include programs run by Father Chris Riley. Additionally, the anti-social behaviour pilot project (discussed in greater detail in the Children and Young People in Trouble section of the report) provides some elements of early intervention. It aims to respond to needs quickly at the local level to support high risk children and young people with the aim of preventing criminal activity or further criminal activity.

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305 NSW Department of Premier and Cabinet, Keep them safe: a shared approach to child wellbeing, 2009.
306 NSW Department of Premier and Cabinet, Keep them safe: a shared approach to child wellbeing, 2009.
308 NSW Department of Premier and Cabinet, Keep them safe: a shared approach to child wellbeing, 2009.
296. Both of these early intervention programs are generally focused on adolescents who are at risk of offending. As described earlier, early intervention aims to prevent or lower the incidence or prevalence of specific problems or issues in a population or sub-population. It doesn't have an age limit, and there needs to be appropriate early intervention services for all children and young people at risk of offending. It is acknowledged these young people may be further on the path to offending than the target group of Brighter Futures and as a result, the programs are likely to be more expensive and have a poorer return on investment. They are however significantly less expensive than the juvenile justice system.

297. As the Government has stated, the priority group for Brighter Futures is 0-3 year olds, followed by 4-8 year olds, and consideration is being given to expanding to 9-14 year olds. This means that 9-17 year olds at risk of offending are much less likely to receive assistance to address their risk factors before it develops into offending behaviour. The NSW Police has a number of programs that target this group, but they are not sufficient to target the necessary numbers of children and young people. Additionally, Juvenile Justice has no responsibility for early intervention, however this target group will likely end up in the juvenile justice system if there is no intervention. The strategic approach to children and young people discussed earlier in the report needs to ensure that there are appropriate services and programs targeting 9-17 year olds at risk of offending.

Recommendation 32: The Department of Human Services investigate evidence-based approaches to reduce the risk of offending and resource additional early intervention and prevention based services and programs for 9-17 year olds.

EDUCATION

298. Sustained involvement in the education system is a key factor in reducing the risk of entry into the juvenile justice system. The role of the DET is outlined earlier in the report, however, a number of education related issues were highlighted throughout the conduct of the Review.

299. New legislation requires that children complete Year 10 and continue to engage in education or employment until 17 years of age. Under the changes, eligible students must be:

a. in school, or registered for home schooling;

b. in approved education or training (e.g. TAFE, traineeship, apprenticeship);

c. in full-time, paid employment (average 25 hours/week); or

d. in a combination of work, education and/or training.\(^3\)

300. Young people who do not meet this requirement will not be eligible for Youth Allowance.\(^4\) The government has legislated this change to ensure that school leavers have the opportunity to maximise their preparation for further education, or training, or employment. This is based on Australian and


international research which demonstrates ongoing negative effects from leaving school early affect not only the individual, but also the economy and society as a whole.\(^{313}\)

301. While there are a range of exclusions, the implications of this policy for disadvantaged children and young people (e.g. those that are homeless or reintegrating into community after detention) need to be better understood. The removal of Youth Allowance for non-compliance has the potential to be very damaging for disadvantaged youth. There are already onerous conditions on these young people’s entitlements, and removing their financial support will further disadvantage these marginalised groups.

Recommendation 33: The Department of Education and Training review the changes to compulsory school leaving age legislation to better understand the implications for disadvantaged youth, particularly children and young people involved in the juvenile justice system. Consideration be given to providing additional support to re-engage these children and young people in the education system, and as a last resort, provide further exceptions for disadvantaged youth.

Recommendation 34: Juvenile Justice, in conjunction with the Department of Education and Training, incorporate new compulsory school leaving age legislative requirements into its case management process for children and young people reintegrating into the community.

302. A number of stakeholders also raised concerns to the Review about the exclusion of children and young people with complex needs from the education system. It is understood that the Minister for Education is the only person who can technically exclude a person from the education system, however, children can be suspended or expelled from individual schools. The aim of suspension is to resolve the issue that led to the inappropriate behaviour. To support this aim, there are 22 suspension centres for children and young people who are suspended for extended periods of time (more than five days, with a maximum of 20 days). Given the evidence supporting children and young persons’ continued engagement with the education system, it is essential that DET do all they can to ensure they meet the needs of all children and young people, including those exhibiting difficult behaviour.

303. Issues associated with education once a child or young person comes into contact with the juvenile justice system is discussed in the Children and Young People in Trouble section.

ACCESS TO SUITABLE ACCOMMODATION

304. Homelessness is a known risk factor for entry into the juvenile justice system. There are three levels of homelessness: primary; secondary; and tertiary. Primary homelessness refers to people living without regular shelter such as those living on the street, squatting in derelict buildings, using railway carriages for temporary shelter etc. Secondary homeless is moving from one form of temporary accommodation to another (e.g. crisis accommodation, staying with family and friends). Tertiary homelessness refers to people who live in boarding houses on a medium to long-term basis (i.e. below the minimum community standard).\(^{314}\)

305. In 2006, more than 27,000 people in NSW were homeless. Some key characteristics of this group include:

a. 13% were categorised as primary, 40% secondary and 28% tertiary.

b. A further 19% were in Supported Accommodation Assistance Program (SAAP) accommodation.

c. 59% were male and 41% were female.

d. 7.2% were Aboriginal or Torres Strait Islanders.

e. Importantly, 28% were aged 12-24 and 11% were children under 12.\textsuperscript{315}

306. SAAP accommodation was established in 1985 to consolidate a number of Australian Government and state and territory government programs designed to assist people who are homeless or at risk of being homeless.\textsuperscript{316} 37,000 clients used 398 SAAP services in NSW in 2007/08, approximately 40% of these clients were under the age of 25 years. In 2007/08, the highest client group of SAAP services were those aged 15-19 years, comprising 23% of total users. A further 19,000 children accompanied these people to SAAP services in NSW, bringing the total number of clients to 56,700.\textsuperscript{317} The main reasons for people seeking assistance from a SAAP service include domestic and family violence (20%), relationship and family breakdown (12%), problematic alcohol and substance use (12%), financial difficulty (10%), time out from family (9%) and emergency/previous accommodation ended (8%). In 2007/08, the highest client group of SAAP services were those aged 15-19 years old, comprising 18% of the total users.\textsuperscript{318}

307. Out-of-home care is another form of crisis accommodation that is provided to children and young people who are unable to live with their birth families, generally because they have been maltreated at home.\textsuperscript{319} There were 4,467 children and young people admitted to out-of-home care in NSW in 2007/08. Of this group 16.3% were less than 1 year of age, 25.8% were aged 1-4, 25.4% were 10-14 and 17% were 15-17. The total number of children and young people in out-of-home care in Australia has been steadily rising since 2006, from 9,896 to 13,566 in 2008.\textsuperscript{320} Some of the factors that may explain this increase include a better understanding of child abuse or neglect, rising numbers of children needing protection, expanding community awareness, and changes in policies and practices including mandatory reporting in some states.\textsuperscript{321} Regardless of the reasons, there are large numbers of children and young people who are homeless.

308. Given the high numbers of children and young people either homeless or in out-of-home care and the known risks around increased likelihood of entry into juvenile justice, the NSW Government needs do all it can to provide suitable accommodation. Preventing homelessness, particularly for children and


\textsuperscript{317} Information provided to the Review by NSW Housing.


\textsuperscript{320} Australian Institute of Health and Welfare, Child protection Australia 2007-08, 2009.

\textsuperscript{321} ibid
young people, ensures connection, stability and support that form the foundations for adulthood. In response to this growing problem, the Commonwealth Government released ‘The Road Home White Paper on Homelessness’ in 2008. NSW Housing also released “A Way Home: Reducing Homelessness in NSW – NSW Homelessness Action Plan 2009 – 2014”. This sets out how NSW Government will prevent homelessness, respond effectively to homelessness and break the cycle. The NSW Homeless Action Plan has a number of important principles including a whole-of-government and whole-of-community partnership approach, and understanding the requirement for a continuum approach focused on prevention and the provision of long-term and suitable housing solutions. It is not within the scope of this review to examine ways to prevent homelessness, however, it is observed that actions outlined in the plan such as developing programs to support young people who leave care, reconciling young people with their families and supporting young people to maintain connection with education, training and employment are supported by the Review.

309. As described in the NSW Housing section earlier, the NSW Homeless Action Plan also contains a number of actions directly relevant to juvenile justice, including:

i. Young people leaving juvenile justice centres will be released under a ‘no exit into homelessness’ policy. This will be met through discharge plans that address the housing and accommodation needs of the individual.

j. The Juniperina Shared Access Trial will provide long-term support and accommodation for young women with a history of offending or at risk of re-offending. The Joint Tenancy Assistance Program (JTAP) model described previously will also be expanded to support young women on the Juniperina Shared Access Trial.

k. Transitions Program for Aboriginal people will provide a range of accommodation and support services for Aboriginal young people exiting the juvenile justice system.

l. Accommodation and intensive support services will be linked to education, training and employment for young people.

a. The Inner City Supportive Housing and Support for Young People Project will provide coordinated case management and supportive housing for young people who are homeless or at risk of homelessness.

310. The Review supports all of the actions outlined above. In particular, the JTAP was highlighted to the Review as an effective program for homeless young people with complex needs in contact with the juvenile justice system. The program aims to stabilise homeless young people (16-18 years) with complex needs away from offending lifestyles. It involves initial intensive case management and support from Juvenile Justice, Housing NSW, BridgeHousing and CatholicCare. An independent evaluation found that JTAP has evolved into a responsive, successful and financially efficient program.

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in supporting young people’s transition from enmeshment in the juvenile justice system to independent living. Some key successes include 39% of those who exited JTAP graduated to Priority Housing, only 7% re-offended, 67% of young people resumed education and gained their Year 10, and 36% found employment.\footnote{Unpublished Joint Tenancy Assistance Program Review Report.} The Review specifically supports the expansion of JTAP to support young women on the Juniperina Shared Access Trial and where appropriate expansion of the program to support a greater number of children and young people.

\textit{Observation:} The expansion of the Joint Tenancy Assistance Program to include young women and increased numbers of children and young men is supported by the Review.

311. The lack of suitable accommodation for children and young people granted bail, but unable to meet conditions (e.g. reside as directed) is addressed in the \textit{Bail Act} section of the report.

\section*{Intellectual Disabilities}

312. Although the figure is often debated, between 1\% and 3\% of the NSW population have an intellectual disability.\footnote{Simpson, J., Martin, M., Green, J., The Framework Report, 2001.} It is known that 13\% of children and young people in custody\footnote{NSW Department of Juvenile Justice, \textit{NSW Young People in Custody Health Survey, Key Findings Report}, 2003.}, and 11\% on community orders\footnote{Kenny, D.T., Nelson, P., Butler, T., Lennings, C., Allerton, M., and Champion, U., \textit{NSW Young People on Community Orders Health Survey 2003-2006: Key Findings Report}, 2003.}, could have an intellectual disability. This section will concentrate on children and young people with an intellectual disability at risk of contact with the juvenile justice system. Issues associated with those in contact with the system are discussed in the \textit{Children and Young People in Trouble} section of the report.

313. ADHC provides services to children and young people to reduce potential contact with the juvenile justice system through identification, assessment and early intervention. This involves working with other agencies to identify children and young people who might benefit from disability services. ADHC also provides services to potential victims of crime, as well as to children and young people that could develop offending behaviour. An initial needs assessment is generally conducted, and specific services to minimise potentially risky or offending behaviour are developed. These could include:

a. Primary services such as respite, accommodation, living skills, case management, counselling, therapeutic and behaviour support services. These are generally delivered through Community Support Teams.

b. Secondary services such as behaviour support for those with complex needs who are likely to require services for a period greater than six months. These are delivered by Regional Behaviour Intervention Teams.

c. Tertiary services includes assessment, program development and training (as opposed to direct clinical intervention). This is delivered by the Statewide Behaviour Intervention Teams in consultation with government and non-government agencies.\footnote{Ageing, Disability and Home Care, \textit{Justice Services Policy}, 2009.}
It is not within the scope of this review to make recommendations regarding disability services for children and young people at risk of offending (i.e. not involved in the juvenile justice system). However, it is known that 13% of children and young people in custody may have an intellectual disability. Therefore, ADHC’s role in diverting these children and young people from offending behaviour is important. As a general observation, the services being provided by ADHC appear to appropriate and effective. However, as approximately one in ten children and young people in custody may have an intellectual disability there appears to be a requirement to expand programs for the identification, assessment and early intervention of children and young people with intellectual disabilities.

Observation: The early identification and support of children and young people with intellectual disabilities can reduce the likelihood of this group entering the juvenile justice system. Expanding existing programs for the identification, assessment and early intervention is supported by the Review.

Issues associated with children and young people with an intellectual disability and mental illness within the juvenile justice system is discussed in the Children and Young People in Trouble section.

Children and Young People in Trouble

A child or young person in trouble refers to someone who has come into contact with the juvenile justice system, from first contact with police, through to custody in juvenile justice centres. It is important to understand that the majority of children and young people who come into contact with the juvenile justice system are characterised by high levels of socio-economic stress, physical abuse and childhood neglect. Some of these risk factors that led to offending are explored in the previous section of the report. One of the greatest insights into this group in NSW is provided by the health surveys of children and young people on community orders and in custody. Figure 16 below provides a snapshot of some of the characteristics of children and young people in both custody and the community.

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Figure 16: Health Characteristics of Children and Young People in Custody and the Community

Source: NSW Young People in Custody Health Survey 2003 and NSW Young People on Community Orders Health Survey 2003-2006

317. Some other characteristics include:

a. The mean age for boys in custody was 17, and just under 17 for girls. The mean age for children and young people in the community was 16.5.

b. 11% of those in the community had ‘unsettled accommodation’.

c. Many children have been subject to physical and/or sexual abuse and/or neglect.

d. Ear infections and mild loss of hearing were common in both groups.

e. Low average IQ scores, problems with reading, spelling and arithmetic were common to both groups.

318. Before examining some of the issues associated with children and young people in trouble, Text Box 7 below provides a summary of some theory associated with working with this group.

Text Box 7 – Broad Approaches to Working with Children and Young People

There are two broad approaches to working with children and young people in trouble in NSW: addressing their criminogenic needs by influencing thinking and teaching new skills; and changing the thinking of clients by changing their ‘social ecologies’.

The first approach is demonstrated by the ‘Targets’ program which is a skills-based cognitive behavioural approach that assumes young people who offend can change their thinking and stay out of trouble. Other Juvenile justice programs such as the Sex Offender Program, Violent Offender Program and Alcohol and Other Drug programs adopt a similar approach. The second approach is exemplified by the Intensive
Supervision Program, which intervenes with the systems of the young person, including family, school and the community. It is based on Multi-Systemic Therapy which is discussed in Enclosure 1 – Review of Effective Practice in Juvenile Justice. Another example is strategic collaborative case planning. The merits of each of these approaches is discussed throughout this section of the report, however, the ability for Government to influence the behaviour and risk factors associated with offending is likely to be maximised when they concentrate on shaping the social ecologies and systems within children and young peoples’ lives.\textsuperscript{332}

319. The range of issues that will explored within this section of the report include:

a. Police practice, including leadership, the use of discretion, and targeting bail compliance.

b. The Court Process, including magistrates, legal assistance, audio-visual links, barriers to participation in the legal process for rural and remote communities, the YDAC and Fines.

c. Juvenile Justice, including case management, community-based orders, control orders and juvenile justice centres.

d. Specific programs, including the Intensive Supervision Program, Youth Conduct Orders and the Anti Social Behaviour Pilot Project.

e. Other issues, including children and young people with an intellectual disability and mental health problems, education, transporting juvenile detainees, workforce planning and its research and data collection capability.

320. It is noted that issues associated with the diversionary options for children and young people in trouble are discussed in the Young Offenders Act section above.

POLICE PRACTICE

321. NSW Police play a key role in the juvenile justice system. They are the ‘gatekeepers’ of the juvenile justice system, and invariably, will provide a child or young person with their first contact with the system. When a child or young person is brought into custody by NSW Police, a multi-level assessment is undertaken to determine the most appropriate course of action. This includes the attending police officer, the Supervisor for event verification, the Specialist Youth Officer for appropriateness of action, the Custody Manager for Quality Assurance and the Youth Liaison Officer for identification and remediation of systemic issues.\textsuperscript{333}

HISTORICAL PERSPECTIVE

322. Figure 17 below provides a historical perspective on the use of NSW Police options, including proceeding against a child or young person in court, youth justice conferences, cautions, warnings and infringement notices. A sharp decline in court appearances can be observed between 1998 (39.4% of total responses) and 2002 (17.1% of total responses). This period of decline coincided with the introduction of the Young Offenders Act 1997 in 1998. A number of stakeholders have commented that at the time, the Act was strongly supported at the highest levels of NSW Police and

\textsuperscript{332} Review submission received from I. Nisbet.
\textsuperscript{333} Unpublished information provided by NSW Police Force.
by the Government of the day. As is expected, the numbers of young people in custody declined over the same period from an average daily number of 327 children and young people to 264. From 2002 onwards, there has been a steady increase in the use of court proceedings (from 17.1% in 2002 to 23.2% in 2008). This also resulted in a commensurate increase in the average number of children and young people in custody from 264 to 428 (see Figure 19). The Review does not believe that police practice is main reason for this increase (other drivers include legislation, demographics, the role of other juvenile justice related agencies and inter-agency collaboration etc.), but it does demonstrate the impact of the NSW Police gate-keeper role on custody figures.

CURRENT POLICE PRACTICE

323. As outlined the in the Young Offenders Act section of the report, the use of diversionary options (cautions and youth justice conferences) increased from 14,535 in 2006-07 to 15,575 in 2007-08. A further 21,054 children and young people received warnings. 12,610 children and young people were proceeded to court. This means that children and young people are diverted to caution or conference in 55% of cases. The issues associated with the use of diversionary options discussed previously include the low referral rate to youth justice conferences compared to the Children’s Court (44%, compared with 56%), and the inconsistency of application across Local Area Commands. As outlined previously, 28 of 77 Local Area Commands only referred 1-5 children or young people to youth justice conferences in 2008/09. These specific issues will not be recovered in this section of the report, however, issues such as NSW Police leadership are related and will assist in addressing the identified issues. The issues that will be examined include leadership and strategic direction, the use of discretion, and policing bail compliance.

LEADERSHIP AND STRATEGIC DIRECTION

324. The NSW Police Youth Policy Statement provides the strategic direction for police in dealing with young people. It aims to inform police personnel and the wider community of the principles and priorities for the policing of young people in NSW. 334 The NSW Police Youth Policy Statement was developed in 2001 and was to expire in 2004, but it is still current. While the existing aims of the NSW Police Youth Policy Statement of reducing youth crime, diverting young people from crime, preventing youth crime, building partnerships and enhancing effective relationships are laudable, the juvenile

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justice environment has evolved since the strategy was developed. Consequently, it is appropriate given NSW Police’s key role in juvenile justice, that this strategy be updated.

Recommendation 35: The NSW Police Force update, or develop a new, Youth Policy Statement based on evidence-based strategies for policing children and young people.

325. The NSW Police Spokesperson for Youth is at the Superintendent level. It is understood that the Spokesperson for Youth used to be at the Assistant Commissioner level. Given the complexity and whole-of-government nature of juvenile justice, along with the large amount of crime committed by children and young people, it would seem appropriate that an Assistant Commissioner have responsibility for children and young people in the NSW Police (i.e. the Spokesperson for Youth). Furthermore, ensuring this role has no operational responsibilities would provide an appropriate focus on developing a strategic and consistent approach to children and young people (e.g. developing and overseeing an updated NSW Police Youth Policy Statement). The NSW Police Corporate Spokesperson for Custody (an Assistant Commissioner) has responsibility for Adult and Juvenile custody issues. In addition to this responsibility, the incumbent has complex and demanding operational responsibilities as a Local Area Commander. This is unfair to both the Assistant Commissioner and to the role due to the breadth of responsibilities and insufficient time to dedicate to strategic thinking on custody issues relating to children and young people. Consequently, there is significant advantage to be obtained by combining all NSW Police responsibility for juveniles with a single Assistant Commissioner level officer.

Recommendation 36: The NSW Police Force Spokesperson for Youth position be made an Assistant Commissioner.

326. As described earlier, there are three distinct areas of NSW Police dealing with children and young people. These are Youth Command (including PCYC case managers), School Liaison Police (currently residing in the Policy area) and Youth Liaison Officers (who are resident in each Local Area Command). It would seem appropriate that these three areas be consolidated under a single Command to drive a consistent approach to children and young people across the NSW Police. Youth Liaison Officers would still reside in each Local Area Command to allow them to respond to local issues, but operating under a common strategic direction. It is envisaged that this would assist in driving more consistent use of diversionary options such as referrals to youth justice conferences across Local Area Commands.

Recommendation 37: The NSW Police Force combine all functions relating to children and young people, including the current Youth Command, School Liaison Police and Youth Liaison Officers into a single Command.

327. The NSW Police should also give consideration to the total number of police that are dealing specifically with children and young people. As posited earlier, a large amount of crime is committed by children and young people, however, Youth Command, School Liaison Police and Youth Liaison Officers make up less than 2% of the NSW Police. This means that only a very small amount of

335 It is noted that a proportion of NSW Police have undertaken Specialist Youth Officer training. However, it is understood that these officers are not dedicated to policing of children and young people.
effort is dedicated to targeted youth engagement and crime prevention. The NSW Police should consider an increased investment in this area to reduce the proportion of crime committed by children and young people.

Recommendation 38: The NSW Police Force consider increasing the number of dedicated officers in youth engagement and crime prevention.

The NSW has recently implemented the Command Performance Accountability System (COMPAS). It is the peak forum where commander and director performance is assessed. COMPAS provides the mechanism to ensure that NSW Police is meeting its obligations to government and the public. It does this by assessing the performance of individual commands, commanders or directors in a series of performance and accountability categories related to crime management, corporate management and operational support. Given the demonstrated inconsistency in the utilisation of diversionary options under the Young Offenders Act, and NSW Police’s commitment to “increase the number of young people appropriately diverted from court by use of the provisions of the Young Offenders Act 1997”, one of the crime management categories used in COMPAS should include the use of diversionary options in Local Area Commands. This will ensure that commanders are held accountable for compliance with the provisions of the Young Offenders Act, and its general obligations to the government and public as per COMPAS’ intent.

Recommendation 39: The NSW Police Force measure Local Area Commands’ utilisation of diversionary options under the Young Offenders Act 1997 through the Command Performance Accountability System.

POLICE DISCRETION

NSW Police has significant discretionary powers in administering cautions and warnings and ultimately deciding how a young offender is dealt with. As a result, police discretion is a major factor in determining how far a young person is drawn into the juvenile justice system. A number of previous reviews have identified the structuring of NSW Police discretion as a major success of the Young Offenders Act. Because of the discretion involved in police decision making, this success however was dependent on a “sympathetic interpretative community” resulting from broad acceptance of the Young Offenders Act. This finding came at a time when there was significant investment in training, education and regular promotion of the Young Offenders Act in NSW Police and Juvenile Justice. It was commented at the time that the effectiveness of training and education can be limited if police officers lack philosophical commitment to the Young Offenders Act. At the time, the only regulatory body to monitor police discretion was the Youth Justice Advisory Committee. It is understood that this was successful because the NSW Police Commissioner (or his nominee) attended the forum and provided the necessary ‘conversational’ regulation.

Since the Youth Justice Advisory Committee was disbanded and the Young Offenders Advisory Council’s focus is at the strategic level, there is no effective external oversight of police discretion.
There is however an internal chain of command for monitoring decisions made under the *Young Offenders Act*. A number of stakeholders have commented that NSW Police’s philosophical commitment to the *Young Offenders Act* has also been diluted over time. This may be due to a widespread lack of knowledge and understanding about the intent and operation of the *Young Offenders Act*. These factors combined are likely to be contributing to the lack of consistency in application of the *Young Offenders Act*. The Review believes that Recommendations 14 and 15, which provide a refocused Young Offenders Advisory Council, and Recommendation 39 which provides improved NSW Police use of diversionary options will assist in improving the exercising of police discretion with regard to the *Young Offenders Act*.

**Recommendation 40:** The NSW Police Force increase training and education on the intent and operation of the *Young Offenders Act* 1997.

**BAIL COMPLIANCE**

331. When a child or young person fails to comply with their bail conditions, they may be arrested and brought before the court. The NSW Police can arrest a young person if they observe a breach of bail, regardless of whether the breach is a criminal offence, or a breach of bail conditions (e.g. a curfew) which is not a criminal offence. The latter is known as a ‘technical breach’ and the *Bail Act* requires the young person to appear before the court to reconsider the question of bail. The use of arrest means that a young person is held in custody on remand until they appear before the court. This is invariably what happens despite the C(CP)A providing the option to proceed via Court Attendance Notice which provides a mechanism for the breach to be brought to the court in a less costly and less intrusive way.

332. In 2006/07, breach of bail conditions was the most common reason for appearances in the Children’s Court across NSW. It comprised 18.9% of court appearances for non-ATSI children, and 23.6% for ATSI children. Of this group, over two-thirds committed ‘technical breaches’ (i.e. did not commit new offences or fail to appear at court). A major contributor to these figures is NSW Police’s proactive policing of bail. The strategy was highlighted in the previous version of the State Plan that committed to:

“Extending community monitoring of those at high risk of reoffending. For example, more random home visits, and electronic monitoring 24 hours a day, seven days a week for very high risk individuals.”

333. This was one of actions aimed to reduce re-offending by 10% by 2016. There is however no evidence that arresting young people for breaches of bail reduces re-offending. In fact, the evidence suggests that holding children and young people on remand increases the likelihood of further

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340 *Bail Act 1978* (NSW) s 50.
341 ibid.
345 ibid.
offending. Despite this lack of evidence, NSW Police has continued to target bail compliance as a means to reduce re-offending.\textsuperscript{346}

334. Proactive policing of technical breaches of bail is contradictory to the principles of diverting young people from the juvenile justice system. It also conflicts with children’s legislation and international conventions which state detention should be used as a last resort.\textsuperscript{347, 348} Additionally, 60% of the children and young people held on remand and then taken before court to reconsider bail were granted bail with little or no change to bail conditions within 24 hours.\textsuperscript{349} This demonstrates over half the children and young people held in custody for bail breaches were unnecessarily detained, therefore increasing their risk of re-offending. Most importantly, there is no evidence to support an improvement in community safety, or a reduction in either offending or re-offending.

\textit{Observation:} It would appear counter-productive that 60% of children and young people held on remand are released within 24 hours with no or little change to bail conditions. Recommendations throughout this report concentrated on bail compliance and conditions should alleviate this issue and provide a more effective use of NSW Police, Children’s Court and Juvenile Justice resources.

335. In the Review’s consultation with NSW Police, they identified that taking children and young people in custody is their only option for bail breaches\textsuperscript{350}. The Review understands that NSW Police can apply discretion as to whether a child or young person is arrested and brought before the court for bail breaches.\textsuperscript{351} NSW legislation is premised on detention as a last resort, however, current bail practices would appear to result in detention being used as an automatic response. It is recommended that NSW Police employ a risk-based approach to children and young people found to be breaching their bail conditions. A risk management framework may assist in assessing each individual and the circumstances of their bail breach. For example, a child or young person found to be breaching their bail conditions because they have missed curfew by 10 minutes or because their residence is unsafe during curfew hours would be low-risk and could be appropriately dealt with via an informal warning. Higher risk individuals and breaches should still be dealt with via arrest and proceeding to court for a redetermination of bail. Detailed education and training on the risk management framework would need to be delivered to NSW Police roles such as Specialist Youth Officers and Youth Liaison Officers. Other NSW Police members should be aware of the framework so that it can be applied in the field.

\begin{itemize}
\item \textcolor{red}{Recommendation 41:} The NSW Police Force develop a risk management framework, and associated education and training, to apply a risk-based approach to children and young people found to be breaching their bail conditions
\end{itemize}

POLICE PRACTICE AND COMMUNITY RELATIONSHIPS

336. The NSW Police play a significant role in the juvenile justice system. They are doing important work in preventing crime and diverting large numbers of children and young people from the juvenile justice

\begin{itemize}
\item For instance, see the NSW Police Force Annual Report 2007/2008 which details nightly bail compliance checks in the Western Region of NSW.
\item Children (Criminal Proceedings) Act 1987 (NSW) s 8 and Young Offenders Act 1997 (NSW).
\item Youth Justice Coalition, \textit{Bail Me Out: NSW Young Offenders and Bail}, 2009.
\item It is noted that Section 50 of the Bail Act allows police to seek a summons to have the young people appear in relation to the Breach, however, it was reported that the only practical option is taking young people into custody.
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\end{itemize}
system through the Young Offenders Act and programs such as the PCYC case management. A recent NSW Ombudsman review found that NSW Police had made marked improvements in the quality and effectiveness of police work with children and young people. It also commented that a number of Local Area Commands have implemented effective programs, particularly around preventing juvenile offending and effecting long-term behaviour change. Similar to the findings of the Review however, the Ombudsman found inconsistency between Local Area Commands and noted that diversionary options need to be monitored and Local Area Commanders made responsible to improve performance. It also supported the view that corporate-level support and leadership requires strengthening to sustain a strategic focus on policing children and young people.352

337. There is no doubt that crime committed by children and young people is distressing and a major community concern. Responding appropriately to these concerns is an important function of government, with much of the burden falling upon NSW Police. In responding to the community’s concerns about juvenile crime, police have adopted high visibility and related policing methods to reduce crime and ameliorate community concerns. There is some evidence to suggest that these tactics are successful in delivering short-term, area specific reductions in crime. However, the effects on community relationships and long-term crime levels are not well understood. This is particularly the case with the police relationship with young people. It is not within the terms of reference of the review to examine tactical police practices and relationships with the community, however, the overwhelming views of stakeholders suggests that there is a need for these issues to be better understood. To develop this understanding, it is suggested that the Commission for Children and Young People exercise one of its principal functions to conduct a special inquiry into issues affecting children on this issue.353 The special inquiry should be held in a public and consultative manner, however, appropriate protection should be provided to children and young people giving evidence during hearings.355

Recommendation 42: The Commission for Children and Young People conduct a special inquiry into NSW police practices affecting children and young people and their impact on community relationships.

THE COURT PROCESS
338. The function of the Children’s Court (and Local Courts hearing children’s matters) is described earlier in the report. This section will explore issues associated with the court process, including:

- Government support;
- Legal assistance;
- Magistrates;
- Audio-visual links;

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352 NSW Ombudsman, Working with Local Aboriginal Communities, Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006), 2005.
353 Section 11(c) and 17(1) - Commission for Children and Young People Act 1998 (NSW) S 11(c) and 17(1).
354 This is consistent with S 17(2), 20(6-7) of the Commission for Children and Young People Act 1998 (NSW).
e. specific barriers for rural and remote communities;

f. YDAC; and

g. fines.

GOVERNMENT SUPPORT

339. The Children’s Court requirement to source the necessary background information to make appropriate decisions was discussed specifically for bail hearings earlier in the report. These findings are equally applicable to criminal matters and as such, it should not be necessary to have a range of intake officers from different agencies at court to provide information. As per Recommendation 17, the information sharing and systems need to be established so that a single officer can source information from a range of sources such as Juvenile Justice, Community Services, Housing etc.

340. The case is slightly different when the child or young person is under the care of the Minister for Community Services or Chief Executive of Community Services. It is understood that Community Services does not appear in court for the majority of cases involving these offenders. As raised by the Law Reform Commission, the parental responsibility does not cease once a young person is criminally charged, nor does that responsibility transfer to the Minister for Juvenile Justice at any part of the proceeding. Despite this, Community Services is not required under legislation to attend court, as parents of the accused are under Section 8 of the Children (Protection and Parental Responsibility) Act. The court process can be daunting, and children and young people under the care of the Minister or Chief Executive of Community Services should receive the same level of support that could be expected from any parental guardian. As such, Community Services should attend court with children and young people under the care of the Minister or Chief Executive of Community Services as a matter of course.

Recommendation 43: Community Services attend court with children and young people under the care of the Minister for Community Services or Chief Executive of Community Services.

LEGAL ASSISTANCE

341. As discussed earlier in the report the Children’s Legal Service provides free legal assistance and representation to all children and young people aged under 18 in NSW. A phone hotline is also available for children and young people requiring legal advice. Additionally, the Aboriginal Legal Service (ALS) provides advice and representation for Indigenous young people. The ALS predominately deal with criminal matters, but also provide services in child protection matters. Other services include the Children’s Court Assistance Scheme which is available at a number of Children’s Courts in NSW. Volunteers are available to provide young people with advice on the court process and legal proceedings, and can also assist with referrals to other services such as

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356 Sections 15, 16, 30, 34 and 81 of the Children and Young Persons (Care and Protection) Act 1998 provide information regarding the responsibility of the Minister and the Director General with respect to young people under care and is dependent on types of orders.


accommodation. The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. It is a joint project of Mission Australia, the Salvation Army and the law firm Freehills. While children and young people that use this service are often eligible for legal aid, they often require greater support and continuity due to their circumstances. The Shopfront Youth Legal Centre also provides assistance for matters such as fines and traffic offences which Legal Aid does not support.

362 The quality of legal advice is likely to have a large bearing on the outcomes of court proceedings for children and young people, and perhaps most importantly their understanding of the outcome. It is therefore imperative that children and young people receive an appropriate level of representation from suitably skilled representatives. The capacity of the Children’s Legal Service to spend the necessary amount of time with a child or young person before court was raised as a concern by a number of stakeholders. The Review has not been able to source any substantive evidence to support these concerns. For example, the average amount of time spent with a child or young person is unable to be sourced from Legal Aid. It is known that in 2007/08, Legal Aid:

   a. answered 22,996 Youth Hotline calls, this is a 24.8% increase on the previous year;
   b. provided 641,884 client services, an 8.5% increase on the previous year and 80.6% increase over five years; and
   c. represented clients in 65,308 matters, a 6.7% increase on the previous year.

363 Furthermore, it is understood that 14.6% of Legal Aid’s client base is under 18. These statistics demonstrate that demand for Legal Aid’s services is growing, however, Legal Aid’s income also increased from 2006/07 to 2007/08. This suggests that a separate study is required to investigate concerns around the capacity of Legal Aid to adequately represent children and young people and ensure they understand the court process.

Recommendation 44: An independent study is undertaken into the current capacity of the Legal Aid Commission to adequately represent children and young people and ensure they understand the court process.

364 Similar concerns were also raised with the Review regarding the funding of the ALS and their ability to respond to NSW programs and requirements. While there is some special purpose funding provided by the NSW Government and Legal Aid, the ALS is predominately funded by the Commonwealth Government. This makes it very difficult for the ALS to respond to NSW based requirements. For example, the NSW Government requires the ALS to operate a 24 hour telephone custody notification.

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service which allows Aboriginal people to call the service when they are arrested. While this is a NSW Government requirement, it is understood that the NSW Government provided no funding to establish or maintain this service because ALS is a Commonwealth funded body.

345. It would seem appropriate that the NSW Government provide special purpose funding to the ALS to ensure that all NSW specific requirements can be delivered appropriately. This will involve examining current ALS services to determine any additional funding requirements such as the Custody Notification Service. It will also require the NSW Government to consider ALS funding requirements for any future policy and/or legislative change.

Recommendation 45: The NSW Government review the services delivered by the Aboriginal Legal Service and determine whether any additional special purpose funding is required to deliver NSW specific requirements. Future policy and/or legislative change should also consider funding implications for the Aboriginal Legal Service.

MAGISTRATES

346. Specialist Children’s Magistrates are appointed for a term not exceeding three years, however, they can be re-appointed. In areas not served by a specialist Children’s Court (i.e. outside of the Sydney metropolitan area), children’s matters are heard by the Local Court sitting as a Children’s Court. This was raised as an issue by a number of stakeholders and specifically by the Law Reform Commission in its report. It was reported to the Review that regionally based magistrates tend to impose tougher sentences, potentially because they hear matters less regularly and offences may appear to be more severe compared to a Children’s Court Magistrate who regularly hears serious children’s matters. This claim however cannot be substantiated. The Law Reform Commission recently supported the concept of a rural Children’s Court circuit to regularly rotate appointments. It was argued that this would address the need to be, and be seen to be, impartial towards particular individuals or families who may regularly appear before the court. Furthermore, the Review understands that Mark Marien, the current President of the Children’s Court, has called for the Children’s Court to be given its own status separate from the Local Courts, and wants permanent, specialised magistrates out on circuit to sit on cases around NSW. This Review supports the use of specialised Children’s Court magistrates for all children’s matters. As the Law Reform Commission observed, the Children’s Court jurisdiction requires particular communication skills, pragmatism and personality traits, and recognised that it can be particularly stressful and confronting when considering the demands of both juvenile crime, and care and protection matters.

Recommendation 46: The Children’s Court be given its own status separate from Local Courts, and specialist Children’s Court magistrates hear all children matters through the implementation of a circuit rotation system.

368 ibid.
369 ibid.
371 ibid.
347. Whether Recommendation 46 is implemented or not, the Children’s Court needs to ensure that there is consistency in decision making and sentencing regardless of whether the matter is being heard in a Local Court or specialist Children’s Court. Training and education play an important role in this regard, as does the selection of magistrates suited to children’s matters. It is understood that all new magistrates receive 3 months training in the Parramatta Children’s Court. There are a number of magistrates who have never received this training because they commenced their position prior to this requirement being implemented. (e.g. long standing country magistrates). It is further understood that magistrates undertaking this training are regularly required to fulfil duties outside of the Children’s Court. In order to ensure the integrity of this training, and increase the understanding of the Children’s Court jurisdiction for all magistrates, the education and development of training needs to strengthened. Additionally, the Children’s Court needs to ensure that these training and education requirements are adhered to. This means ensuring that no magistrate can sit in the Children’s Court if they have not successfully completed the required training and education.

Recommendation 47: The requirements for the education and development of magistrates in hearing Children’s Court matters are strengthened. This includes ensuring these requirements are adhered to and that a magistrate cannot sit in a Children’s Court unless they have successfully completed the training and education requirements.

AUDIO-VISUAL LINKS

348. A bill was introduced in November 2007 to better facilitate the use of audio visual link technology for appearances by accused detainees before the NSW Courts. The changes mean that accused detainees will appear via audio and visual links in those proceedings where the equipment is available unless the court orders otherwise in the interests of the administration of justice. The court has discretion in determining whether a child’s presence at court is required providing it is in the best interests of the administration of justice. The child or young person’s legal representative can also make submissions to the court in support of the child’s presence. Some of the reasons for the legislative amendment include concerns about the transport of detainees (attempted and actual escapes, violence and sometimes further offences committed in transit), interruptions to the child’s rehabilitative and education programs, the majority of court appearances were brief mentions, administrative and interlocutory proceedings and the cost involved in transportation.

349. Stakeholders have raised concerns that the focus of the amendment has been on the best interests of the administration of justice, not the best interests of the child or young person. Some of these interests of the child or young person include the fact that they are required to be held in holding cell until their matter comes up, which could be all day. It also means there is no family support for children and young people going before the court which is recognised as a difficult and sometimes traumatic process. It was also raised that the requirement for private communication between an accused detainee and their legal representation is not always observed. It is noted that the evaluation of the technology found the quality of communication with and participation of juveniles using the technology was the same, if not better, than those who appear in person. The attraction of

374 Ibid.
375 Evidence (Audio and Audio Visual Links) Act 1998 (NSW) Section 5BC.
audio and visual technology is obvious in terms of its innovation and cost-effectiveness. This benefit needs to balanced with the best interests of the child, not just the administration of justice. These concerns need to be considered by magistrates and legal representatives in determining whether audio-visual technology is the best way to proceed for individual matters.

*Observation*: In deciding to use audio visual links magistrates and legal representatives be cognisant of the best interests of the child in each individual case.

**SPECIFIC BARRIERS FOR RURAL AND REMOTE COMMUNITIES**

350. A range of research has been conducted regarding the barriers to participation in the legal process for children and young people living in rural and remote communities. Early research identified access to appropriate and timely legal services, availability of services (e.g. transport, health care, charities, housing) and physical distance between juvenile justice centres and detainees’ communities/families. More recent research has identified a range of broader barriers, including:

a. a net reduction in most rural areas in relation to population, services and employment opportunities;

b. increasing trend towards young women leaving rural and remote communities, resulting in an entrenched culture of heavy drinking and violence by young men;

c. declining school attendance and completion rates;

d. limited recreational opportunities;

e. the provision of services is expensive due to geographic dispersion, inaccessibility and low population density;

f. a growing tendency to view young people as ‘trouble’ in small towns; and

g. high rates of youth suicide.

351. While these factors are likely to lead to difficulties in accessing the legal system, they are more symptomatic of general issues in the provision of government services rather than the legal process specifically. Of specific concern is the potential disparity in practice between rural and remote Local Court magistrates and those in specialised Children’s Courts as discussed earlier in the report. The Law Reform Commission acknowledged that in some parts of NSW, magistrates may be willing to use the full range of sentencing options under the C(CP)A, however, they are not available in practice. This could be attributed to a range of factors, including those listed above. The Standing Committee on Law and Justice conducted an inquiry into community based sentencing options for rural and remote areas and disadvantaged populations in 2005. This report concentrated on the adult jurisdiction. A similar activity could take place for the juvenile justice system. The Law Reform

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378 Legislative Council, Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 2005.
Commission recently recommended the utilisation of sentencing options be monitoring by BOCSAR or the Judicial Commission to form the basis of further investigation to establish whether an increased allocation of resources in those areas would facilitate a more comprehensive application of sentencing options under the C(CP)A. This does not appear to have occurred. The Review supports the findings of the Law Reform Commission. It is not acceptable that a child or young person in a rural or remote community have fewer sentencing options due to unavailability of resources.

 Recommendation 48: The utilisation of sentencing options in rural and remote communities is monitored to establish whether an increased allocation of resources is required to facilitate a more comprehensive application of sentencing options under the Children (Criminal Proceedings) Act 1987. This is as per the recommendation made by the Law Reform Commission.

YOUTH DRUG AND ALCOHOL COURT

352. As described previously, YDAC provides an opportunity for young offenders to participate in an intensive period of rehabilitation before being sentenced. Ongoing case management is provided which involves treatment schedules, regular appointments with the court, and assistance with health, housing and education needs. YDAC aims to reduce offending and drug use amongst young people who have become entrenched in the criminal justice system.

353. An evaluation conducted in 2003 by the University of New South Wales Evaluation Consortium found that the implementation of the program took place without major problems. Some of the Evaluation’s findings include:

a. In its first two years, the YDAC received 164 referrals of young people facing possible custodial sentences for serious offences, of whom 75 (46%) were judged eligible and suitable for intensive case management. Of these, 29 (39%) went on to complete the program to the Court’s satisfaction, or to ‘graduate’.

b. Best estimates suggest that around 60% of participants appeared in court on fresh charges while on the program.

c. Around 35% of participants were not recorded as having offended after they left or completed the program, but the post-program offending data was incomplete and only available for a short period after the end of the pilot.

d. Graduates were less likely to re-offend than those who did not complete the program.

e. Most participants interviewed reported that their drug use had decreased compared with that three months before entering the program.

f. The cost data had some limitations, but best estimates suggest that a reasonable measure of per capita costs per day on the program lies between $359 and $452. If costs are measured on the basis of only those who complete the program successfully it appears substantially more expensive, at between $539 and $760 per day per graduate.

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354. Despite some data limitations, the evaluation recommended that the YDAC program continue and possibly be expanded to selected other geographical areas. Importantly, this recommendation was subject to a number of issues being addressed, including better data on further offending coming to the attention of the police and the courts. This was needed to determine the level of offending by program referrals and participants. No data of this nature has been collected and no further evaluation conducted. It is understood that there are some privacy issues with tracking offending of children and young people. This may be mitigated by obtaining consent from each child and young person for the use of their information for evaluation purposes. Concerns have also been raised about the sample size of the program and potential difficulties in drawing any conclusions from the group. It is understood that Health conducted an evaluation of the health outcomes of program participants, however, it did not consider one of the core aims of the program which is to reduce offending.

355. Given that YDAC commenced as a pilot program in 2001 and it has come at a significant expense ($359 to $452 a day per participant), there is a clear need to conduct a further evaluation of the program. It is not possible to draw any conclusions about the success of the program without an understanding of the level of re-offending from program participants. The evaluation needs to have a primary focus on its ability to reduce offending and drug use as per the program aims. Additionally the evaluation should consider the merits of a range of issues raised as part of this Review, including:

a. expanding the program to all court orders, not just supervised orders;

b. the effectiveness of judicial supervision as a concept;

c. making the YDAC a court in itself, as opposed to a court program; and

d. potential synergies with the Magistrates’ Early Referral Into Treatment scheme currently operating in the adult system.

Recommendation 49: The NSW Government undertake an independent evaluation of the Youth Drug and Alcohol Court to determine its effectiveness in reducing offending and drug use, and make recommendations regarding its ongoing role in the NSW juvenile justice system.

FINES

356. Children and young people can receive two types of fines, a court-imposed fine (e.g. a young offender is found guilty of an offence), or a penalty notice issued by a statutory authority (e.g. regulatory offences such as driving offences, avoiding train fares etc.). The two main issues associated with fines are the amount imposed on the young person and the possible escalation of penalties for those who cannot pay their fines. Fines and infringement notices are the most commonly used response

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383 NSW Department of Justice and Attorney General, Magistrates Early Referral Into Treatment (MERIT), http://www.lawlink.nsw.gov.au/Lawlink/cpd/ll_cpd.nsf/pages/CPD_cpd_programs#8 accessed 8 December 2009. “MERIT provides defendants in NSW Local Courts with the option of undertaking formal drug treatment while on bail. A BOCSAR evaluation found that participation in the MERIT program reduces defendants’ propensity to commit theft offences and, for those who complete the program, substantially reduces their propensity to commit any type of re-offence.”
to regulatory offences committed by children and young people. It is understood that children as young as 10 can accumulate large debts in unpaid fines for non-criminal offences such as not wearing a bicycle helmet or travelling without a fare on public transport.\(^{386}\) The accumulation of fines can follow a young person into adulthood and prevent them being able to register vehicles and obtain driving licenses. This in turn leads to further offences such as driving unlicensed. This is understood to particularly impact upon Aboriginal and other disadvantaged young people. In response to this issue, the NSW Government introduced Work and Development Orders to reduce the impact of unpaid fines on disadvantage people (including children and young people) in 2008. This was developed in response to a 2006 report by the NSW Sentencing Council. The NSW Attorney General announced that this would be a two year trial\(^{387}\), however, the Review has not been made aware of an evaluation process. An evaluation is required, preferably conducted by BOCSAR, to ensure that it has reduced the impact on disadvantaged people.

**Recommendation 50:** The Bureau of Crime Statistics and Research conduct an evaluation of the Work and Development Orders.

357. A number of stakeholders have advocated that any offence for which a fine can be issued, could and should be dealt with via warning or caution. This was recommended in the NSW Attorney General’s 2002 report on the impact of the Young Offenders Act, however, it was rejected when the report was tabled in Parliament. The Review does not support a dilution of children and young people being held accountable for their actions, however, the penalties under the Young Offenders Act have proven to be effective in reducing re-offending and in children and young people taking responsibility for their actions. Consequently, there is a case to be made to provide the option in some cases for using warnings and cautions where a fine is currently issued. It is appreciated that this is a contentious issue for Government to deal with (as with many of the issues raised by the Review). However, given that children and young people are different to adults (particularly in their ability to pay fines) this reform requires careful consideration.

 ENTITY Observation: Government consider providing the option to use a warning or caution for offences currently dealt with by a fine.

### JUVENILE JUSTICE

358. This section explore issues associated with children and young people once they come into contact with Juvenile Justice, including

- a. initial assessment and case management;
- b. community-based orders;
- c. control orders (including Kariong, Emu Plains Juvenile Justice Centre, Official Visitor Scheme and Chaplaincy services); and

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\(^{386}\) Unpublished data provided by the NSW Bureau of Crime Statistics and Research.

d. programs (including the Intensive Supervision Program, Youth Conduct Orders and the Anti Social Behaviour Pilot Project).

INITIAL ASSESSMENT AND CASE MANAGEMENT
359. Juvenile Justice uses Youth Level of Service Inventory to conduct initial assessments of supervision needs and develop appropriate case plan intervention for children and young people on court orders. It forms the foundation of any effective intervention in Juvenile Justice as is used as a reliable measure of risk and needs. This forms part of the broader Casework Standards and Procedures of the Juvenile Justice Community Services Procedures Manual.\textsuperscript{388} It is understood that Juvenile Justice piloted the Comprehensive Assessment Format in a number of regions in 2007/08. It is another assessment tool to assist in targeted interventions using a structured assessment process.\textsuperscript{389} The pilot is currently being evaluated.

360. These assessment frameworks demonstrate a trend towards a risk-based intervention within Juvenile Justice. A risk based approach suggests that effort should be focused on addressing the criminogenic needs of high-risk clients. This is a marked shift in the way Juvenile Justice previously practiced case management which was based on ‘minimum standards of supervision’. This approach specified that a young person’s level of supervision was determined by their court order. For example, Juvenile Justice Officers would have direct contact a minimum of once a month for three months for children and young people on a Good Behaviour Bond, while a Suspended Sentence would involve direct contact for three months, followed by a minimum of once a month contact for three months. Anecdotally, the high case load of Juvenile Justice Officers meant that higher priority was given to those on higher level orders, and as such, less priority was given to lower level orders, regardless of their risk of re-offending. The current approach requires the level and duration of contact to be determined by the risk of re-offending.\textsuperscript{390}

361. The change to risk based assessment and case management is consistent with international evidence that suggests the most effective way to reduce recidivism is to address risk, needs and responsivity.\textsuperscript{391} That said, 55.3% of juvenile offenders on supervised orders in 2006/07, and 61.7% on control orders in the same period, received a subsequent conviction within 12 months.\textsuperscript{392} While this figure has been steadily declining (for example, the re-offending rate for those on controls orders has declined by 11.6% over the past 6 years), it does indicate that Juvenile Justice interventions are not having the desired effect of reducing re-offending (within 12 months) for over half of the children and young people on supervised and detention orders. Noting that Juvenile Justice’s shift to risk based assessment and case management has only occurred recently, these figures may not provide a true indication of recent efforts to improve assessment and case management practices. Assuming that the risk based approach is implemented effectively, it is reasonable to expect that the rate of juveniles re-offending within 12 months will continue to decline in coming years. Therefore, Juvenile Justice should continue to monitor the rate of re-offending within 12 months over the coming years to determine the effectiveness of the changes and if necessary refine the assessment and case management processes.

\textsuperscript{388} Review submission received from I. Nisbet.
\textsuperscript{390} Review submission received from I. Nisbet.
\textsuperscript{391} ibid.
It is understood that Juvenile Justice has setup an Effective Practice Working Group within the agency to examine case management practices. This group has developed a practice and assessment framework for case management that involves significant collaboration with other agencies and Departments and focuses on holding others accountable to a case plan and its outcomes. The Review supports the work of the Effective Practice Working Group due to the importance of case planning management in reducing re-offending.

COMMUNITY-BASED ORDERS

The Children’s Court can sentence young offenders to community-based penalties such as good behaviour bonds and probation orders. Juvenile Justice is required to supervise all community service work orders, parole orders and suspended sentences. The number of community-based orders has increased in recent years as demonstrated by Figure 18 below.

![Figure 18: Number of community-based orders commencing](image)

Source: NSW Department of Juvenile Justice Annual Report 2008/09

Trend: The numbers of children and young people on community-based orders has been steadily increasing since 2004/05. The percentage of these juvenile offenders re-offending within 12 months during this period has remained steady between 54% and 57%.

Enclosure 1 – Review of Effective Practice in Juvenile Justice details the effectiveness of community based responses delivered with appropriate support for children and young people. Juvenile Justice provides community based support through intensive case management strategies, partnership with other Departments and providing evidence based programs. Specific services include:

a. court directed supervision;

b. case management, including interventions to address risk factors identified as contributed young people’s offending behaviour;
c. counselling programs such as the Sex Offender Program and Violent Offender Program; and

d. establishing networks with other government and community-based services.  

365. Juvenile Justice also funds NGOs to deliver specific community-based programs including post release programs, accommodation support programs, local offender programs, alcohol and other drug programs, employment skilling programs and Children’s Visiting Legal Service.  

This represents a significant investment in providing the necessary support to ensure offenders are rehabilitated in their community, therefore reducing risk of re-offending.

366. Despite the increase in the use of community-based orders, and the evidence in support of these types of responses, the percentage of juvenile offenders receiving a subsequent conviction or conference within 12 months of a supervised order was 55.3% in 2008/9.  

This figure has remained steady over the previous six years (ranging from 54.0% to 56.9%).  

No evidence has been provided to the review to explain the factors behind what appears to be a high re-offending rate for this group.  

Other Australian states do not publish re-offending rates, and it is therefore difficult to benchmark the effectiveness of a 55% re-offending rate.  

Given the evidence which suggests community based responses are the most effective, it would appear that community-based practices within Juvenile Justice require improvement.

367. It is known that community-based services comprised approximately 30% of Juvenile Justice’s expenditure in 2008/09.  

This equates to approximately $23 a day for supervised community orders, with a return of a 55.3% re-offending rate.  

This compares to $556 a day for detention with a 61.7% re-offending rate.  

These figures suggest that community-based services are a cost-effective alternative to detention for some children and young people, however, improved re-offending rates are needed as it represents the best opportunity for improving re-offending rates.  

A small improvement in community-based services is likely to have a substantial impact.  

It is suggested that target rates for re-offending are established and a plan to achieve these rates implemented.  

A five year time frame for this is plan would enable time for changes to be implemented and produce results.  

Noting the offending habits of children and young people discussed earlier in the report, the plan should also include other effectiveness measures such as reduction in offending frequency and seriousness to obtain a broader suite of performance indicators.

1 Recommendation 51: Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.

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394 Ibid.
395 This includes suspended sentences with supervision, Community Service Orders, probation with supervision and bonds with supervision.
397 Ibid. Community-based services comprised $55.616 million (including direct and indirect costs) of the total $183.552 million expenditure.
CONTROL ORDERS

368. Juvenile Justice operates eight juvenile justice centres across NSW (this does not include Kariong which is discussed below). This includes a purpose built facility for young women offenders. This equates to an operational bed capacity of 424 children and young people. All juvenile justice centres provide an extensive range of educational, recreational, vocational, specialised counselling (e.g. alcohol and other drug) and personal development programs. Psychologists are also employed to provide a range of services including assessment, counselling and group work. Justice Health provide health services (e.g. Registered nurses, General Practitioners, consultant psychiatrists) within juvenile justice centres, and DET run the Education and Training Unit within the centres. Individual case management is also provided to plan for a young offenders release and reintegration into the community. Other services that are discussed later in this section of the report include chaplaincy services and the official visitor scheme.

369. Figure 19 below shows the average daily number children and young people in custody since 1999, and a forecast through to 2018/19 based on a regression analysis provided by Juvenile Justice.

**Figure 19: Ten Year Projection of Young People in Custody – Average Daily Number (June 2009)**

![Graph showing ten year projection of young people in custody average daily number (June 2009)](image)

*Source: 1999-2008 DJJ RPE Standard Statistical Reporting Database, 2008-09 DJJ RPENlive Database. Figures are taken from a live database and are subject to change.*

1. Based on 2008-09 estimate figures and selected regression analysis of 1999-2009 data.
2. Length of Stay on Remand reduces to 16.3 days, and Length of Stay on Control rises to 93.5 days by 2018-19.
3. Projected trend curve of Custodial Stays on Remand peaking at 4486 in 2013-4 and then falling to 3274 by 2018-19, and Control peaking at 1560 in 2017-18 and falling to 1546 in 2018-19.

*Trend.* The numbers of children and young people on control orders has been steadily increased since 2002/03. This trend is expected to continue and demand for juvenile justice centres will far exceed the current juvenile justice centre capacity of 424 beds in the short-term.

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370. The Juvenile Justice custody projection illustrated in Figure 19 does not factor in a range of external lead indicators such as the number of children and young people entering the care system and broader disadvantage markers. As outlined in Recommendation 31, lead indicators need to be developed to better forecast detention requirements amongst other things. Without these lead indicators, it is difficult to provide a revised projection for young people in custody, however, there are a range of known indicators. For example, there is a well-established relationship between entry into the child protection system and juvenile justice. Therefore, an increase in the number of young people entering custody is likely due to a 38.8% increase in the number of children and young people entering out of home care from 2004/05 to 2008/09. Further exacerbating this, the Wood Report highlighted increasing complexity of children and young people coming into contact with Community Services. For example, it found increasing numbers of re-reported children and young people, child protection reports involving multiple reported issues, concentration of reports in sibling groups and increases in the substantiation rates of child protection reports over time. Furthermore, it is known that the Indigenous population is the fastest growing population in the country with an annual growth rate of 2.3%, and 50% are aged 20 years of age or less. The overrepresentation of Indigenous young people in the juvenile justice system, coupled with the high growth rates and young average age of Indigenous Australians provides another indication that demand for custody is likely to increase in coming years. Laws and procedures are also likely to have an impact on the increasing number of children and young people in detention. The continuing use of punitive responses to law and order issues is likely to result in significantly increased custody numbers. Additionally, the number of children and young people will increase as the effects of detention compound (that is, the more children and young people held in detention, the greater the rate of re-offending).

371. With these indicators in mind, the Review believes that the projected number of young people in custody illustrated in Figure 19 underestimates future demand for custody services. Analysis shows that an additional 1,000 neglected children would result in another 256 juveniles involved in crime. The indicators outlined above regarding the child protection system and Indigenous population growth are likely to mean an increase in the number of children and young people entering the juvenile justice system. It is therefore estimated that the Juvenile Justice projections are underestimated by as much as 25%. This would mean that the average daily number of children and young people in detention is likely to peak at 733 in 2015/16. This is 309 children and young people greater than the current capacity of juvenile justice centres.

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400 | 28% of male and 39% of female detainees between 2003-06 had a history of being place in care. See Special Commission of Inquiry into Child Protection Services in NSW, Report of the Special Commission of Inquiry into Child Protection Services in NSW, 2008.
401 | Community Services, Integrated Substitute Care Database statistical extract and KIDS/MDS: Corporate Information Warehouse annual data, 2008.
406 | Based on an additional 1,360 children and young people entering out of home care in 2008/09 compared to 2004/05, and the high growth rates and young average age of Indigenous Australians.
As illustrated in Figure 19 there is a clear upwards trend in the number of young people in custody in NSW. The average number of children and young people in custody increased from 389 in 2007/08 to 428 in 2008/09 despite:

a. growing evidence that holding children young people in custody is not effective in reducing juvenile re-offending;\(^{407}\)

b. prison exerting no specific deterrent effect;\(^{408}\)

c. it being one of the highest cost options available to Government;\(^{409}\)

d. legislation stating detention should be used as a last resort;\(^{410}\)

e. the average number in custody (428)\(^{411}\) is greater than the operational capacity of NSW juvenile justice centres (424)\(^{412}\); and

f. no increase in juvenile involvement in violent and property crime.\(^{413}\)

Recent studies have shown that more than two-thirds of children and young people who receive a control order will be convicted of a further offence within two years. This suggests that holding a child or young person in custody is not effective in reducing re-offending. This not to say that detention is not necessary, there will always be a need for custody for high risk offenders in order to protect the community. There is however a strong body of evidence that demonstrates that a group of young people that can be dealt with more effectively, and as safely, within the community in order to reduce the risk of re-offending in the future.

A recent BOCSAR study critically analysed the effect of custodial sentences on juvenile offending. The study noted that previous research in this area had its limitations, but found that juveniles given custodial sentences were more likely to re-offend than juveniles given non-custodial sentences. BOCSAR’s own research found that juveniles given custodial orders are no less likely to re-offend than juveniles given non-custodial orders. The study outlined a number of reasons for this, including the prison environment which is conducive to acquisition of new criminal skills, the stigmatisation effect on offenders and it reduces the offender’s capacity to obtain income by legitimate means. It also examined the long term effects of custodial penalties and found that incarceration produced a significant negative effect on future employment prospects.\(^{414}\)

BOCSAR’s research also found that prison has no deterrent effect, which is consistent with overseas research and the Review’s consultation with children and young people involved in the juvenile justice

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\(^{408}\) Ibid.

\(^{409}\) This is explored below.

\(^{410}\) Children (Criminal Proceedings) Act 1987 (NSW) s 33.


\(^{412}\) Unpublished information provided by Juvenile Justice.


system. The important factor here is not that juvenile justice centres are ‘too soft’, it is the fact that they do not act as a deterrent. The punishment involved is the loss of liberty, the most important factor is what is done within the centres to reduce re-offending.

376. BOCSAR’s study concludes that custodial penalties should be used sparingly with juvenile offenders noting the adverse effects on employment outcomes and the absence of strong evidence that custodial penalties act as a deterrent. The Review also notes that over two-thirds of children and young people will re-offend with two years. Additionally, in 2007/08, Juvenile Justice spent $103 million on custodial services. This equates to an average daily cost of $556 per person in custody, compared with $11 for youth justice conferencing and $23 for supervised community orders.

377. It is has been established that holding juveniles in custody is expensive, does not provide a deterrent, has failed to reduce re-offending for two-thirds of offenders and juvenile crime has remained static in a period of increased custody numbers. Despite these factors, previous analysis shows that the number of children and young people held in custody will exceed current capacity by 309 in 2015/16. It is estimated that building a new juvenile justice centre for 15 children and young people would involve capital costs $8.5 million, and $2.8 million in recurring costs (excluding costs for Justice Health and Education services). This means that building an additional 309 beds will involve capital costs of $175.1 million and recurring annual costs of $57.68 million. This means that the NSW Government is faced with building additional juvenile justice centres at significant expense, or making a concerted effort to reduce the numbers of juveniles held in custody. Given the evidence put forward to the review, it is clear that the preferred option is to reduce the numbers in custody. The NSW Government therefore needs to consider ways to reduce the numbers in custody.

378. Given the recent increase in children and young people held on remand, it is expected that the Review’s recommendations around the C(CP)A, Bail Act and associated practices will have an impact on reducing the numbers in custody. These changes alone are unlikely to have the required effect on reducing custody numbers. The overwhelming evidence presented throughout this report and in Enclosure 1 – Review of Effective Practice in Juvenile Justice is that prevention and early intervention programs are the most effective means of reducing entry into the juvenile justice system and reducing re-offending. Consequently, an approach that seeks to reduce the causes of offending (in particular through targeting disadvantage), diverts young people from entering the juvenile justice system and reduces re-offending will provide the best outcome for the community. This approach is best summarised by the thinking that underpins Justice Reinvestment. More detailed discussion of Justice Reinvestment and how it can be applied is contained in the Options for the Future section of the report, however, it is premised on adopting a policy of diverting a portion of the funds spent on imprisonment (including the funds that are required to build additional juvenile justice facilities) and investing it in programs and services that address the underlying causes of crime in local communities. One of the greatest risks to successful implementation of Justice Reinvestment is that insufficient funds will be diverted to the necessary programs. Insufficient funding of reinvestment programs will increase the long term costs to the community.

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415 ibid.
418 Unpublished information provided by Juvenile Justice.
379. A Justice Reinvestment approach will have the greatest return on investment over an extended timeframe such as 10 years. This is because the majority of diverted funds will target earlier intervention, including broader care and protection issues for children and families. This will have a greater likelihood of preventing children and young people from entering the juvenile justice system, but will of course have a longer lead time to realise the benefits of the investment. Greater investment in preventative programs focused on children and young people at immediate risk of offending will deliver shorter term benefits. Therefore, the NSW Government needs to fund a range of services and programs across the entire continuum (from increased early intervention programs such as home visiting and anti-bullying strategies, to specific programs for high-risk offenders such as intensive case management at PCYC). The reforms initiated through Brighter Futures will provide some of the improvements, however, there are a range of other areas that will require investment.

Recommendation 52: NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.

380. If the above recommendations are implemented a reduction in the numbers of detained children and young people can be expected. Unfortunately these measures will not address the inevitable fact that the numbers of detained children and young people will exceed juvenile justice centre capacity to an unmanageable level in the short-term. Additional detention facilities cannot be built within the next 12 months and it is not appropriate to hold children and young people in alternative facilities such as adult prisons. As such, unless Juvenile Justice implements a range of measures to reduce the detention population immediately, Juvenile Justice will need to develop contingency plans to handle this situation until more juvenile justice centres can be built. A strategy is therefore required for dealing with a greater number of children and young people sentenced to control orders and remand than can be accommodated in juvenile justice centres.

Recommendation 53: If the Review’s recommendations on reducing the number of juveniles on remand are not implemented, Juvenile Justice develop contingency plans incorporating capital strategies and policy approaches to handle greater numbers than they can accommodate.

KARIONG JUVENILE CORRECTIONAL CENTRE

381. Kariong was transferred from Juvenile Justice to Corrective Services in 2004. Kariong is designed to be the most secure juvenile justice facility to accommodate offenders over the age of 16 whose offences are considered to be the most serious and those who are unable to be managed in other centres because of their behaviour. Stakeholders and other sources reflected a number of concerns and issues associated with the transfer and operation of Kariong to the Review. These concerns centre around the rationale for the decision, the lack of an evidence base to support the transfer, legal aspects (including contravention of international law), and the taking of a more punitive, rather than rehabilitative, approach. The Review was unable to independently ascertain the veracity of these concerns. However, the report by a Parliamentary Select Committee established in 2005 to investigate, amongst other things, the reasons for, and the consequences of, transferring the management responsibility to DCS, explores some of these issues. The Select Committee detailed a

number of concerns regarding the transfer, including that the decision to transfer operational
management of Kariong to DCS may have been a political one.421

382. The Select Committee noted that the NSW Government recognises the needs and requirements of
juveniles are distinct from adults. This is evidenced by the structural separation of Juvenile Justice
and Corrective Services and their two client groups. The Committee specifically supported the
principles of Juvenile Justice and the separation of responsibility for juvenile offenders. It ultimately
recommended that the NSW Government continue to current operation management arrangements
while an evaluation is undertaken to establish the longer term impact of the decision on detainees and
the juvenile justice system more broadly. The Committee also specifically mentioned that the NSW
Government should further consider returning the responsibility for management of all juvenile
offenders to Juvenile Justice in the longer term.422 In response to the Select Committee, the
Government reiterated its support for the current management regime for Kariong and will continue to
hold young offenders on serious charges and those whose behaviour warrants higher security in the
centre.423

383. This Review supports the Select Committee’s recommendation to evaluate the effectiveness of these
management arrangements. Having two agencies managing children and young people in custody is
not sound from a public administration point of view. As noted previously, it is also counter to the
structural separation of Juvenile Justice and Corrective Services upon which the system is founded.

Recommendation 53: The NSW Government conduct an independent evaluation of the
management and operation of the Kariong Juvenile Correctional Centre as recommended by the
Select Committee on Juvenile Offenders.

EMU PLAINS JUVENILE JUSTICE CENTRE

384. Emu Plains Juvenile Justice Centre (Emu Plains) was opened in April 2009 to cater for the rising
numbers of children and young people held on remand (i.e. have not been sentenced or have been
refused bail).424 There has been a significant change in the profile of young offenders coming into
custody as the pool of detainees suitable to be accommodated at Emu Plains is now just as likely to
be detainees on control as detainees on remand. As a result, a number of stakeholders have raised
concerns about some of the conditions at Emu Plains, including the lack of a dedicated Education and
Training Unit. A number of stakeholders have also commented on the inappropriateness of some of
the physical conditions due to the centre’s previous use as a period detention centre for women.
Specific complaints include a lack of access to toilets and showers in cells, a lack of privacy in toilets
and showers, a lack of running water into rooms and children and young people being held in their
cell for up to 20 hours a day.425 Concerns have been raised that the conditions do not meet the
same standard as other NSW juvenile justice centres and Australasian Juvenile Justice Administrators
(AJJA) Standards for Juvenile Custodial Facilities (which are based on human rights standards such

421 ibid.
385. Juvenile Justice has commenced a capital works upgrade program to improve the support and programs services at Emu Plains. Building works to convert an accommodation unit into program and education rooms have commenced. This will allow expanded education programs to be offered at Emu Plains comparable to other centres. It also provides extra space for other rehabilitative programs. Further security improvements, including a new fence, are being made at the centre to provide another recreational area. These changes will mean that young people at Emu Plains will have similar access to a range of education recreation and rehabilitation programs as those at other centres. It will also mean that out of room hours can be increased to bring Emu Plains in line with other centres and to provide flexibility in the profile of detainees that can be housed at the facility.

386. It is not within the scope of the review to comment on specific conditions within a detention centre, however, it is relevant to ensure that all juvenile justice centres are consistent with the AJJA standards to which NSW is a signatory. As detailed above Juvenile Justice has commenced a capital works program to address some of these concerns. It is essential that these upgrades bring Emu Plains into line with AJJA Standards for Juvenile Custodial Facilities.

Recommendation 55: Juvenile Justice is funded to ensure that conditions at Emu Plains Juvenile Justice Centre comply with Australasian Juvenile Justice Administrators’ standards for juvenile justice facilities.

OFFICIAL VISITOR SCHEME

387. The Official Visitor Scheme provides independent members of community to monitor and evaluate the services and conditions of juvenile justice centres. Official Visitors are ministerially-appointed positions established under the Children (Detention Centres) Act 1987. The Official Visitors provide advocacy, and direct support to detainees. They have the power to enter and inspect juvenile justice centres and confer privately with any person who is resident or detained at a centre. Official Visitors provide formal written reports every six months on standards of care relating to detainees’ security, welfare and rehabilitation. This report specifically examines the performance of the centre in accordance with the AJJA Standards for Juvenile Custodial Facilities. The Review is supportive of this program and believes it provides a means to independently validate conditions utilising a whole-of-community approach.

CHAPLAINCY SERVICES

388. Juvenile Justice engages full-time and part-time chaplains through subsidies to the Civil Chaplains Advisory Committee. Chaplains provide religious and spiritual support to children and young people in detention. The Advisory Committee can also arrange religious support and counsel for children and young people from non-Christian faiths, including Islam and Buddhism. Some of the specific services provided include outreach, connections to culture, assistance with education and coordination of programs and resources (e.g. coordinating community members to manage recreational activities in centres). Chaplaincy provides a very good mechanism for getting the community involved in delivering services and programs within juvenile justice centres. The evidence base which underpins this review (see Enclosure 1 – Review of Effective Practice in Juvenile Justice) suggests that whole-of-community approaches such as this are effective. It is not within the Review’s

scope to comment on specific services of this nature, however, it was raised that chaplains have a lack of subsidy hours to administer services, particularly in rural centres where a chaplain is only available for 7-8 hours a week.

**Observation:** The Review acknowledges the important work that chaplaincy provides in juvenile justice centres, particularly in getting the community involved in delivering services and programs in juvenile justice centres. It is understood that chaplaincy is much broader than spiritual support, and the Review supports the continued use of chaplaincy within juvenile justice centres and ensuring that sufficient subsidy hours are available to deliver the required services.

**PROGRAMS**

389. This section will examine a range of specific programs currently being implemented in NSW, including the Intensive Supervision Program, Youth Conduct Orders, and Anti-Social Behaviour Pilot Project.

**Intensive Supervision Program**

390. The Intensive Supervision Program was launched by Juvenile Justice in May 2008. It was a program launched under the State Plan in an attempt to reduce re-offending using a multi-systemic therapy model. It has been successfully implemented in a number of other jurisdictions include Western Australia, New Zealand, the United States, Canada and nine countries in Europe. Multi-systemic therapy is discussed as an effective program in Enclosure 1 – Review of Effective Practice in Juvenile Justice. The program targets juveniles who commit serious and/or repeat offences, or whose severe anti-social behaviour increases their likelihood of offending. It involves working with children and young people and their families to provide them with the skills to successfully adjust to family, peer, school and neighbourhood demands. The multi-systemic nature of the program deals not only with behavioural problems, but also the underlying problems within the family framework, disadvantage, and issues such as substance abuse, financial problems, housing and peer groups. The program also seeks to establish positive interagency links to ensure they are able to access appropriate government and non-government services.

391. The Intensive Supervision Program is a four-year, $5.5 million pilot program in Newcastle and Western Sydney. As at 30 June 2009, 27 families had successfully completed the program (11 of whom were Aboriginal and Torres Strait Islanders). The preliminary findings of the pilot show that offending dropped by 60% while families were receiving services during the program and that offending dropped further to 74% six months after families terminated services with the Intensive Supervision Program. Furthermore, 87% of caregivers demonstrated parenting skills necessary to handle future problems, 80% with improved family relationships and 60% with an improved network of support. A full evaluation of the program will be conducted at the conclusion of the pilot period. The Intensive Supervision Program has also proven to be successful in a number of other jurisdictions as described in Enclosure 1 – Review of Effective Practice in Juvenile Justice. It is essential that the program is properly evaluated, and if proven to be effective, expanded to other suitable areas of NSW.

**Recommendation 56:** The Intensive Supervision Program is comprehensively evaluated, and if found to be effective, funded to expand to other suitable areas of New South Wales.

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429 ibid.
431 Unpublished information provided by Juvenile Justice.
Youth Conduct Orders

392. The Youth Conduct Order pilot commenced on 1 July 2009. It provides key agencies with diversionary, intensive, case management options for dealing with children and young people charged with or found guilty of anti-social offences. It is aimed to meet the Government's priority of reducing levels of anti-social behaviour under the State Plan. It is intended that the scheme will provide a balance between law enforcement responses and social and family support for children and young people engaging in offending behaviour. This balance is achieved by restricting the behaviour and movement of a child or young person and performing certain tasks or activities to reduce their risk of offending, and participation in an intensive early intervention program based on coordinated case management from human service and justice agencies. The scheme is being piloted in three NSW Police Local Area Commands (Campbelltown, Mount Druitt and New England).432

393. The coordinated case management aspects of Youth Conduct Orders are facilitated by a Case Coordination Senior Officers Group which involves representatives from relevant human services and justice agencies. There is a local Case Coordinator employed at each pilot location responsible for implementing the Youth Conduct Order scheme at the operational level. DPC has overall operational responsibility for the scheme, and Juvenile Justice is responsible for the employment, management and support of Case Coordinators.433

394. The Youth Conduct Order scheme is still relatively new and at the time of writing this report, only one person had been placed on an order.434 This makes it impossible to comment on the effectiveness of the program. However, a number of stakeholders have raised concerns about the program that should be considered in its evaluation. These include the lack of a requirement for an admission to the alleged offence. It is argued that this model gives decision-making authority for recommending conduct provisions and restrictions to government officials, rather than court officials, where this authority traditionally resides. Concern has also been raised about linking coordinated case management with court ordered conditions such as curfews, non-association orders and place restrictions. The evidence presented earlier in the report around proactive policing of conditions and a child or young person’s inability to meet conditions could be limiting the likelihood of success, and drawing them further into the juvenile justice system. It is unlikely that the relatively low numbers on Youth Conduct Orders will have a significant impact on total custody numbers, although this will need to be determined through a comprehensive evaluation.

Recommendation 57: The evaluation of Youth Conduct Orders include consideration of any adverse impacts on the overall operation of the Young Offenders Act 1997 and whether children and young people eligible for less intrusive diversionary options were placed on Youth Conduct Orders.

Anti Social Behaviour Pilot Project

395. The NSW Government launched the Anti-Social Behaviour Pilot Project in September 2006. Similarly to Youth Conduct Orders, it provides a multi-agency intervention strategy to develop integrated case plans and behaviour restrictions. It is focused on early intervention for those most at risk of engaging in criminal activity and entering the juvenile justice system, rather than those that have committed an

433 ibid.
434 Unpublished information provided by the Department of Premier and Cabinet.
offence. The goal of the program is to provide a coordinated, responsive, holistic and effective service that contributes to the well-being of children and young people who are at risk of harm to themselves and/or the community. The objective is to assist the NSW Government reduce levels of anti-social behaviour through the principles of prevention and early intervention.435

396. At the time of writing this report, the Anti-Social Behaviour Pilot Project had received approximately 200 referrals, and the active case load was approximately 70.436 Despite what appears to be a sufficient participation, and active operations for three years, there has been no evaluation of the pilot. It is understood that the evaluation announced as part of Youth Conduct Orders will also examine the Anti-Social Behaviour Pilot Project. It is not known whether the evaluation will give sufficient focus on both programs. As with Youth Conduct Orders, it is not possible to draw any conclusions regarding the program because of the lack of evaluation data. It is essential that the Youth Conduct Order evaluation give appropriate attention to the Anti-Social Behaviour Pilot Project, and specifically the extent to which it complements/duplicates Youth Conduct Orders. Consideration should also be given to the impact of behaviour restrictions that formalise previously informal responses, thereby intensifying forms of intervention and punishment, and any erosion of the principles of the Young Offenders Act, including its model of minimal intervention and requirement for the least restrictive sanction being applied.

Recommendation 58: The evaluation of Youth Conduct Orders investigate the effectiveness of the Anti-Social Behaviour Pilot Project, including whether it compliments/duplicates Youth Conduct Orders and any possible erosion of the Young Offenders Act 1997.

OTHER ISSUES
INTELLECTUAL DISABILITY
397. The prevalence of children and young people with an intellectual disability in custody or on community orders is significant. The Young People in Custody Health Survey 2004 found:

a. 17% had cognitive functioning scores consistent with a possible intellectual disability;

b. 10% met both culture-fair IQ and adaptive behaviour deficits consistent with criteria for intellectual disability; and

c. the arithmetic skills of 64% of the subjects were equivalent to those expected of people with intellectual disabilities.437

398. Similarly, the Young People on Community Orders Health Survey 2003-2006 found:

a. 12% had culture-fair IQ scores consistent with a possible intellectual disability;

b. 15% had IQ scores consistent with a possible intellectual disability; and

c. 11% met both IQ and adaptive behaviour deficits consistent with criteria for (possible) intellectual disability (8% based on a culture fair assessment).438

435 NSW Department of Premier and Cabinet, Anti-Social Behaviour Pilot Project Case Coordination Guidelines, 2008.
436 Unpublished information provided by the Department of Premier and Cabinet.
The Review’s consultation revealed that preliminary findings from the yet to be published *Young People in Custody Health Survey* found approximately 25% of children and young people in custody could have an intellectual disability. The Review is unable to ascertain whether this increase is due to an improvement in statistical sampling and measurement, or there are increasing numbers of children and young people entering the juvenile justice system with a possible intellectual disability. Regardless, the initial assessment and screening process needs to be enhanced to ensure that children and young people with an intellectual disability receive appropriate support. This issue will be explored in this section of the report.

**Trend:** The levels of intellectual disability of those involved in the juvenile justice system is increasing. Programs to divert children and young people with an intellectual disability from entering the system and more effectively managing those with a disability in the system will become increasingly important.

This trend has significant implications in terms of the services and programs required of Juvenile Justice. The Review maintains that children and young people are different and should be treated as such. This particularly applies to children and young people with an intellectual disability. There is a need to deal with their disability issues, rather than criminal justice issues. This requires meeting the disability related support and therapeutic needs of young offenders. The figures also raise questions about the appropriateness of custody as a punishment for this group.

**Observation:** Up to a quarter of the children and young people in Juvenile Justice Centres could have an intellectual disability. This represents a justice based solution to what is most likely a disability and health problem.

A number of studies have explored the impact of detention on people with an intellectual disability. The NSW Sentencing Council recently examined sentencing consequences for people with an intellectual disability. These included an entrenched culture of criminality due to a need to be accepted by their peer group and therefore copying peers’ behaviour (which tends to be predominately negative in prison). It also found it can be particularly difficult to reintegrate young people with an intellectual disability into the community when leaving custody and as such, they are more likely to re-offend. People with an intellectual disability are also more likely to be assaulted and otherwise mistreated in a prison environment.

Specific issues with the Court process were also highlighted to the Review. Lack of access to specific services for children and young people with a borderline intellectual disability was consistently raised. This is linked to the situation described previously where a significant number of children and young people in custody and the community could have an intellectual disability, but are not diagnosed or treated as such.

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403. It is recognised that these issues have obvious human costs, but also significant financial cost to the NSW Government in terms of NSW Police, Children’s Court and Legal Aid time, and the cost on ineffective responses by human services. The NSW Standing Committee on Social Issues found a lack of effective support for people with disabilities, creating significant additional costs to government. It recommended additional investment in support for people with disabilities, and enhancing the preventative capacity of the human service system. The NSW Government launched the Framework Report in 2002 which sought to provide a detailed and practical way forward on the lack of human services support for people with intellectual disabilities and their involvement in the criminal justice system.

404. The Framework Report established a specialist Criminal Justice Program within ADHC which includes case work and clinical teams for offenders and those at risk of offending. This program continues to operate and provides accommodation and support to people with an intellectual disability that have had contact with the criminal justice system placing themselves or others at serious risk of harm, and those who present a level of complexity that requires services beyond what DADHC may normally provide. In order to be eligible for the program, a child or young person must:

a. have intellectual disability (intellectual functioning measured at two or more standard deviations below the mean for the Full-Scale score on a recognised test of intelligence such as a base level IQ of 70), and

b. have had contact with the criminal justice system and pose a risk of serious re-offending.

405. It is understood that approximately 12 out of the 105 currently on the program are children or young people. The Review was unable to obtain any evidence to substantiate the low rate of children and young people on the program, however, stakeholders have raised a number of concerns in regard to the Criminal Justice Program. Stakeholders commented that Juvenile Justice has made relatively few referrals since the program’s commencement. This is particularly concerning given that up to one quarter of children and young people in custody could have an intellectual disability. It is further understood that few of the children and young people referred by Juvenile Justice will be accepted into the program, and if they are accepted, the delay in receiving a service means that they are no longer under Juvenile Justice supervision and are unable to work with the child or young person. Specific concerns were also raised in regards to the eligibility criteria for young offenders, including:

a. in determining whether a child or young person has a disability, other disabilities such as mental health issues and alcohol and other drugs issues are not considered; and

b. children and young people often have difficulty in demonstrating continued contact with the criminal justice system due to their age, or are not considered to have committed serious enough offences to be of serious harm to others.

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441 NSW Standing Committee on Social Issues, Making it happen: final report on disability services, 2002.
442 Review submission received from the NSW Council for Intellectual Disability and Intellectual Disability Rights Service.
443 Ageing, Disability and Home Care, Criminal Justice Program- Access, Eligibility and Prioritisation, 2007.
Interim results from a recent evaluation of the Criminal Justice Program show a significant reduction in offending behaviour. Given the demonstrated effectiveness of the program in reducing offending, it is essential that ADHC and Juvenile Justice work together to resolve the issues outlined previously. It is understood that senior representatives from both organisations are working to address the concerns. Given the high proportion of children and young people in custody who could have intellectual disabilities, it is necessary that ADHC and Juvenile Justice improve referral rates and acceptances into the program. This may include amending the eligibility criteria for children and young people noting that they often commit less serious offences (but will escalate into more serious offending in the future without intervention), and have had less time to demonstrate continued contact with the criminal justice system. Both agencies should also consider means to improve the timeframes for acceptance into the program, and the delivery of services once accepted.

Recommendation 59: Ageing, Disability and Home Care and Juvenile Justice work together to improve the rate of referrals and acceptances of children and young people into the Criminal Justice Program. This may involve developing a separate evaluation criteria for entry into the program for children and young people and the setting of targets to monitor performance.

In response to the growing recognition of the problems associated with children and young people with an intellectual disability in the justice system, Juvenile Justice developed a Disability Action Plan 2004-2006. It provides an action plan for diverting children and young people with disabilities from the justice system, and providing effective services to those in the system. An updated Disability Action Plan 2007-2011 outlines a range of strategies including assessment of young people entering the system, individual case plans recognising their specific needs, specialised services, providing links to other services within the community, and collaboration with other agencies to ensure they receive the level of support and services required.

ADHC also released a Criminal Justice Resource Manual and Justice Services Policy in June 2009. The Manual provides guidance to ADHC staff delivering services to people with an intellectual disability who are in, or at risk of, contact with the criminal justice system. The Policy provides an overarching framework for disability service providers to ensure responsive and appropriate service provision. It also guides service delivery to clients who are in, or at risk of, contact with the criminal justice system as victims, witnesses or alleged offenders. The objectives of the policy are to:

a. Reduce contact with the criminal justice system through improved identification, assessment and earlier intervention.

b. Access representation and/or support services that will ensure they are treated fairly and justly when they come in contact with the criminal justice system as a victim, witness or alleged offender.

c. Obtain appropriate recognition and response to their intellectual disability and any cultural or linguistic needs in all stages of the criminal justice process.

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444 Unpublished information provided by Ageing, Disability and Home Care.
d. Access available and culturally appropriate diversionary options away from detention or custody and into more appropriate support and treatment options.

e. Integrate/reintegrate into the community on release from custody by being able to access case management support, suitable accommodation and culturally appropriate services that will help minimise the risk of re-offending.

f. Access services and support that will recognise their strengths and meet their individual needs and goals, including their community and cultural needs.  

409. It would appear that these objectives, and those of the Juvenile Justice Disability Action Plan 2007-2011, are appropriately focused on addressing the issues identified previously by the Review. It is apparent the ADHC has put significant effort into the recent development of its Criminal Justice Resource Manual and Justice Services Policy. Ensuring the success of these initiatives will require ADHC to gain support from other agencies, and supporting other agencies, involved in delivering services to children and young people with a disability. This will involve integrating the policy with the whole-of-government framework for children and young people recommended in the Strategic Approach to Children and Young People section of the report.

410. ADHC and Juvenile Justice also need to ensure that they monitor and evaluate their respective disability policies and plans on a regular basis. It is understood that ADHC will review the Justice Services Policy annually for the first three years of operation which is appropriate. Juvenile Justice should give consideration to reviewing the Disability Action Plan 2007-2011 following finalisation of the health survey results which are likely to show an increase in the number of children and young people in custody and the community with an intellectual disability. It is recommended that the Plan be strengthened to improve the identification and assessment of children and young people with a potential intellectual disability to where possible, and appropriate, divert them from custody and provide them with specialised services and support (such as the Criminal Justice Program discussed earlier).

Recommendation 60: In light of the 2009 health surveys, Juvenile Justice review the Disability Action Plan 2007-2011 to ensure it will address the intellectual disability issues of children and young people in custody.

MENTAL ILLNESS

411. Children and young people with a mental illness are overrepresented in the juvenile justice system. The Young People in Custody Health Survey 2004 found that 88% reported mild, moderate or severe symptoms consistent with a clinical disorder.  

Furthermore, 40% on community orders reported severe symptoms on the Adolescent Psychopathology Scale consistent with a clinical disorder. In response to this issue, the NSW Government has established the Justice Health Adolescent Court and Community Team to provide court diversion services. The process of diverting children and young people to mental health services is underpinned by sections 32 and 33 of the Mental Health

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447 Ageing, Disability and Home Care, Justice Services Policy, 2009.
448 NSW Department of Juvenile Justice, NSW Young People in Custody Health Survey, Key Findings Report, 2003.
(Forensic Provisions) Act 1990. Section 32 provides the ability for magistrates to dispose of criminal charges for defendants who are developmentally disabled, suffering from mental illness, or suffering from a mental condition for which treatment is available in a mental health facility but who are not mentally ill persons. Section 33 provides the ability for a magistrate to order a defendant be taken to, and detained in, a mental health facility for assessment. Section 31 of the same Act outlines that sections 32 and 33 apply to criminal proceedings for summary offences and indictable offences heard summarily before a magistrate, as well as any related bail proceedings.

412. This legislation allows the Justice Health Adolescent Court and Community Team to refer a child or young person for a mental health assessment. Based on this assessment, the court clinician will provide a report for the court outlining mental health issues and possible options for dealing with young people in custodial and community settings. In 2007, 212 assessments were completed, 169 (80%) of these identified mental health issues, and 127 young people were diverted into community settings/facilities. The service targets children and young people aged 12 to 18 years and is entirely referral based (as opposed to the adult system which requires additional screening of individuals in custody). It began as a pilot project at Cobham Children’s Court in 2006 and has since been expanded to five children’s courts.

413. A recent BOCSAR evaluation of this service found a significant decline in offending frequency for clients of the program that was not observed for the control group who received supervised bonds. This suggests that Justice Health intervention has a positive impact on reducing the frequency with which clients come into contact with the juvenile justice system. BOCSAR’s stakeholder analysis found that the majority of stakeholders felt the services had a positive impact on those with mental health matters. They also reported that the greatest benefit of the service was the assistance provided to the court in identifying individuals with mental health issues, communicating this information, and diverting children and young people into treatment services. Other strengths included the availability of liaison nurses to court personnel, timely response of staff dealing with referrals and conducting assessment, and the capacity of court diversion staff to effectively assess the health system. The evaluation also identified a number of areas for improvement, including service availability, provision of training and education on mental health matters, awareness of services and establishing and maintaining collaborative links with stakeholder agencies, particularly potential treatment services.

414. The Adolescent Health Adolescent Court and Community Team is playing an increasingly important role as the number of children and young people coming before the court and in custody and/or the community with a possible mental health problem is increasing. While BOCSAR's evaluation only examined three of the Children’s Courts (Parramatta, Bidura and Campbelltown) where the service is operating, early indications are that the expansion to Woy Woy and Wyong has been successful. It would therefore be appropriate to expand the service to all six specialist Children’s Court (including Broadmeadow and Illawarra) as well as regular sittings at Local Courts around NSW. The issues identified by the BOCSAR evaluation should be addressed before expansion. The service model will

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450 Mental Health (Forensic Provisions) Act 1990 (NSW) s 32(3A).
451 Mental Health (Forensic Provisions) Act 1990 (NSW) s 33(2).
453 ibid.
need to be modified for Local Courts as full-time, or even part-time, court liaison staff are unlikely to be sustainable. That said, it is important that children and young people in rural and remote areas have access to similar services as those in areas served by a specialist Children’s Court, particularly Indigenous children and young people. A model that provides an effective screening tool before bringing in a court clinician and/or psychiatric personnel for comprehensive assessments and reports to the Local Court may be appropriate.

Recommendation 61: The Justice Health Adolescent Court and Community Team develop an action plan to address the issues identified as part of the Bureau of Crime Statistics and Research evaluation.

Recommendation 62: The Justice Health Adolescent Court and Community Team is funded to expand their court liaison and diversion services for children and young people with mental health problems to all NSW Local Courts, including regional areas.

415. An important element to addressing this issue is the availability of services in the community for children and young people with a mental illness. This also relates to building NGO capacity for complex needs children and young people discussed earlier in the report.

EDUCATION

416. As described in the Children and Young People at Risk section of the report, ongoing engagement with the education system is a key factor in diverting children and young people from offending pathways. Likewise, it is important that children and young people maintain involvement in education and training while under Juvenile Justice supervision and after being released into the community. Despite these known factors, the recent health surveys found that 56% of children and young people on community orders had left school before commencing Year 10 and 89% had been suspended from school.454 Similarly, 75% of children and young people in custody had left school before Year Nine and over 90% has been suspended from school at some time.455

417. Education and Training Units within Juvenile Justice Centres play an integral role in re-engaging children and young people in education and training systems. Juvenile Justice and DET deliver a range of risk-assessed in custody programs that aim to:

a. improve the standard of young offenders’ level of education and training;

b. build educational, vocational and training pathways for young offenders; and

c. increase the young offenders confidence and skills to re-enter education, training or the workforce after he or she leaves custody.

418. In 2009, 1,311 young people were enrolled in Education and Training Units. Of these 1,311 people, 633 were enrolled in TAFE, 140 were enrolled in School Certificate Courses, 56 were enrolled in HSC Courses and 94 completed a School Certification.456 This demonstrates that Education and Training

Units are successfully re-engaging a large number of children and young people in formal education. The ongoing challenge for Juvenile Justice and DET is ensuring that these children and young people maintain the momentum within a community setting post-release. For example, none of the 56 enrolled in HSC Courses completed their HSC while in custody. It is up to the individual to complete their HSC in the community. Consequently, there is a requirement for DET to establish a support service for children and young people exiting community orders and custody to provide advice and assistance for enrolling in education and training opportunities. The service would also ensure that children and young people existing Juvenile Justice supervision comply with new minimum school age legislation. This will ensure a child or young person is given the best chance to succeed in the community and minimise the risk of re-offending.

Recommendation 63: The Department of Education and Training establish a service for children and young people exiting community orders or custody to enrol them in education and training opportunities.

TRANSPORT OF PRISONERS

419. Juvenile Justice operates a Transport Unit which moves young offenders to court appearances and secure transportation between juvenile justice centres and from juvenile justice centres to correctional centres. In 2008/09, there were 4,318 transport movements involving 10,009 children and young people.\(^{457}\) A Memorandum of Understanding (MoU) was established between NSW Police and Juvenile Justice in 2003 which agreed that Juvenile Justice would undertake all juvenile offender transport functions following the admission of a young person to a juvenile justice centre by police.\(^{458}\) From 1 July 2007, Juvenile Justice assumed the responsibility for all transport of juvenile detainees except the very first transport from a Police station to a Juvenile Justice Centre. It would appear as though there is a misunderstanding in the operation of the MoU, as during the Review’s consultation with NSW Police a concern was raised about NSW Police’s requirement to transport children and young people. Given that the MoU states that NSW Police are only required to transport children and young people to a juvenile justice centre after arrest, it would appear that the current arrangements are appropriate and operating in accordance with the agreement. If NSW Police is conducting any other transport functions, Juvenile Justice should assume this responsibility, however, no evidence was produced to support this being the case.

WORKFORCE PLANNING

420. Dealing with young people in the juvenile justice system who invariably have complex needs is a demanding task. It requires a mix of personnel with specialist knowledge, skills, competencies and attitudes. As with all public sector endeavours, meeting the challenges of the future will require a skilled and capable workforce. There are a range of emerging workforce issues such as overseas trends (see Enclosure 1 – Review of Effective Practice in Juvenile Justice), requirements to up-skill personnel to meet workplace needs, competition from related fields, demographic drivers and other specific public sector issues that need to be taken into account in meeting these demands. Recent academic research has highlighted that better outcomes will be achieved through more skilled personnel with greater specialisation. It is not apparent that Juvenile Justice is positioned to

\(^{457}\) ibid.
\(^{458}\) NSW Department of Juvenile Justice and NSW Police Force, Memorandum of Understanding: NSW NSWP MoU Verification Number: 04/03834, 2003.
effectively respond to these demands and meet the challenges of the future. It is understood that Juvenile Justice is currently developing its workforce planning strategy and in the process of identifying its core competencies. This workforce planning exercise needs to take a strategic approach and look beyond a competency projection exercise. It should look strategically at its workforce options including how it meets future needs from external providers such as the NGO sector.

 Recommendation 64: Juvenile Justice prepare a Strategic Workforce Plan to 2020 in order to develop a sustainable and capable workforce.

RESEARCH AND DATA COLLECTION CAPABILITY

Juvenile Justice has a Research and Information Unit consisting of four people. The agency’s research agenda is overseen by a Research Steering Committee comprising internal staff, BOCSAR, Justice Health and Corrective Services. Juvenile Justice has recently funded three large scale research programs, including:

a. **2009 NSW Young People in Custody Health Survey.** Similar to the 2003 Young People in Custody Health Survey, Juvenile Justice, in partnership with Juvenile Health, is conducting a survey to provide data on the health issues, general functioning levels and the complexity of problems faced by young people in custody.

b. **A longitudinal study of the biological and social/cognitive factors that lead to anti-social behaviour in adolescence.** Juvenile Justice funded the School of Psychology, University of Wollongong to undertake a longitudinal study to identify the social, cognitive and psychological factors related to antisocial behaviour. The study will examine the presence of protective and resilience factors within the research cohort.

c. **Three year research program with BOCSAR.** A Research Officer has been employed to undertake research into ‘Juveniles on remand: Causes and effects’, ‘Police and Youth Justice Conferencing’, ‘Desistence from offending’, ‘Cautions and reoffending’ and ‘Simulation model of the juvenile justice system’.

Juvenile Justice is also actively improving its data collection capability. A Corporate Information System (CIS) is currently being implemented which will provide greater analysis and reporting of information across the agency. It will also integrate with Justicelink which will provide easy access to Court data. Improved data will enable Juvenile Justice to better evaluate its programs and monitor re-offending rates. Efforts are also underway to improve data sharing and matching between agencies under the newly formed Department of Human Services.

Observation: Juvenile Justice’s limited funding base means that it needs to develop innovative solutions to develop its research capability. Its current research and data collection improvement initiatives are supported by the Review and Juvenile Justice should continue to conduct evidence based research and evaluation to reduce re-offending and meet other corporate goals. This should include identifying emerging technology trends that will enable Juvenile Justice’s business objectives and relate with children and young people.
Children and Young People Reintegrating into the Community

423. One of Juvenile Justice’s core responsibilities is working with young offenders to reduce their risk of re-offending when they are released into the community. As discussed throughout this report, this involves working with children and young people to address the underlying issues that contribute to their offending. Juvenile Justice develops individualised case plans for each child and young person in detention to assist them reintegrate into the community. One of the most obvious measures for Juvenile Justice’s effectiveness of reintegration is the rate of re-offending. Text Box 8 below outlines a new predictive instrument used to predict re-offending rates.

Text Box 8 – Group Risk Assessment Model

BOCSAR has developed a predictive instrument to improve comparative measurement of re-offending. The Group Risk Assessment Model (GRAM) generates a predicted annual rate of re-offending against which actual rates can be compared. Effective justice services and programs will result in a lower actual rate than the predicted rate. The predicted juvenile rate of re-offending within 24 months in 2005/06 was 55.0%. The actual rate was 57.3%.

424. Figure 20 shows the percentage of juvenile offenders who receive a subsequent conviction or conference within 12 months of their index appearance.

Figure 20: Percentage of juvenile offenders receiving a subsequent conviction or conference within twelve months of the index appearance

Source: NSW Bureau of Crime Statistics and Research
Conference: Young People finalised at a Youth Justice Conference
Supervised Order: Young People finalised in the Children’s Court who received a supervised order other than a control order (including suspended sentence with supervision, CSO, probation with supervision, bond with supervision)
Detention Order: Young People receiving a control order <=365 days for their index offence (count reoffending from end of minimal term)
Note: (1) a person can appear in different groups in a given financial year, but can appear in a given group at most once in a given financial year. (2) for a person with non-custodial sentence, their follow-up period starts on the date of finalisation of their index appearance, while for a person with a custodial sentence, their follow-up period starts at the end of their fixed sentence.

Trend. The percentage of juvenile offenders re-offending within twelve months of a control order has steadily decreased since 2000/01. The percentage on supervised orders has remained relatively

stable, and there was a slight increase in re-offending rate from youth justice conferences in recent years.

425. Figure 20 illustrates that 65.6% of young offenders in custody with an index appearance in 2005/06 went on to record a subsequent conviction in 2006/07. This would appear on face value to be a very high figure, however, it has been steadily declining since 2000/01. This section will explore what is being done to ensure that a child or young person is successfully reintegrated into the community. Table 6 below shows the work being undertaken by Juvenile Justice to ensure that children and young people are reintegrated into safe and appropriate accommodation, are engaged in education, training or employment and participating in community activities. It also shows the level of improvement in a child or young person’s Youth Level of Service Inventory score upon exit from Juvenile Justice Supervision.

Table 6 – Post-Release Outcomes

<table>
<thead>
<tr>
<th>Percentage of young people who on exit from departmental care are:</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Living in safe and appropriate accommodation</td>
<td>N/A</td>
<td>82%</td>
<td>89%</td>
<td>91%</td>
</tr>
<tr>
<td>Participating in education and training or participating in employment</td>
<td>N/A</td>
<td>55%</td>
<td>59%</td>
<td>59%</td>
</tr>
<tr>
<td>Participating in community activities</td>
<td>N/A</td>
<td>36%</td>
<td>38%</td>
<td>38%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percentage of all clients showing a reduction in their Youth Level of Service Inventory score on exit from departmental care supervision</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>56%</td>
<td>61%</td>
<td>66%</td>
<td>69%</td>
</tr>
</tbody>
</table>

| Percentage of medium to high Youth Level of Service Inventory rankings that are reduced on exit from departmental care supervision | 37%     | 47%     | 45%     | 51%     |

426. Table 6 demonstrates that Juvenile Justice has improved across all three measured areas of post-release support from 2006/07 to 2008/09 (accommodation, education/training/employment and participation in community activities). While these are indicative of successful reintegration, Enclosure 1 – Review of Effective Practice in Juvenile Justice explores a range of other goals to assist with reintegration such as socialisation skills, dependency on alcohol or illicit drugs, lifestyle choices such as peer groups, education, employment, and reducing the need for gang participation. While these are not explicitly stated measures, most of these factors are calculated in the improvement in YLSI scores demonstrated in Table 6. Improvement in every category presented in Table 6 suggests that Juvenile Justice is giving an appropriate focus on successful reintegration of children and young people into the community.
427. One of the major challenges for Juvenile Justice in reintegration and reducing re-offending is that they often only have a very short period of time to work with children and young people. They can only deliver programs and services while a young offender is under a court ordered mandate. It follows that intensive support from other organisations (government and non-government) is essential during the reintegration process. A number of stakeholders have commented that it is much more difficult for a child or young person who is a known offender to access government and non-government services. For example, it is very difficult for a young offender to gain access to supported accommodation, or reintegrate into the education system, post-release. There could be number of reasons behind this, including a misconception that Juvenile Justice will be able to provide the necessary support post release, or more likely, services are reluctant to take on high needs clients who may be difficult to engage with, present with challenging behaviour or may pose safety risks to their staff. This reluctance to provide support to those at the greatest risk of re-offending is likely to be a significant contributor to the high levels of re-offending displayed in Figure 20 previously.

428. To address this issue, Juvenile Justice is currently required to link children and young people to NGO case workers to maintain improvements gained while under Juvenile Justice’s care. For example, the South Sydney Youth Service provides post release support as part of the Local Offender Program. A case worker will engage with a young offender 6 weeks before release, then continue to work with the young person up to 12 months post release. In our consultation with the South Sydney Youth Service, it is understood that the first three to four days are a critical period for successful reintegration. Support services include attempting to reengage the child or young person with the education system, help them secure financial support (through Centrelink or employment), and gain access to accommodation. Other examples of effective NGO support include Young People Connected which provides customised mobile phone technology to help youth workers stay in touch with young offenders, and Stay Safe which provides young offenders with accommodation and support to reduce the risk of re-offending. This is the type of support that needs to be provided to children and young people until they are effectively transitioned into the community.

429. It is known that children and young people who have had contact with the juvenile justice system are at the greatest risk of re-offending. This group should therefore receive the greatest level of support, rather than disengagement from service providers. Children and young people are provided with the necessary services and program support while under Juvenile Justice supervision. It follows that Juvenile Justice is the best placed government agency to deliver (or fund and supervise NGOs to deliver) services to young offenders once they are released from supervision and no longer have a court mandate. These services should be focused on continuing to address the underlying, multi-systemic causes that led to offending behaviour. This is a very different model to that which operates currently and would require legislative change and a significant increase in Juvenile Justice funding. Juvenile Justice is, however, arguably the most skilled agency at dealing children and young people with complex and high needs.

430. The challenge for this approach is to ensure it does not result in ‘net-widening’, or keeping children and young people in juvenile justice system unnecessarily. This could be achieved through having

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461 UnitingCare Burnside, Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales, 2009.
voluntary participation in Juvenile Justice extension services and programs post-order. This differs to the current approach where a child or young person cannot receive Juvenile Justice support once a court order finishes. Unfortunately, offending behaviour does not stop neatly on court ordered dates. A more effective model would involve children and young people continuing to receive support until they are successfully reintegrated into the community, meet certain outcomes (e.g. complete a case plan) or meet an accepted level of risk in terms of re-offending. Whatever the model, it is essential that government does not cease delivering services and programs that reduce the risk of further offending because a child or young person completes a court order.

431. It is recommended that a child or young person is eligible for voluntary Juvenile Justice support while reintegrating into the community through the delivery of tailored services and programs that address the underlying causes of their offending behaviour. Consistent with the evidence within *Enclosure 1 – Review of Effective Practice in Juvenile Justice*, it should be multi-systemic, family integrated support. This support would need to be entirely voluntary for the child or young person and/or family. The provision of support should not be for a pre-determined length of time, but based on outcomes such as achieving an acceptable level of risk, or meeting certain milestones or outcomes. Support should be provided to children and young people transitioning into the community from both control and supervision orders. Juvenile Justice must be appropriately funded to deliver and/or fund the appropriate services and programs to ensure that children and young people are appropriately supported and reintegrated into the community, thereby reducing the risk of re-offending. Noting that some children and young people will require intensive support to reintegrate successfully (e.g. entry into the Intensive Supervision Program), and others less support, it is expected that the average daily cost of community-supervised orders is an appropriate indicator of reintegration costs (currently $23 a day). In 2008/09 there were 711 admissions to juvenile justice centres on control orders and the average length of stay was 124 days. This indicates that approximately 700 children and young people will need to be reintegrated each year. If each of these children and young people requires support for 120 days post-release (and agree to this support), this is an additional annual cost of $1.932 million.

Recommendation 65: The role of Juvenile Justice is extended to provide services and programs to young offenders on a voluntary basis beyond their court ordered mandate (control and supervised orders) in order to ensure successful reintegration into the community and reduce re-offending. This will involve additional funding of approximately $1.932 million for the delivery of internal and NGO delivered services.

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464 This figure is an estimate by the Review and will require confirmation by Juvenile Justice.
Indigenous Overrepresentation

432. This section will explore issues associated with the overrepresentation of Indigenous children and young people in the juvenile justice system. In doing so, the following areas will be explored:

a. Indigenous population characteristics;

b. Indigenous disadvantage;

c. Indigenous overrepresentation in the Australian juvenile justice system;

d. Indigenous overrepresentation in the NSW juvenile justice system;

e. what is being done in NSW to reduce disadvantage and overrepresentation in the juvenile justice system; and

f. how things can be done differently.

433. It is important to understand the level of overrepresentation in the juvenile justice system. Figure 21 shows the proportion of Aboriginal and Torres Strait Islander young people who are attending a youth justice conference, under community supervision, remanded in custody and sentenced to detention from 2002-03 to 2007/08. Despite only making up only 3% of the total young people aged 12-24 years of age in Australia\(^{465}\), they comprised 56.3% of the total detention population in 2007/08.

434. As the Review will explore in this section of the report, the overrepresentation of Indigenous children and young people in the juvenile justice system is intrinsically linked to disadvantage in the Indigenous

population. It is important to understand that any measures to reduce Indigenous overrepresentation in the juvenile justice system in isolation of broader disadvantage is highly unlikely to realise long-term benefits. This section of the report will therefore explore Indigenous disadvantage, and make broader, long-term recommendations to address the underlying causes of crime in Indigenous communities (i.e. disadvantage and other known risk factors explored previously in the report), and short-term recommendations aimed to remediate identified issues with the current juvenile justice system.

Observation. Reducing Indigenous overrepresentation represents the most important and complex challenge facing government in improving the juvenile justice system. The causes of this overrepresentation are rooted in long standing community disadvantage with this disadvantage being well documented in a range of government reports.

Indigenous Population Characteristics
435. Aboriginal and Torres Strait Islanders make up approximately 2.5% of the total Australian population (approximately 217,200 people). Aboriginal and Torres Strait Islanders make up 2.2% of the NSW population. This population is growing faster than the non-Indigenous population, with an annual growth rate of 2.3%, compared with 1.2% for non-Indigenous people. The Indigenous population is likely to be more than 550,000 people by the year 2011.

436. Indigenous young people make up approximately 26% of the total Indigenous population. This compares to 18% for non-Indigenous people. The median age for the Indigenous population is 21 years of age, which means than 50% of the population are 20 years of age or less. Overrepresentation in the juvenile justice system, high growth rates and the young average age of Indigenous Australians makes it even more important that the NSW Government develops innovative solutions to address the overrepresentation of Indigenous people in the juvenile justice system.

Indigenous Disadvantage
437. Disadvantage is recognised as a key marker for determining entry into the juvenile justice system (see Enclosure 1 – Review of Effective Practice in Juvenile Justice). In order to fully analyse Indigenous overrepresentation in the juvenile justice system, it is necessary to understand Indigenous disadvantage. This is because overrepresentation is not a juvenile justice issue, it is the effect of socioeconomic disadvantage that has existed since colonisation of the country. Numerous reports and reviews have examined specific Indigenous issues such as land justice, reparations, discrimination, reconciliation, inter-generational poverty, trauma and the experience of the Stolen Generation. This review will not re-examine these issues, however, it is important to understand the background, and some of the causal factors, leading to Indigenous disadvantage in Australia and NSW. Indigenous disadvantage is extensively documented elsewhere in a range of publications. A number of national and state programs are seeking to reduce this and some are described below.

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467 ibid
468 ibid
469 ibid.
470 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, 1997, and Aboriginal and Torres Strait Islander Women’s Taskforce on Violence Report, 1999.
438. *Closing the Gap* is a campaign that aims to close the life expectancy gap between Indigenous and non-Indigenous Australians within a generation. Aboriginal and Torres Strait Islanders have a life expectancy 17 years less than other Australians. The Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs released its *Closing the gap on Indigenous disadvantage: the challenge for Australia* report in March 2009. It sets out the Australian Government’s approach to ‘Closing the Gap’. It describes progress made to date, and sets out priorities for the future. The report looks at specific gaps in key areas such as life expectancy, infant and child mortality, early childhood education, literacy and numeracy skills, school completion rates, and employment outcomes. Significant gaps are observed in each of these areas. Figures 22 and 23 below provide a comparison of the overall mortality rates between Indigenous and non-Indigenous Australians and shows a very different picture for both groups.

439. The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander People (2008) report presents recent data on the health, welfare and socioeconomic circumstances of Australia’s Aboriginal and Torres Strait Islander peoples. The report’s key findings include:

a. Retention rates for Indigenous students to Year 10 and beyond increased between 1998 and 2007, and the differences between Indigenous and non-Indigenous retention rates decreased. Indigenous adults who had completed Year 12 were more likely to report excellent or very good health and less likely to report high or very high levels of psychological distress.

b. The unemployment rate for Indigenous people aged 15-64 years decreased from 20% to 16% between 2001 and 2006. The non-Indigenous unemployment rate in 2006 was 5%.

c. One in every two Indigenous household receives some form of government housing assistance, and 27% are living in overcrowded conditions.

d. Indigenous Australians were hospitalised for potentially preventable conditions at five times the rate of non-Indigenous Australians. Consistent with Closing the Gap, there was a difference of around 17 years in the life expectancy for Indigenous Australians compared with non-Indigenous Australians.

e. The rate of Indigenous children on care and protection orders is six times the rate of non-Indigenous children.

f. Indigenous youth were under juvenile justice supervisions across Australia at a rate of 44 per 1,000, compared with 3 per 1,000 for other Australian youth.\(^{472}\)

440. *Overcoming Indigenous Disadvantage* is a series of reports produced to inform Australian governments about whether policy programs and interventions are achieving positive outcomes for Indigenous people. The most recent report published in 2009 examined a range of headline indicators, including post secondary education, disability and chronic disease, household and individual income, substantiated child abuse and neglect, family and community violence and imprisonment and juvenile detention. The report observed a slight increase in the level of Indigenous people attaining certificate level III or above education. The median income for Indigenous households was 65% of those non-Indigenous households. It found that the gap between Indigenous and non-Indigenous children widened for substantiated child abuse and neglect instances. It also found family and community violence continues to be an issue for many Indigenous communities despite limited data. The Indigenous juvenile detention rate increased by 27% between 2001 and 2007, and Indigenous juveniles were 28 times more likely to be detained than non-Indigenous juveniles. The Overcoming Indigenous Disadvantage advantage also identified a number of strategic areas for action. These include addressing hospitalisation rates for Indigenous 0-4 year olds, the proportion of young Indigenous people neither at school nor employed, lifestyle choices (e.g. nutrition, obesity, tobacco, drug and alcohol use), housing overcrowding, Indigenous self-harm, and imprisonment and juvenile justice rates.473

441. These reports demonstrate that the Indigenous population in Australia and NSW is severely disadvantaged compared to non-Indigenous populations in a number of key health, welfare and socioeconomic areas. Given the risk factors for juvenile offending presented previously in this report (e.g. disadvantaged backgrounds, poor education attainment, accommodation problems and family dysfunction), Indigenous disadvantage is most likely one of the strongest factors in the overrepresentation of children and young people in the juvenile justice system. This is supported by evidence which indicates that the significant socioeconomic disadvantage facing Indigenous people in many parts of NSW is a very strong predictor of contact with the criminal justice system.474

**Indigenous Overrepresentation in the Australian Juvenile Justice System**

442. Indigenous children and young people are the fastest growing prison population in all states and territories in Australia.475 This is despite a decline in the total juvenile prison population. In 2003, there were 640 juveniles in detention throughout Australia, and of these 47% (302) were Indigenous children or young people.476 The 2008 Social Justice Report released by the Human Rights and Equal Opportunity Commission states that Indigenous children are 23 times more likely to be in detention than non-Indigenous children.477 Table 7 below provides a summary of the rates of juveniles under supervision in each state and territory for both Indigenous and non-Indigenous young people.

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Table 7 – Rates of Juveniles Under Supervision in Australia by Indigenous Status

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of Juveniles</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indigenous</td>
<td>1,027</td>
<td>182</td>
<td>1,162</td>
<td>1,165</td>
<td>279</td>
<td>79</td>
<td>41</td>
<td>228</td>
<td>4,163</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>1,792</td>
<td>1,152</td>
<td>1,275</td>
<td>709</td>
<td>596</td>
<td>251</td>
<td>176</td>
<td>27</td>
<td>5,978</td>
</tr>
<tr>
<td>Unknown</td>
<td>225</td>
<td>207</td>
<td>1</td>
<td>18</td>
<td>50</td>
<td>32</td>
<td>0</td>
<td>1</td>
<td>534</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,044</td>
<td>1,541</td>
<td>2,438</td>
<td>1,892</td>
<td>925</td>
<td>362</td>
<td>217</td>
<td>256</td>
<td>10,675</td>
</tr>
<tr>
<td><strong>Percentage of Juveniles</strong></td>
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<td></td>
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</tr>
<tr>
<td>Indigenous</td>
<td>34</td>
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<td>48</td>
<td>62</td>
<td>30</td>
<td>22</td>
<td>19</td>
<td>89</td>
<td>39</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>59</td>
<td>75</td>
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<td><strong>Total</strong></td>
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</tr>
<tr>
<td><strong>Rate Per 1,000 Juveniles</strong></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
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<td>31.8</td>
<td>26.2</td>
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<td>79.8</td>
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<td>20.5</td>
<td>42.1</td>
<td>20.3</td>
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<td>3.2</td>
<td>3.8</td>
<td>4.9</td>
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<td>2.8</td>
</tr>
<tr>
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<td>0.0</td>
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</tr>
<tr>
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<td>12.2</td>
<td>12.5</td>
<td>13.1</td>
<td>24.9</td>
<td>13.1</td>
<td>4.2</td>
<td>8.1</td>
<td>11.3</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
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<td>2.8</td>
<td>5.2</td>
<td>8.1</td>
<td>5.6</td>
<td>6.6</td>
<td>6.2</td>
<td>9.6</td>
<td>4.7</td>
</tr>
</tbody>
</table>

This table shows that approximately 39% of children and young people under supervision in Australia are Indigenous (this does not include any of the unknown group, so the proportion could be higher). Furthermore, it shows that 39.3 Indigenous young people per 1,000 are under juvenile supervision, compared with 2.8 per 1,000 for non-Indigenous young people. Considering only approximately 3% of young people in Australia are Indigenous, Indigenous children and young are severely overrepresented in the Australian juvenile justice system.

**Indigenous Overrepresentation in the NSW Juvenile Justice System**

The following section will explore the overrepresentation of Indigenous children and young people in terms of their contact with NSW Police, the Children’s Court and Juvenile Justice. It also presents some data on re-offending rates and Indigenous young people with cognitive disabilities.

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478 Australian Institute of Criminology, *Juveniles’ contact with the criminal justice system in Australia*, 2009.
CONTACT WITH NSW POLICE

445. In 2007/08, Indigenous children and young people comprised 17% (11,049) of persons of interest recorded by NSW Police, compared with 83% (55,309) for non-Indigenous persons of interest. This demonstrates an overrepresentation of NSW Police contact with Indigenous children and young people, but not to the same extent as the Children’s Court and Juvenile Justice presented below. While this group is less likely to come into contact with NSW Police, it is much more likely to proceed further into formal justice responses such the Children’s Court and detention.

446. The Wood Report found that Indigenous juveniles are less likely than non-Indigenous youth to receive diversionary options from custody. Similarly, there is evidence that Indigenous children have not received police cautions at the same rate as the general youth population.

447. The importance of NSW Police’s ‘gatekeeper’ role of the juvenile justice system was discussed previously, however, this role is even more important for Aboriginal and Torres Strait Islanders. Evidence shows that the earlier an Aboriginal child comes into contact with the juvenile justice system, the more likely they are to be imprisoned a number of times before they turn 18. It also shows that Aboriginal children and young people between 10 and 14 years of age who have had contact with the juvenile justice system are almost certain to be imprisoned as adults.

CONTACT WITH THE CHILDREN’S COURT

448. There is limited data available for Indigenous juveniles’ contact with the Children’s Court as the Australian Bureau of Statistics data and NSW Criminal Courts Statistics do not provide details on the Indigenous status of juveniles. A study conducted by the Judicial Commission of NSW in 1996 was able to examine the sentencing process and found that Aboriginal and Torres Strait Islanders received significantly harsher penalties than other groups. This study was conducted prior to the introduction of the Young Offenders Act, the level of training for Children’s Court magistrates and quality and availability of the Children’s Legal Service and Aboriginal Legal Service representation.

449. A study conducted at a similar time in 1997 found that the likelihood of custodial sentences was greater due to Indigenous young people being more likely to have been previously institutionalised, less likely to receive diversionary options, and more likely to have a greater number of previous convictions. More recent research has however found that Aboriginal and Torres Strait Islander people have very high rates of contact the court system and are overrepresented at all stages of the juvenile justice process.

450. A study of Indigenous children and young people and their support needs in the Children’s Court found a number of specific issues. These included a general mistrust by Aboriginal young people of the legal system. The study also highlighted the lack of Aboriginal and Torres Strait Islander workers.

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479 ibid.
483 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, 1997.
at Children’s Court, inconsistent representation from the Aboriginal Legal Service, language
differences and lack of consideration of community ties and kinship systems when setting bail
conditions.485 Furthermore, a range of reports found that many Indigenous children and young people
come from rural and remote communities, and as such, are further disadvantaged.486 The Bringing
them Home report also raised concern about inadequate representation for Indigenous children in
rural and remote areas due to the geographic isolation and lack of specialist Children’s Magistrates.

CONTACT WITH JUVENILE JUSTICE

451. Figure 21 shows the proportion of Aboriginal and Torres Strait Islander young people in contact
with Juvenile Justice. This includes attending a youth justice conference, under community supervision,
remanded in custody and sentenced to detention from 2002-03 to 2007/08. The figure illustrates that
Aboriginal and Torres Strait Islander young people are heavily overrepresented in NSW across all
aspects of the juvenile justice system. It shows a pronounced increase in the number of Aboriginal
and Torres Strait Islander young people sentenced to detention in the past two years (from 47.5% in
2005/06 to 56.3% in 2007/08), and a minor increase in the number remanded in custody (from 37.3% in
2005/06 to 39.6% in 2007/08).

Trend. The proportion of Aboriginal and Torres Strait Islander young people sentenced to control
orders increased dramatically from 2005/06 to 2007/08 (from 47.5% to 56.3), however, a significant
drop to 48.5% can be observed in 2008/09. The proportion attending youth justice conferences has
steadily decreased since 2004/05, and the proportion under community-supervision and remand has
remained relatively stable.

452. A separate study conducted by the Australian Institute of Health and Welfare identified relationships
between the age, sex and Indigenous status of juveniles under supervision during the 2006/07
financial year. The study found that Indigenous juveniles under supervision were slightly younger
than non-Indigenous juveniles. The proportion of Indigenous juveniles in each age group decreased
as the age increased (from 73% of 10 year olds, to 30% of 17 year olds). It also found that
Indigenous juveniles comprised a higher proportion of all female juveniles under supervision (44%)
than all male juveniles under supervision (38%).487

453. Analysis of data from 2000 to 2005 found that much of the increase in overrepresentation in detention
presented previously is due to an increase in the proportion of Indigenous young people on
remand.488 In 2007/08, 85% of the 2363 Indigenous young people held in detention in NSW were on
remand. Furthermore, many of those refused bail and remanded in custody were under 15 years of
age.489 A report by the Aboriginal Justice Advisory Council in 1999 found that the assessments of
community ties and prior criminal histories in bail determinations appears to be strongly based from a
fundamentally different cultural perspective than those of Aboriginal and Torres Strait Islander
defendants and utilising a set of criteria that a significant number of these defendants cannot meet. It
also found that Aboriginal and Torres Strait Islander defendants are much more likely to have had
previous involvement in the justice system, are therefore less likely to meet criteria for bail.

485 Cruickshank L., Identifying Broken Bridges: a needs analysis identifying gaps in services for Aboriginal young people
486 Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, Seen and heard: priority
487 Australian Institute of Criminology, Juveniles’ contact with the criminal justice system in Australia, 2009.
489 ibid.
Stakeholders have raised concerns that amendments to the Bail Act described previously in the report have had a particular impact on Indigenous young offenders. It is anticipated that the changes to the Bail Act outlined earlier in the report should re-dress some of the issues associated with Indigenous overrepresentation on remand.

RE-OFFENDING
454. The rate of re-offending for Indigenous males is 187% higher than for non-Indigenous males. Furthermore, the average number of reappearances within eight years is estimated to be three times higher for Indigenous offenders. Another study found that Indigenous offenders are 2.969 times more likely of having a proven court appearance within five years of completing a conference compared to non-Indigenous offenders. This would indicate that a young person’s Indigenous status is a significant predictor of re-offending, however, another study found that while Indigenous offenders were more likely to re-offend, the Indigenous status of the offenders did not exert an independent effect on risk of re-offending. This means that the high proportion of Indigenous offenders that re-offend is due more to that fact they are disadvantaged (e.g. homeless, not attending school etc.). This means that racially based explanations of re-offending risk are likely to be invalid.

INDIGENOUS YOUNG PEOPLE WITH COGNITIVE DISABILITIES
455. There are a range of factors that make it difficult to identify the prevalence of cognitive disabilities in Indigenous people in the criminal justice system. These include the absence of reliable statistical data examining the extent of disability in Indigenous populations, including the fact that assessment tools may not be culturally appropriate, differing frameworks for defining and understanding cognitive disabilities, and a tendency for cognitive disabilities to be masked in Indigenous populations as a consequence of other disadvantages. The Young People in Custody Health Survey is one of the only measures in this regard and revealed that 10% of Aboriginal and Torres Strait Islander young people in custody had a ‘culture fair’ estimate consistent with an intellectual disability.

What is Being Done?
456. Government has committed both effort and funding to address the overrepresentation of Aboriginal and Torres Strait Islander young people in the NSW juvenile justice system. This section explores the services and programs currently available to address juvenile offending for Indigenous young people.

NSW GOVERNMENT
457. The NSW State Plan identifies ‘Strengthening Aboriginal Communities’ as one of its key priorities. It points towards the NSW Government’s Aboriginal Affairs Plan, Two Ways Together, and specific actions identified in the State Plan include:

a. partnering with 40 communities to set up recognised community governance bodies to improve community wellbeing and respond to local needs;

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b. providing better protection for our Aboriginal children by implementing *Keep Them Safe*, the *NSW Interagency Plan to Tackling Child Sexual Assault in Aboriginal Communities*, and the *Safe Families Program*;

c. piloting a new consultation model with Aboriginal community groups to agree how best to keep Aboriginal children and young people safe, including community input on individual children protection decisions;

d. establishing 3 new non-government operated Intensive Family Based Services to help families recognise and deal with problems before they spiral out of control;

(1) supporting targeted Aboriginal Assistance Schemes which encourage the wider community to be involved in their children’s development and education;

e. helping Aboriginal students stay interested in learning for longer;

f. creating better employment job opportunities with Job Compacts, increasing training opportunities and more public sector jobs;

g. increasing employment and business opportunities through government purchasing and government construction projects; and

h. fixing community infrastructure including a joint NSW Government and NSW Aboriginal Land Council investment of around $200 million over 25 years to upgrade water and sewerage in over 60 Aboriginal communities, with 22 communities to benefit over the next 3 years.\(^{494}\)

458. Specific targets to strengthen Aboriginal communities include reducing the level of domestic violence for Aboriginal children and young people, ensuring all Aboriginal 4 year olds in remote communities have access to quality early childhood education within 5 years, increasing community partnerships and closing/reducing gaps in a number of areas including literacy and numeracy, Year 12 attainment, life expectancy, mortality rates, and employment outcomes.\(^{495}\)

**ABORIGINAL AFFAIRS**

459. *Two Ways Together* is the NSW Government’s 10 year plan (2003-2012) to improve the lives of Aboriginal people and their communities. It sets out ways to achieve better outcomes in the priority areas of health, housing, education, culture and heritage, justice, economic development, and families and young people.\(^{496}\) The vision of *Two Ways Together* is for Aboriginal people, the NSW Government and government agencies to work together, and be jointly responsible, to plan and deliver solutions that meet community needs. Its overall objectives are to develop committed partnerships between Aboriginal people and Government, and improve the social, economic and cultural and emotional wellbeing of Aboriginal people in NSW. Importantly, it establishes ways to make sure that Aboriginal people have a strong voice in planning and deciding how their needs and

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aspirations are met. This will involve working with Aboriginal people at the local and regional level in each of the seven areas outlined previously. 497 Two Ways Together is guided by three principles:

a. Collaboration – bringing together Aboriginal people, NSW and Australian government agencies and Aboriginal organisations in a structured and systematic way.

b. Accountability – incorporating the Council of Australian Governments indicators and NSW specific measures, and progress reports to the NSW Premier.

c. Cultural Appropriateness – improving the way government respond to the needs of Aboriginal people and ensuring better service delivery and informed policy. 498

460. Two Ways Together operates through a network of groups and committees established to ensure key government agencies and Aboriginal peak bodies are working together. At the state level, there is a Chief Executives Committee and Two Ways Together Coordinating Committee. At the Regional Level, a network of Regional Engagement Groups have been established (linked to Regional Coordination Management Groups (RCMG)). Additionally, Aboriginal Partnership Engagement Groups provide a commitment to Aboriginal self-determination. As a result, forty Partnership Communities have been identified and established. Specific to the Justice priority area, Community Justice Groups aim to reduce crime by involving local people in decision making. Additionally, support services are provided through Rekindling the Spirit, which seeks to address issues such as family violence, relationship development and parenting skills. 499

461. In 2006, Aboriginal Affairs released 10 regional reports which aimed to bring together data about Aboriginal people and the government services for each of the RCMG regions. In the priority area of justice, each report concentrated on presenting data on the juvenile justice system such as custody rates, diversion rates, remand numbers, victim rates etc. They provided little guidance on available government services, except the Riverina-Murray and Mid-Western NSW Regional Reports, which commented on Tirkandi Inaburra (discussed separately below). The Illawarra South East Regional Report discussed Circle Sentencing, however, this is an adult program. Additionally the Central Coast region identified there would be benefit in extending the Magistrates Early Referral in Treatment program discussed earlier in the report to children and young people. 500

462. It is understood that Aboriginal Affairs is currently undertaking extensive community consultation as part of a broader review process for Two Ways Together. This provides an opportunity to strengthen the plan’s strategic focus on justice issues which appears to be lacking. The regional reports provide useful summaries of demographics and indicators on certain justice issues (e.g. rates of diversion) however, they do not provide a framework for action to address identified local issues. Aboriginal Affairs should look to incorporate the findings of this report, and specifically the Doings Things

499 ibid.
Differently section below, to ensure that the overrepresentation of Indigenous young people receives the attention it requires at the local and state level.

Recommendation 66: Aboriginal Affairs incorporate the findings of this report into the current review of Two Ways Together.

NSW POLICE

463. NSW Police has an Aboriginal Strategic Direction 2007-2011 that identifies where police will work to decrease the overrepresentation of Aboriginal people in the criminal justice system. It provides guidance on the management of Aboriginal issues and seeks Aboriginal community ownership through a consultative and proactive approach. It details a range of programs and initiatives to divert Aboriginal youth from the criminal justice system through the Young Offenders Act. NSW Police acknowledge that the rate of Aboriginal youth diversion has remained static for the past 3 years and the Policy aims to identify where their response can be improved in the area.501

464. One of the objectives outlined in the Aboriginal Strategic Direction is to ‘Divert Aboriginal youth from crime and anti-social behaviour’. A number of specific Strategies (and associated actions, accountabilities, performance indicators and timeframes) are identified under this Objective, including:

a. implementation of youth cultural awareness camps (involves identifying areas of high youth crime within Local Area Commands);

b. policing and schooling strategies (involves identifying recidivists not attending school and developing strategies to ensure they return to school);

a. reduction in underage drinking (involves identifying those selling alcohol to minors, educating young people and proactive policing strategies);

b. Young Offenders Act (involves increasing diversion rates for Aboriginal youth, monitoring the use of warning cautions and conferences, providing regular advice to oversight committees, NSW Police awareness, promoting use of the Youth Offenders Referral and the Cautioning Aboriginal Young Persons Protocol);

c. Intensive Bail Supervision Program (involves developing local protocols between NSW Police and Juvenile Justice regarding the program);

d. PCYC (involves identifying culturally appropriate activities/program and implementing programs that meet the needs of Aboriginal youth);

e. PCYC’s Targeted Program (involves referring Aboriginal youth to the program);

f. recreational facilities / activities (involves identifying areas of need, liaising with Local Government and identifying partnership opportunities); and

g. facilitate workshops on missing persons (involves identifying and promoting services and identifying and discussing reasons why people are reported missing).  

465. It would appear that the Aboriginal Strategic Direction provides an excellent framework for ensuring that Aboriginal youth are diverted from the criminal justice system. The evidence presented earlier however indicates that Indigenous juveniles are less likely than non-Indigenous youth to benefit from diversionary options from custody and do not receive cautions at the same rate as the general youth population.  

This indicates that the monitoring and evaluation of the Aboriginal Strategic Direction needs to be strengthened for youth specific issues. It is understood that the performance of the Aboriginal Strategic Direction is measured through:

a. Commanders’ Performance Agreements; 
b. Quarterly Reporting to the Aboriginal Strategic Direction Steering Committee; 
c. presentations to the Police Aboriginal Strategic Advisory Council; 
d. Aboriginal Environment Scans at Local Area Commands; 
e. Data Reports to the Police Aboriginal Strategic Advisory Committee every six months; 
f. Risk Matrices at Local Area Commands; 
g. Thematic Inspections of Local Area Commands; and 
h. Operations and Crime Review at Local Area Commands. 

466. This is a comprehensive monitoring and evaluation framework, so there would be no benefit in creating additional governance of the Aboriginal Strategic Directions. Within this framework, an increased focus is required on Objective Four: Divert Aboriginal youth from crime and anti-social behaviour. The Plan itself notes that the NSW Police can improve in this area. It is recommended that the NSW Police make a concerted effort to increase to focus on diverting Aboriginal youth from crime and anti-social behaviour as part of monitoring the performance of the Aboriginal Strategic Direction 2007-2011.  


467. The NSW Police is also undertaking a range of crime prevention initiatives not directly referenced in the Aboriginal Strategic Direction, although they are funded through it. Some examples of current programs include:

a. NIMBAL – a young Koori diversion program; 

502 ibid. 
b. Aboriginal cadet mentoring program;

c. domestic violence projects;

d. Blue Reelers;

e. Mobile PCYC – a diversionary program for Aboriginal young people;

f. Wanga Idingi;

g. Project Murra – promotes the NSW Police Force as an employer of choice and keeps Aboriginal students in school beyond Year 10;

h. sporting events organised between police and Aboriginal people; and

i. promotion of National Aboriginal Islander Day Observance Committee (NAIDOC) Week activities.  

468. The NSW Police Annual Report states that these programs have been enormously successful in terms of getting police and Aboriginal people working together in a collaborative partnership, and helping to build mutual respect and confidence. They could also expect to realise some benefits in terms of crime prevention.  

NSW Police continuing commitment to working closely with Indigenous people is a key element in reducing Indigenous overrepresentation in juvenile justice.

DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL

469. DJAG oversees the NSW Aboriginal Justice Plan Beyond Justice 2004 – 2014 which is a plan that seeks to address Aboriginal overrepresentation in the NSW criminal justice system through dealing with the underlying causes of crime and incarceration. The Plan replaces fragmented policy approaches to Aboriginal justice with a coordinated response based on strong partnerships between Government and Aboriginal communities. It affirms Government’s commitment to true reconciliation by directing where and how work can be done to resolve the underlying issues in Aboriginal justice. The Plan is structured to provide goals, principles and strategic directions and actions to provide the overall leadership and coordination in directing efforts to improve the criminal justice system and make Aboriginal communities safe places. Table 8 provides the Aboriginal Justice Plan’s goals, principles and strategic directions.

Table 8 – NSW Aboriginal Justice Plan Beyond Justice 2004 Overview

<table>
<thead>
<tr>
<th>Goals</th>
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<tbody>
<tr>
<td>1. Reduce the number of Aboriginal people coming into contact with the criminal justice system in its entirety.</td>
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</tbody>
</table>

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506 ibid.
508 ibid.
2. Improve the quality of services for Aboriginal people.
3. Develop safer communities by recognising that the majority of victims of offences committed by Aboriginal people are other Aboriginal people and that many offences are not reported through the criminal justice system.

Principles

1. As Aboriginal people understand their own problems and issues, they are best placed to find innovative ways to address them.
2. The significant cultural diversity among NSW Aboriginal communities will be recognised and respected, along with their differing needs being acknowledged.
3. Connection to culture and family and the wider Aboriginal community is an essential component of protecting and supporting all members of the community.
4. The responsibility for addressing the underlying causes of crime in Aboriginal communities is shared by Aboriginal communities, government and the broader community.
5. The provision of improved access to opportunities and services for Aboriginal people promotes choices that reduce the likelihood of their contact with the criminal justice system.
6. The negative impact of past government policies, practices and philosophies on Aboriginal people will be recognised and acknowledged.
7. Aboriginal people have an inherent right to equality before the law, a right to self-determination and a right to live free from discrimination.

Strategic Directions and Objectives

1. Aboriginal children – Provide Aboriginal children with the best start in life by supporting their early childhood development, growth and schooling and giving attention to needs of their carers and families.
2. Aboriginal young people – Build the skill capacity, self-worth and resilience of Aboriginal young people to create healthy young individuals.
3. Community well-being – Create safe and strong Aboriginal communities by minimising the factors that contribute to offending and maximising the factors that bring healing to Aboriginal communities.
4. Sustainable economic base – Engage Aboriginal communities in the broader economy and generate employment, education and training opportunities that create a sustainable economic base for Aboriginal people.
5. Criminal justice system – Create a justice system that openly engages Aboriginal communities to reduce offending and the overrepresentation of Aboriginal people and responds to the needs of Aboriginal communities.
6. Systemic reform – Establish a continuous process of innovation and reform in government activity to ensure the emerging and diverse needs of Aboriginal people are met.
7. Leadership and change – Improve coordination and leadership at the state level to drive
470. It is understood that the Aboriginal Justice Plan has been in place for three years and an evaluation is currently being undertaken.\textsuperscript{509} The Review is therefore unable to comment on the effectiveness of the plan, however, the strategic content of the plan is consistent with leading practice in the field and provides a whole-of-community approach to tacking the underlying causes of Indigenous overrepresentation.

471. DJAG also funds a number of specific programs targeting Indigenous children and young people, including:

a. Tirkandi Inaburra is an early intervention residential centre located near Griffith NSW. It targets 12-15 year old Indigenous males who either are coming to the notice of police, showing signs of disengaging from family, school or community life or first offenders. It is a voluntary program that seeks to assist young people at risk before they become involved in offending behaviour. Tirkandi Inaburra’s program focuses on four core learning areas, schooled based education with a focus on numeracy and literacy, cultural skills, sport and recreation, and life and living skills. Of 94 graduates, 53 are still enrolled in study, five have obtained Year 10 Certificates, three are employed in a part-time job after school, six are employed full-time. Importantly, only two of the 94 graduates in 2006 have been incarcerated since attending the Centre.\textsuperscript{510}

b. The NSW Attorney General recently announced the Red Dust Healing program to be run by the Lismore City Council. The Community Services portfolio will run a series of camps for Aboriginal males aged 13 to 18 at risk of becoming involved in crime. The program aims to reach out to Aboriginal teenagers and steer them back on track through their cultural identity, re-engagement with education and developing conflict management skills.\textsuperscript{511}

c. Although the Review has been unable to source any information, it is understood that DJAG is currently trailing community panels in certain areas that will provide advice to magistrates on the appropriateness of bail conditions.

472. DJAG also operates Circle Sentencing, but only for adults. This provides an alternative to sentencing for adult Aboriginal offenders. It places the sentencing process in a community setting, involving community members and the Magistrate, to discuss the offence and the offender. It can also involve victims of offences and respected community people, as well as the offender’s family. An evaluation was conducted in 2007 and found that seven of the eight objectives were met. Confidence in the Sentencing process was high. Elders, Project Officers and offenders indicated that barriers between Aboriginal people and the Courts have reduced, and outcomes were culturally appropriate when compared to a Local Court. Further work was required for the program to have a measurable impact.

\textsuperscript{510} Review submission received from Tirkandi Inaburra Cultural and Development Centre.
on re-offending. No consideration was given to expanding this program to children and young people.

473. It is also important to note that the Aboriginal Justice Advisory Council was recently disbanded. It has been replaced with a network of 20 Aboriginal Community Justice Groups on law and justice issues affecting Aboriginal people in NSW. This decision is consistent with the principles of the Aboriginal Justice Plan to involve local Aboriginal communities in addressing the underlying causes of crime.

**JUVENILE JUSTICE**

474. Juvenile Justice released its Aboriginal Over-Representation Strategic Plan in September 2001. Its aim was to decrease the number of Aboriginal young people under the supervision of the Department, particularly the number of Aboriginal young people in custody. An evaluation was conducted in May 2006 which found:

a. The number of formal police interventions involving Indigenous young people had risen slightly (2.6%) however, the rate of Aboriginal overrepresentation has decreased from 6.7 to 6.0.

b. A drop in court cases for Indigenous young people (7.1% decrease from 2004 to 2001). Additionally, finalised court appearances as a rate per 1000 of the 10-17 Indigenous population dropped by 21% (from 81.3 to 64.0 per 1000).

c. A decline in the average annual detention rates of Indigenous youth from 1999 to 2001 and an increase since then. Indigenous detention rates increased since its introduction, and non-Indigenous rates declined, therefore, the level of Indigenous overrepresentation in NSW detention centres increased.

475. In response to the evaluation and its recommendations, Juvenile Justice released an updated Aboriginal Strategic Plan 2007-2011 in 2007. This Plan is guided by the principles of governance, culture, community, success, service delivery, and the recognition of the needs of young people. It seeks to establish a strong platform for well coordinated and targeted interventions. The Plan aims to provide improved responses and better outcomes for Aboriginal and Torres Strait Islander young people in New South Wales who are involved with the department. This includes addressing the overrepresentation of Indigenous young people in the juvenile justice system.

476. It was originally envisaged that the Aboriginal Justice Advisory Council would provide a monitoring role for the Aboriginal Strategic Plan, however, this committee has since been disbanded. Juvenile Justice therefore needs to establish an alternative governance arrangement. Given that Juvenile Justice has been structurally separated from justice agencies, the governance of the Aboriginal Strategic Plan also needs to be separate from DJAG and the Aboriginal Justice Plan. It is therefore recommended that the Department of Human Services Executive oversee the Aboriginal Strategic Plan.

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Plan. Given that the DJAG’s Aboriginal Justice Plan sought to address fragmented policy approaches to Aboriginal justice with a coordinated response however, the Aboriginal Strategic Plan needs to be aligned with the Aboriginal Justice Plan.

Recommendation 68: The Department of Human Services Executive provide oversight for the Juvenile Justice Aboriginal Strategic Plan 2007-2011.


477.Juvenile Justice also commenced and operated a number of specific programs and services in response to specific Indigenous issues in 2007-08, including:

a. development, piloting and launch of the ‘Dthina Yuwali’ alcohol and other drugs group work program for Indigenous young people;

b. commencement of evaluation and review of the ‘Our Journey to Respect’ intergenerational anti-violence group work program for Indigenous males;

c. initiation of reporting against the department’s Aboriginal Strategic Plan 2007-2011;

d. establishment of two Aboriginal Team Advisor positions within the department’s Intensive Supervision Program Pilot;

e. commencement of the recruitment process to employ two Cadet Aboriginal Psychologists within the Metropolitan Region;

f. commencement of revision of the Aboriginal Recruitment and Retention Strategy;

g. strengthening of the roles of Aboriginal Regional Advisory Committees and Aboriginal Strategic Advisory Committees;

h. strengthening of the role of the Aboriginal Strategic Coordination Unit;

i. maintaining active participation in the annual Aboriginal Staff Conference;

j. implementation of the recommendations of the Aboriginal Child Sexual Assault Taskforce;

k. participating in the Two Ways Together Coordinating Committee;

l. commencement of the Rock and Water Program, a program for children and young people in custody that explores heritage and family, culminating with camping out overnight, in the centre if required and sometimes outside;

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m. continuation of Targets for Effective Change Program, a program about understanding offending behaviour, targeting relationship skills and handling conflict (this will be replaced with a program called Charts which will incorporate culturally appropriate practice);

n. development of a trial complementary drug and alcohol program in juvenile justice centres that requires minimal literacy skills and is totally cartoon based; and

o. operation of a dedicated Aboriginal program section that not only develops Aboriginal-specific programs but also ensures that all the programs that Juvenile Justice provides are culturally appropriate.517

### Doing Things Differently

478. It is clear that the NSW Government is strongly committed to overcoming Indigenous disadvantage, and addressing specific issues associated with the overrepresentation of Indigenous young people in the juvenile justice system. As outlined previously, there are a range of agencies involved in delivering programs and services to Indigenous young people, and a range of documents, plans, policies, directions, strategies, frameworks etc. While the commitment to deliver better outcomes is evident, as is the substantial funding allocated to addressing these issues, one thing is apparent – what the State and Commonwealth Governments are doing is not having the necessary effect on addressing the underlying issues associated with overrepresentation. At the Commonwealth level, reports such as the Overcoming Indigenous Disadvantage indicate only a slight improvement in Indigenous disadvantage. The Chairman of the Steering Committee for the Review of Government Service Provision stated:

> "My expectation when presenting the first [Overcoming Indigenous Disadvantage] report in 2003 was that many of the disparities evident at that time would have begun to narrow by now. Six years and three reports later, that has been clearly achieved for only about 20 per cent of the indicators. In 10 per cent of them things have actually gotten worse."518

479. Within NSW, despite efforts to reduce the overrepresentation of Indigenous children and young people in the juvenile justice system, the proportion involved in the juvenile justice system increased since 2002/03 in the following four categories: attending youth justice conferences, under community supervision, remanded in custody and sentenced to detention.519 This would suggest that a different approach is required to address both the overrepresentation of Indigenous children and young people (within the scope of this review), and overcoming Indigenous disadvantage more generally (outside the scope of this review but will have significant impacts on the juvenile justice system). There are, however, a range of actions that can be undertaken immediately including the recommendations outlined previously in the What is Being Done section, and responses to a number of issues identified to the Review, including Aboriginal Cultural Support Plans, Koori Court, Reconciliation Action Plans and targeting Indigenous Children and Young People With a Cognitive Disability. The need to

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518 Gary Banks, National Library of Australia, Parkes Place, Canberra, 7 July 2009.

develop a different, long-term approach to the overrepresentation of Indigenous children and young people in the juvenile justice system is discussed separately below.

480. Before the Review examines how things may be done differently, Text Box 9 provides a brief overview of research that is likely to influence the development of any prevention based approach to Indigenous issues.

**Text Box 9 – A Developmental Prevention Approach in the Aboriginal Population**

In developing resilience to offending amongst Aboriginal youth, there is a tension between the traditional concept of mitigating risk factors and strengthening protective factors at an individual level, and understanding how specific features of Aboriginal people’s history, culture and position in the social structure shape their environment and developmental pathways. By the nature of their historical and current circumstances, Aboriginal people have significantly higher risk exposure than the mainstream population. This is further compounded by the inclusive nature of Aboriginal societies, as it is more likely that an entire community will be affected by adversity. This means that effective responses need to be focused on whole-of-community as well as individual treatments. For example, programs addressing alcohol consumption need to understand and address the cultural and social factors of the community before developing individual treatment programs.

**ABORIGINAL CULTURAL SUPPORT PLANS**

481. It is understood that all young Aboriginal people involved in the Victoria youth justice system have the opportunity for an Aboriginal Cultural Support Plan. These plans are prefaced on the need to build pride in Indigenous identity and connection to the community. In Victoria, they have increased young people’s sense of belonging, especially for those who have come from fractured communities. It provides an opportunity for children and young people to learn about their culture and gain these experiences if they are ready and willing. At the organisation level, it has provided a mechanism for the Victorian Government to implement culturally secure practice. This is achieved through the development of Aboriginal Cultural Support Plans that provide:

a. information on the Aboriginal community group that the young person identifies with;

b. tribal family origin group;

c. identification of contacts to support cultural links;

d. a contact plan for Aboriginal services; and

e. plans to maintain ongoing cultural links for a young person with their community.

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523 Review submission received from the Aboriginal and Torres Strait Islander Social Justice Commissioner.
The Review believes that a similar approach in NSW would be beneficial. Unfortunately, no data is available on the effect of Aboriginal Cultural Support Plans on re-offending, however, they have proven to improve culturally secure practice and increase a child or young person's sense of belonging. Aboriginal Cultural Support Plans would be developed for all children and young people in the community or custody. Their development would be incorporated into existing case planning processes and provide links to the specific Aboriginal programs and services described in the What is Being Done section of the report (e.g. Aboriginal Assistance Schemes, youth cultural awareness camps, recreational facilities / activities, Red Dust Healing program etc.).

Recommendation 70: Juvenile Justice incorporate the development of Aboriginal Cultural Support Plans into case planning processes for all Aboriginal children and young people under community and control orders.

COMMUNITY BASED SENTENCING

As described earlier, DJAG operates Circle Sentencing for adults which provides a community based alternative to sentencing for adult Aboriginal offenders. It has improved confidence in the legal system and provided more culturally appropriate responses compared to a Local Court. Further work is required to understand the measurable impact on re-offending. A similar program operates in Victoria (for both children and young people and adults) called the Koori Court. It provides a less formal atmosphere that allows greater participation by the Aboriginal community in the court process. Koori Court aims to reduce perceptions of cultural alienation, ensure sentencing orders are appropriate to the cultural needs of Koori offenders, and assist them to address issues relating to their offending behaviour.

An evaluation of the Koori Court Pilot Program between 2002 and 2004 found, amongst other benefits, reduced levels of re-offending amongst Koori defendants, which in turn has direct ramifications for the levels of overrepresentation within the prison system, and increased the level of Koori community participation in, and ownership of, the administration of law.

Given the positive evaluations of both Circle Sentencing for adults in NSW, and Koori Court in Victoria, it is recommended that NSW develop a model for community based sentencing of Indigenous juvenile offenders. In developing a model appropriate for NSW, both Circle Sentencing and Koori Court models should be considered. Circle Sentencing evaluations in NSW were not conclusive about the impact on re-offending, however, the benefits in terms of re-engaging Aboriginal communities with the legal system are in itself a worthwhile investment and should be considered. An evaluation of the Koori Court in Victoria found reduced levels of re-offending, and therefore reduced levels of overrepresentation. A detailed analysis of the Koori Court program and Circle Sentencing may be required to understand specific characteristics that can be adapted and developed into an appropriate model for the NSW juvenile justice system. A community based sentencing option for Indigenous juvenile offenders in NSW is likely to have significant community benefits.


Recommendation 71: The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.

RECONCILIATION ACTION PLANS

485. Reconciliation Australia is an independent, not-for-profit organisation, that amongst other things, is dedicated to closing the life expectancy gap between Indigenous and non-Indigenous Children. One of its key strategies in achieving this is supporting and encouraging organisations to develop their own tailored Reconciliation Action Plans. They provide a tool to help organisations build positive relationships between Indigenous and non-Indigenous people. Clear actions and realistic targets are established in Reconciliation Action Plans, along with lessons learnt mechanisms.527 Some of the activities that can make a difference include building relationships, respecting the contribution of Aboriginal and Torres Strait Islander peoples to Australia, and working together to ensure Indigenous children have the same life opportunities as other children.528 While up to 40 Federal Government agencies have Reconciliation Action Plans, the NSW Fire Brigades is the only NSW State department or agency that has a Reconciliation Action Plan.529 As an agency dealing with a range of specific Indigenous issues, it is recommended that the Department of Human Services develop a Reconciliation Action Plan in accordance with Reconciliation Australia’s guidelines. Some of the benefits from this initiative include a greater ability to work together with Aboriginal communities in building a shared pride in Indigenous culture and history, and incorporating culturally secure practice into everyday practice in collaboration with Indigenous communities and organisations.

Recommendation 72: The Department of Human Services develop and implement a Reconciliation Action Plan as per Reconciliation Australia’s guidelines.

INDIGENOUS CHILDREN AND YOUNG PEOPLE WITH A COGNITIVE DISABILITY

486. A significant number of Indigenous young people have a cognitive disability. Research has shown that being both Indigenous and having a cognitive disability is a dual disadvantage. Along with the range of factors influencing Indigenous disadvantage described previously, having a cognitive disability has significant implications, including:

- reducing a person’s capacity to understand laws and societal norms;
- reducing planning skills and impulse control;
- being easily led and eager to please;
- increasing a person’s vulnerability of be a victim of crime;
- reduced communication skills; and

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f. inaccurate and devaluing community attitudes.\textsuperscript{530}

487. The *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems* report identified practices that prevent offending behaviour in Indigenous young people with a cognitive disability throughout Australia. It provides a set of best practice principles that guide policy and practice with Indigenous young people with cognitive disabilities:

a. Indigenous young people with cognitive disabilities and/or mental health issues have many of the same needs as Indigenous young people without these conditions.

b. The social determinants of health need to be met to improve outcomes for Indigenous young people with cognitive disabilities and/or mental health issues.

c. Service delivery must be holistic.

d. Intervention must be culturally aware and appropriate.

e. Communities need to be involved and have control over programs.

f. Interventions should build on strengths and positive identity.

g. Service needs to rights based.

h. Flexible service.

i. It’s never too late.\textsuperscript{531}

488. Since the development of this report, ADHC has released its Justice Services Policy. One of the four statements of purpose of the Policy is to improve the development of, and access to, programs and services for Aboriginal and culturally and linguistically diverse children, young people and adults with an intellectual disability in, or at risk of, contact with the criminal justice system whether they are victims, witnesses or alleged offenders. Specific strategies and actions contained within the Policy include:

a. recognising the specific needs of this group throughout the entire continuum of juvenile justice;

b. ensuring that all people have access to services responsive to their specific needs;

c. identifying and responding to specific risk factors for children and young people from Aboriginal backgrounds; and

d. utilising Aboriginal workers in planning and support for Aboriginal Service Users.\textsuperscript{532}


\textsuperscript{532} Ageing, Disability and Home Care, *Justice Services Policy*, 2009.
These are high level statements and do not provide sufficient detail on the specific programs and services that will be delivered for Indigenous young people with cognitive disabilities. In the next annual review of the Justice Services Policy, ADHC should incorporate the best practice principles outlined previously and ensure sufficient focus is given on delivering specific programs and services that address the needs of Aboriginal and Torres Strait Island young people with cognitive disabilities.

**Recommendation 73**: Ageing, Disability and Home Care review its Justice Services Policy to ensure that the best practice principles outlined in the Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems report are incorporated and translated into specific strategies and actions.

**LONG-TERM STRATEGIC CHANGE**

490. The Review has identified that the NSW Government has invested heavily in addressing Indigenous disadvantage and overrepresentation in the justice system. Despite this investment, the evidence indicates that the current approach to addressing these issues is not delivering the expected benefits. Although the Review has identified a range of short-term actions that will result in some improvement, the underlying causes behind Indigenous overrepresentation in the juvenile justice system will not be addressed by these measures alone. In order to reduce the overrepresentation of Indigenous children and young people in the juvenile justice system, it is necessary to reduce Indigenous disadvantage. It is not within the scope of this review to examine Indigenous disadvantage in general. However, the Review has been asked to make recommendations on strategies to reducing Indigenous offending. Prevention and early intervention are the most cost effective ways to achieve this outcome.

491. The Justice Reinvestment approach outlined in Recommendation 52 will contribute greatly to the prevention of Indigenous children and young people entering the juvenile justice system. Noting that Indigenous children and young people currently represent over 50% of the custody population, a large portion of the diverted funds to early intervention and prevention as part of Justice Reinvestment needs to be dedicated to appropriate and specific Indigenous responses. In order to achieve this, a complete understanding of the range of services and programs currently being delivered within Aboriginal communities is required. An understanding of all services and programs (not just juvenile justice services, but health, housing, accommodation etc.) is needed to understand the underlying causes of juvenile crime. Therefore, a comprehensive ‘stocktake’ of services and programs being provided to local Indigenous communities, and by whom (including Commonwealth and State departments), is the first step to implementing Justice Reinvestment within Indigenous communities.

**Recommendation 74**: The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.

492. Once a comprehensive understanding of the programs and services being delivered is obtained, the NSW Government should work with local communities to identify the programs and services required to prevent juvenile offending in each community. The Aboriginal Justice Plan provides a good model for this engagement based on self-determination.\(^{533}\) For example, the Plan’s principles of involving

Aboriginal communities in developing innovative ways to address their own problems and issues, recognising their cultural diversity and differing needs, and sharing the responsibility for addressing the underlying causes of crime with communities are fully supported by the Review. It is therefore recommended that the Aboriginal Justice Plan be used as the basis for engaging with local communities and determining the areas for investment that will address the underlying causes of juvenile offending. Building on the framework provided by the Aboriginal Justice Plan, the Government response needs to:

a. Utilise the existing structures used to collaborate with the community (e.g. Aboriginal Justice Groups).

b. Take a whole-of-community and whole-of-government approach (i.e. not look at crime prevention from a justice perspective, but from all sectors including housing, health etc.).

c. Work with both metropolitan and rural Indigenous communities.

d. Provide long-term investment in juvenile crime prevention and early intervention. This means that investment needs to go beyond pilots and programs.

e. Consider the roles of Commonwealth and State Governments and aim to provide seamless services to Indigenous communities.

f. Monitor and evaluate investments at regular intervals (i.e. progressive benefits realisation), but plan for generational change (25 year targets, with interim milestones at 5 years and sustainable results within 10 years for example).

Recommendation 75: The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.

493. It is important to note that others have recommended similar approaches, including the National Indigenous Drug and Alcohol Committee’s Bridges and barriers: addressing Indigenous incarceration and health report in 2009. The recommendations focused on improved:

a. diversion programs;

b. return and reintegration of Indigenous offenders into their community;

c. health services for detainees;

d. national leadership forum to monitor and evaluate strategies;

e. partnerships with Indigenous services; and

f. working partnerships between community-based patrols, law enforcement and drug and alcohol treatment services.
494. The report also recommended an approach similar to Justice Reinvestment based on redirecting funds from the construction and operation of juvenile justice centres specifically to Indigenous-specific health services and Aboriginal community-controlled health services for courts. Additionally, the 2007 Social Justice Report identified a number of characteristics that applied to a number of successful case studies, including community generated, community engagement, a partnership approach, holistic, culturally appropriate, utilising Indigenous staff expertise, sustainability and community based rehabilitation for offending.

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Young Women and Culturally Diverse Groups

Young Women

495. While juvenile males made up the majority of persons of interest for most offences types in 2007/08, juvenile females comprised the majority of persons of interest recorded by NSW Police for the following offence types:

a. dealing or trafficking in ‘other’ drugs (100%);

b. possession and/or use of narcotics (60%);

c. possession and/or use of cocaine and manufacture drug (50%); and

d. steal from retail stores (52%).

496. It is difficult to draw conclusions from these figures, as the total number of juveniles recorded for these offences was very small. Figure 22 below shows the proportions of male and female juveniles recorded by police for other select offences in 2007/08.

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Figure 22: Juvenile persons of interest recorded by NSW police, 2007-08, by offence type and sex (%)

Source: Adapted from BOCSAR data file 2008

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536 Australian Institute of Criminology, Juveniles’ contact with the criminal justice system in Australia, 2009.
497. Figure 23 below provides an overview of the proportions of male and female juvenile offenders in the juvenile justice system (i.e. attending a youth justice conference, under community-based supervision, remanded in custody, and sentenced to detention).

![Figure 23: Gender of Young Offenders in 2008-09](image)

Source: NSW Department of Juvenile Justice Annual Report 2008/09

498. This illustrates that female offenders are more likely to receive youth justice conferences, community based supervision or be remanded in custody, than being sentenced to detention. Only 7.2% of the control order population are female, this is a significant decrease from 14% in 2003/04.\(^{537}\) The proportion of female offenders compared to males however does not provide a true representation of custody trends. This is because the small numbers of females in custody is easily influenced by male trends. Figure 24 below provides the average daily number of young women in custody from 2004-2008.

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499. Figure 24 illustrates a steady increase in the number of young women entering custody. This is consistent with male custody trends and can likely be explained by similar factors such as increasing numbers of children and young people entering the child protection and out-of-home care systems, Indigenous overrepresentation and changes to legislation and associated enforcement of this legislation (e.g. bail compliance).

500. The Juvenile Justice Girls’ and Young Women’s Action Plan 2002-2004 identified a range of issues faced by young women coming into the juvenile justice system and provided a policy framework for responding to the needs of girls and young women. Some of the challenges faced by young women in custody include a low socioeconomic background, poor engagement in education, a history of sexual and physical abuse and violence, neglect and/or trauma and homelessness. These risk factors generally lead to a tendency to put themselves in high risk situations. It is known that young women’s offending behaviour is often related to this history and behaviour patterns, and is particularly related to substance abuse, with a large proportion of young women entering the juvenile justice system on drug-related charges. This is consistent with the more recent Australian Institute of Criminology data presented above.

501. Research suggests that young women in the juvenile justice system have quite distinct needs to those of young males. Young women are generally more responsive to engagement in decisions made about their lives and working with others that genuinely care for them and with whom they can work to change their life circumstances. It is therefore appropriate that Juvenile Justice operates a purpose built juvenile justice centre (Juniperina) for young women offenders. It is understood that this is the only juvenile detention centre in Australia that specifically caters for young women. The Juniperina Shared Access Trial operates from the centre. It is a trial partnership between Community Services,

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540 Alder C, Department of Criminology, The University of Melbourne, *Young Women and the Criminal Justice System*, 2003.
Housing and Juvenile Justice that provides housing and support to young women transitioning into the community and at risk of re-offending. The trial also includes young women on bail orders. 541 It is understood that the Joint Tenancy Assistance Program mentioned earlier is going to be expanded to support young women on the Juniperina Shared Access Trial. Cognisant of the distinct needs of young females, the range of effective programs being delivered specially for young women and the lack of a specialised plan for this group, it is recommended that Juvenile Justice release a new Juvenile Justice Girls’ and Young Women’s Action Plan.

Recommendation 76: Juvenile Justice develop a Juvenile Justice Girls’ and Young Women’s Action Plan that provides a renewed policy framework for responding to the needs of girls and young women.

Culturally and Linguistically Diverse Groups

There is very little data about the level of participation of children and young people from culturally and linguistically diverse (CALD) backgrounds in the juvenile justice system. The absence of reported data for this group is likely due to the difficulties involved in collecting data on ethnicity, particularly for children and young people. These difficulties include the large numbers of different cultural backgrounds. As a result, there are small numbers from specific backgrounds, which is not conducive to data analysis. Additionally, children and young people from CALD backgrounds are not a homogenous group, and as such, do not have the same issues. For these reasons, it is not possible to analyse them as a group. 542 It is understood that Juvenile Justice conducts a range of research into children and young people from CALD backgrounds overrepresented in the juvenile justice system. This research should focus on understanding their circumstances, and developing appropriate preventative and early intervention responses to address the causes of the overrepresentation. The Review notes the research difficulties due to the diversity of cultural issues, however, Juvenile Justice needs to focus on ensuring the effectiveness of their work with groups from over-represented CALD backgrounds. This may include actions such as ensuring there are appropriate numbers of non-English speaking youth justice conferencing convenors.

Recommendation 77: Juvenile Justice ensure their plan for gathering and analysing data on culturally and linguistically diverse groups is cognisant of localised issues, and ensuring the effectiveness of their work with groups from over-represented culturally and linguistically diverse backgrounds.

In analysing the available data and related research there are some general conclusions that can be drawn about children and young people from CALD backgrounds. These include language and community barriers (including accessibility to reliable interpreters), difficulties in accessing legal services, inadequate and inappropriately targeted information, problematic relationships with police and inadequate research and evaluation of multicultural issues in juvenile justice. 543 NGOs have also produced some specific research for CALD groups, including Mission Australia who examined Pacific Islander children and young people involved in the juvenile justice system. A number of common themes emerged from this research, including family and community issues, atypical patterns of

541 UnitingCare Burnside, Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales, 2009.
543 Ibid.
offending, substance use and aggression, and education. The research showed that effective responses for this group are mindful of a young person’s background (such as the common themes mentioned previously) and culture, and that the imposition of standard programs and practice are not as effective.\textsuperscript{544}

STRATEGIC OPTIONS FOR THE FUTURE

504. This section provides the NSW Government with a range of strategic options for the future. The Review has made a series of recommendations throughout this report, each based on evidence and aimed to address specific issues. The Review believes there is merit in implementing each of the recommendations, however, three strategic options have been structured to provide a scale of response to the identified issues in the juvenile justice system.

505. Each strategic option has been analysed using the following headings:

a. Overview – Short description of the option.

b. Drivers – The external drivers of the option.

c. Assumptions/Dependencies – Any conditions that, if they were to change, may impact the option.

d. Detailed description – Incorporating main elements, timeframes, implementation and relevant Review recommendations.

e. Cost Analysis – Likely costs of each option.

f. Benefits/Disadvantages – The positive and negative impacts of the option.

g. Risks – Primary risks to the success of the option.

506. The Review’s analysis of strategic options has been conducted at a very high level due to the strategic nature of the review. Further analysis of the recommended option (i.e. dependencies, benefits, costs etc.) would need to be conducted as part of developing the Government’s response to the Review’s findings. Figure 25 below provides an overview of the three identified strategic options.

<table>
<thead>
<tr>
<th>Figure 25 – Overview of Strategic Options</th>
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<tbody>
<tr>
<td><strong>Option 1: Continue on the same path</strong></td>
</tr>
<tr>
<td>• Maintaining the status quo plus the implementation of some common recommendations.</td>
</tr>
<tr>
<td>• Based on current static crime figures and perceived low appetite for reform.</td>
</tr>
<tr>
<td>• Approximate cost of $348.14 million over the next 6 years to meet forecast juvenile justice centre capacity.</td>
</tr>
<tr>
<td>• Highly unlikely to address the underlying causes of crime or reduce re-offending.</td>
</tr>
<tr>
<td>• Low risk option in terms of certainty of outcomes.</td>
</tr>
</tbody>
</table>

| **Option 2: Less cost and some better outcomes** |
| • Implementation of common recommendations. |
| • Implementation of recommendations to reduce remand numbers. |
| • Based on evidence that shows the negative effects of remand. |
| • Approximate cost of $34.4 million over the next 3 years to meet forecast juvenile justice centre capacity (less demand than Option 1). |
| • Is unlikely to address the underlying causes of crime or reduce re-offending – particularly indigenous offending. |
| • Low risk option in terms of certainty of outcomes. |

| **Option 3: A change in thinking – Justice Reinvestment** |
| • Involves all Review recommendations. |
| • Justice reinvestment to divert funding from building juvenile justice centres to evidence-based prevention and early intervention programs and services for local communities. |
| • Could be implemented through spiral development or immediate widespread implementation. |
| • Approximate costs of $348.14 million to reinvest into addressing the underlying causes of crime. |
| • Significant long term benefits for the community. |
| • Some risk in terms of certainty of outcomes. |

| Appetite for change |
| Reform |
Strategic Options

Option 1: Continue on the Same Path

OVERVIEW
507. ‘Option 1 – Continuing on the same path’ involves minimal changes to current arrangements, but implementing a range of the Review’s recommendations that do not require fundamental change to the way juvenile justice is administered in NSW. This means maintaining the current approach to the key areas of remand, detention and Indigenous overrepresentation policies. Some of the proposed recommendations will deliver significant benefits such as the development of a strategic approach to children and young people, and a range of department/agency specific changes. Work currently being undertaken through reforms such as Keep Them Safe, Two Ways Together and Closing the Gap and specific actions under the State Plan and Youth Action Plan will deliver improvements.

DRIVERS
508. The primary drivers for Option 1 include:

a. The community and Government appetite for change appears to be relatively low.

b. Crime statistics show that juvenile crime has remained relatively static in recent years.

ASSUMPTIONS/DEPENDENCIES
509. Due to the forecast increase in the juvenile detention population in NSW, this option is dependent on increasing the capacity of juvenile justice centres. Based on analysis contained previously in the report, and noting Juvenile Justice is currently above its capacity of 424, it is assumed that:

a. an additional 123 beds will be required to cater for forecast capacity in 2011/2012; and

b. detention numbers will peak in 2015/16 at 733, 309 greater than current capacity.

DETAILED DESCRIPTION

Main Elements
The main areas for reform include the development of a strategic approach to children and young people, and the implementation of a number of Review recommendations (detailed below) related to agency/department specific actions that do not require fundamental change to the juvenile justice system.

Timeframes
It is anticipated that the implementation of a strategic approach to children and young people could take place in the next two years. The implementation of agency/department specific recommendations will vary, but could be implemented within a three year timeframe.

Implementation
Option 1 will require a coordinated Government response, particularly to the development of a strategic approach to children and young people. This coordination is most likely to undertaken by DPC, with the involvement of identified departments/agencies for action.
Relevant Review Recommendations

Recommendations 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 76 and 77. See Table 9 below for more details.

COST ESTIMATES

510. Adoption of Option 1 will require ongoing construction of juvenile justice centres to ensure there is sufficient capacity to deal with projected growth in the detention population. The Review estimates that the construction of a 15 bed unit will involve capital costs $8.5 million, and $2.8 million in recurring costs (excluding costs for Justice Health and Education services).\(^{545}\) Based on the assumptions, an additional 309 beds will be required by 2015/16. This will require an approximate capital investment of $175.1 million over the next 6 years and recurring annual costs of $57.68 million. Estimate costs for Justice Health and Education services have not been obtained, however, would be in the order of several million dollars.

511. There are also less readily quantifiable costs associated with Option 1 based on research that shows detaining children and young people can have detrimental effects on their long-term productivity and economic health of communities.\(^{546}\) This is based on evidence that shows higher rates of re-offending for children and young people in detention compared to those who remain in the community. By way of example, the Backing the Future report found that the cost of continuing to address current levels of social problems in the United Kingdom to be £4 trillion over a 20 year period, and that targeted interventions could help reduce as much as £1.5 trillion worth of the cost of these social problems.

512. Option 1 therefore represents approximate costs of $348.14 million over the next six years ($175.1 million in capital costs, and $173.04 million in recurrent expenditure assuming the juvenile justice centre capacity is operational for the last three years of the six year period). There are additional costs for Justice Health and Education services, and unknown (but significant) long-term costs through the loss of long-term productivity and the economic health of communities.

BENEFITS/DISADVANTAGES

513. The benefits of Option 1 include:

a. A high degree of certainty in terms of costs (e.g. need to build more juvenile justice centres) and outcomes (e.g. static re-offending rates, rising numbers in detention).

b. There is currently little community concern regarding juvenile justice.

514. The disadvantages of Option 1 include:

a. High capital investment and recurrent expenditure required.

b. Holding children and young people in detention has negative effects on those individuals.

\(^{545}\) Unpublished information provided by Juvenile Justice.

c. Managing short-term juvenile justice centre capacity issues due to the time lag in bringing new capacity on-line.

d. Long term costs to the community and individuals (e.g. costs of social problems and crime on Government, communities, victims etc.) as the Option fails to address the underlying causes of crime.

RISKS
It is highly unlikely that Option 1 will contribute to the NSW Government’s objectives of improving community safety and reducing crime and re-offending as detailed in the NSW State Plan. In fact, this Option may exert negative effects on the achievement of these objectives. This is because the Option fails to address the underlying causes of juvenile crime. The Option represents a low implementation risk as the outcomes for Option 1 can be easily predicted. These are detailed in the benefits and disadvantages section above, for example, it is known that additional juvenile justice centres will be needed to cater for an increasing detention population.

Option 2: Less Cost and Some Better Outcomes

OVERVIEW
515. ‘Option 2 – Less Cost and Some Better Outcomes’ involves implementing Option 1 and implementing a range of recommendations within the existing juvenile justice system (i.e. no fundamental change) to reduce the financial cost and provide better outcomes for both the community and those caught up in the juvenile justice system.

DRIVERS
516. The primary drivers for Option 2 include:

a. Budgetary pressures mean that it is unlikely that the significant costs outlined in Option 1 will be palatable to either the Government or community.

b. Acknowledgement that increased numbers of children and young people held on remand in recent years is producing poor outcomes at a large expense.

c. The State Plan provides a target to reduce re-offending, however, evidence shows that children and young people held on remand are at an increased risk of re-offending.

ASSUMPTIONS/DEPENDENCIES
517. Due to the forecast increase in the juvenile detention population in NSW, and noting that that the system is currently above capacity, this option will require a modest increase in juvenile justice centre capacity. Based on Juvenile Justice predictions and estimates made by the Review, it is forecast that without change:

a. an additional 123 beds will be required to cater for forecast capacity in 2011/2012; and

b. detention numbers will peak in 2015/16 at 733, 309 greater than current capacity.
This Option will implement changes to reduce the number of children and young people held on remand. By doing so, the demand for juvenile justice centres will decrease to well below the figures provided above. In 2008/09, the average daily number of children and young people on control orders was 202, while the average number of on remand was 226 (totalling 428). Consequently, the current juvenile justice centre capacity of 424 is sufficient to deal with the custody population. Assuming that the number of children and young people held on remand can be reduced by 25%, no additional juvenile justice centres would be required in the long term. However, any changes will take time, and with a natural increase to the NSW population, along with the inability of this option to address the underlying causes of crime, it is likely that another juvenile justice centre will be required to meet demand. It is therefore assumed that an additional juvenile justice centre with a capacity of 45 beds is required to meet both short term requirements and longer term trends of population growth and static crime levels.

DETAILED DESCRIPTION

Main Elements

Option 2 seeks to implement Option 1 recommendations and reduce the number of children and young people held on remand. This will be achieved through the implementation of a number of Review recommendations including:

- ensuring that children and young people’s circumstances are considered in the determination of bail;
- education and monitoring of bail conditions set by NSW Police and Magistrates;
- Juvenile Justice assuming responsibility for placing children and young people in suitable accommodation when they are given reside as directed bail conditions, and reviewing the situation of every child or young person remanded in custody for this reason every 48 hours;
- establishing SLAs with existing accommodation providers to guarantee placements for children and young people who would be held on remand if they are unable to find suitable accommodation;
- implementation of a risk management based approach to policing bail breaches; and
- greater inter-agency collaboration.

Timeframes

As described earlier, the implementation of Option 1 could be implemented within a three year timeframe. It is anticipated that the implementation of the bail/remand focused recommendations can be achieved within this timeframe.

Implementation

In addition to the implementation implications described for Option 1, the bail/remand focused recommendations will need to form part of the coordinated Government approach, with this component to be led by Juvenile Justice.

Relevant Review Recommendations

547 Unpublished information provided by Juvenile Justice.
548 A reduction of 25% in the remand current population would return the remand population figure to 2004/05 levels.
Recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77. See Table 9 below for more details.

COST ESTIMATES

519. Based on the figures provided in Option 1, the capital investment for a juvenile justice centre with a 45 bed capacity is approximately $25.5 million. The recurring expenditure is $8.4 million a year. The intangible costs associated with the detrimental effects on children and young people will still exist, but to a lesser extent due to the reduced number of children and young people being held on remand.

520. The major costs associated with the implementation of the bail and remand focused recommendations will include the provision of guaranteed accommodation placements for children and young people to meet forecast demand, and funding Juvenile Justice to place children and young people in accommodation when they are given reside as directed bail conditions. The Review has been unable to obtain details of existing costs associated with the provision of these places. However, it is estimated that the cost of these arrangements will be modest, and in the order of $1 million.

521. Option 2 therefore represents approximate costs of $34.4 over the next 3 years. The long-term costs of not reducing the underlying causes of juvenile crime will remain at significant levels (albeit less than Option 1).

BENEFITS/ DISADVANTAGES

522. The benefits of Option 2 include:

a. Reduced costs through fewer children and young people being held in juvenile justice centres on remand.

b. Reduced re-offending rates through the avoidance of children and young people being held in juvenile justice centres on remand.

c. A medium/high degree of certainty in terms of costs (e.g. need to build an additional juvenile justice centre, establish SLAs etc.) and outcomes (e.g. failure to increase the underlying causes of crime, however, reductions in the number of children and young people held on remand).

523. The disadvantages of Option 2 include:

a. Medium capital investment and recurrent expenditure required.

b. It will not address Indigenous overrepresentation.

c. Short-term juvenile justice centre capacity issues due to three year construction timeframe.

d. Long term costs to the community and individuals (e.g. costs of social problems and crime on Government, communities, victims etc.) as the Option fails to address the underlying causes of crime.

RISKS
It is probable that Option 2 will be ineffective in meaningfully improving community safety and reducing crime and re-offending as detailed in the NSW State Plan. This is because the Option fails to address the underlying causes of crime. It represents a lower risk than Option 1 because it will reduce the numbers of children and young people on remand, and therefore reduces the risk of further offending for this group. The implementation risk is low as the outcomes are relatively predictable.

**Option 3: A Change in Thinking – Justice Reinvestment**

**OVERVIEW**

524. ‘Option 3 – A Change in Thinking – Justice Reinvestment’ involves the implementation of all of the Review recommendations. This includes the implementation of Justice Reinvestment which is premised on diverting funds from the construction of additional juvenile justice facilities to investment in programs and services that address the underlying causes of crime in local communities. It also involves the implementation of Review recommendations that require significant change or reform.

**DRIVERS**

525. The primary drivers for Option 3 include:

a. Substantial body of evidence which suggests that prevention and early intervention are the most cost-effective ways to reduce juvenile offending.

b. Acknowledgement that increased numbers of children and young people held in juvenile justice centres is producing poor outcomes at a large expense.

c. The State Plan provides a target to reduce re-offending and crime, however, evidence shows that children and young people held in juvenile justice centres are at an increased risk of re-offending.

**ASSUMPTIONS/DEPENDENCIES**

526. This option assumes that the NSW Government will invest $348.14 million in Justice Reinvestment. This is based on the estimated cost of Option 1 for the construction of juvenile justice centres to cater for an additional 309 beds by 2015/16 to meet forecast demand.

**DETAILED DESCRIPTION**

<table>
<thead>
<tr>
<th>Main Elements</th>
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<tbody>
<tr>
<td>Option 3 involves implementing all Review recommendations. In addition to the elements described in Options 1 and 2, changes include:</td>
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<tr>
<td>+ Developing a bipartisan approach at the political level.</td>
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<td>+ Developing an evaluation framework for all programs and pilots.</td>
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<td>+ Reviewing offences covered by <em>Young Offenders Act</em>.</td>
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<tr>
<td>+ Establishing systems to enable a single Government representative to provide information to the Children’s Court.</td>
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<tr>
<td>+ Investigating the feasibility of hearing traffic offences for children and young people in the Children’s Court.</td>
</tr>
<tr>
<td>+ Providing early intervention and prevention services and programs for 9-17 year olds at risk of re-offending.</td>
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</table>
Implementation of Justice Reinvestment.
+ Expanding the Justice Health Adolescent Court and Community Team to all NSW Local Courts.
+ Providing services and programs to young offenders beyond their court ordered mandates.
+ Conducting a stocktake of programs and services currently being delivered to Indigenous communities, and consulting with these communities to develop long-term strategies (based on prevention and early intervention) to address the underlying causes of juvenile offending.

Timeframes

The implementation of the majority of Review recommendations could take place within a five year period. The impact of these recommendations however will have much greater timeframes, for example, increased investment in prevention and early intervention services and programs will continue into the future, as will consultation with Indigenous communities to develop innovative ways to address local problems.

Implementation

The majority of Review recommendations can be implemented through a coordinated Government response as per Options 1 and 2. There are however two options for the implementation of Justice Reinvestment and addressing Indigenous disadvantage – ‘spiral development’ or ‘immediate implementation’. Spiral development will involve piloting these areas of reform in a trial location or locations. Learnings will be identified from the trials and applied to implementation of the initiatives throughout NSW (possibly through phased rollout or a single implementation depending on the identified lessons, the pilot’s success and available resources). Immediate implementation will involve the implementation of all Review recommendations throughout all of NSW.

Relevant Review Recommendations

All Review recommendations. See Table 9 below for more details.

COST ESTIMATES

527. Based on the assumption made previously, the cost of justice investment will be approximately $348.14 million. Other major costs involved in Option 3 (not including human resource costs for NSW Government Departments) include:

a. establishing SLAs with existing accommodation providers to meet forecast demand;

b. expanding the Justice Health Adolescent Court and Community Team;

c. providing services and programs to young offenders beyond their court ordered mandates; and

d. developing long-term strategies to address the underlying causes of juvenile offending (will likely be partially funded through Justice Reinvestment, however, may require additional funding).

528. The required research and data is not available to develop cost estimates for these options, however, the total cost of this option is unlikely to exceed $400 million (including $348.14 million dedicated to Justice Reinvestment).
BENEFITS/DISADVANTAGES

529. The benefits of Option 3 include:

a. Investment in early intervention, prevention and addressing the underlying causes of juvenile crime will offset the costs of investment. Based on high-level analysis, 2032 children and young people would need to be diverted from lives of crime to get a return on an investment of $200 million. This is based simply on the avoidance of holding children and young people in detention, i.e. the average number of days for young people in custody on control (177 days) and the average daily cost of holding a child or young person in detention ($556). This does not factor in other savings through addressing social problems, increased long-term productivity and economic health of communities which would be significant savings.

b. Reduced levels of juvenile crime. This is based on increased early intervention and prevention, and enhanced focus on addressing the underlying causes of juvenile crime.

c. Reduced re-offending rates through the avoidance of children and young people being held in juvenile justice centres and increased support for children and young people re-integrating into the community.

530. The disadvantages of Option 3 include:

a. High immediate capital costs and ongoing recurrent expenditure through increased services and programs.

b. A medium/high degree of uncertainty in terms of benefits realisation (e.g. ability to influence the causes of crime in Indigenous communities, effectiveness of prevention services and programs etc.).

RISKS

531. It is likely that Option 3 will improve community safety, reduce crime and re-offending as per the NSW State Plan targets. This is because the Option addresses the underlying causes of juvenile crimes. There is some risk in implementing this option as the expected outcomes are not as well known as Options 1 and 2. This is because Justice Reinvestment will require fundamental reform and it fails to reduce offending and re-offending, further investment will be required in building juvenile justice centres.

---

550 $200 million divided by (177*556) = ~2032
Options / Recommendations Matrix

532. Table 9 below details the recommendations that comprise each strategic option detailed previously.

Table 9 – Options / Recommendations Matrix

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Option 1</th>
<th>Option 2</th>
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<tbody>
<tr>
<td><strong>Political Context</strong></td>
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<tr>
<td>Recommendation 1: The major political parties in NSW develop a bipartisan approach to juvenile justice that sets out the underpinning philosophy and principles of the NSW juvenile justice system.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Recommendation 2: The NSW Government and the Legislation Review Committee of the NSW Parliament introduce a children and young person’s impact statement into legislation and policy development and amendment processes.</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Recommendation 3: No juvenile justice pilot program be approved without an evaluation framework and associated funding.</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Recommendation 4: A common evaluation framework for all programs and pilots related to juvenile justice is developed.</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Recommendation 5: The NSW Government conduct community forums to better educate the public on all aspects of the juvenile justice system.</td>
<td>✓</td>
<td>✓</td>
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<td><strong>Legislation</strong></td>
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<tr>
<td>Recommendation 6: Amend the Children (Criminal Proceedings) Act 1987 (Section 50) and Bail Act 1978 (Section 5) to reverse the precedence so that children specific legislation applies to all aspects of bail proceedings.</td>
<td>✓</td>
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</table>
**Recommendation 7**: If Recommendation 6 is not accepted, then amend the *Bail Act 1978* to introduce separate criteria for young people, consistent with the principles in Section 6 of the *Children (Criminal Proceedings) Act 1987*.

| Recommendation 7 | | ✔ | ✔ |

**Recommendation 8**: The Department of Justice and Attorney General monitor the effectiveness of cautioning and any unintended consequences caused by limiting the amount of cautions that can be received.

| Recommendation 8 | ✔ | ✔ | ✔ |

**Recommendation 9**: Juvenile Justice incorporate targets for the improvement of completion of outcome plans into its Strategic Plan.

| Recommendation 9 | ✔ | ✔ | ✔ |

**Recommendation 10**: Juvenile Justice, with the assistance of NSW Police and the Children’s Court, explicitly incorporate the improvement of participation of victims in youth justice conferencing into their Strategic Plan.

| Recommendation 10 | ✔ | ✔ | ✔ |

**Recommendation 11**: Juvenile Justice, in conjunction with the NSW Police Force and the Children’s Court, develop a plan to reduce delays in the conduct of youth justice conferences in order to meet the timeframes stipulated by the *Young Offenders Act 1997*.

| Recommendation 11 | ✔ | ✔ | ✔ |

**Recommendation 12**: Juvenile Justice strengthens the youth justice conferencing process to incorporate an improved risk and needs assessment. This will involve the establishment of necessary systems (people, process and technology) to allow information to be gathered, and where appropriate, action taken to provide additional support to individuals and families.

| Recommendation 12 | ✔ | ✔ | ✔ |

**Recommendation 13**: The Department of Justice and Attorney General review the Law Reform Commission’s recommendations regarding specific exclusions and inclusions of offences covered by the *Young Offenders Act 1997*.

| Recommendation 13 | ✔ | ✔ | ✔ |

**Recommendation 14**: The Young Offenders Advisory Council establish a modified terms of reference in legislation to include a monitoring role of the juvenile justice system, including the use of diversionary options available under the Young Offenders Act 1997.

<p>| Recommendation 14 | ✔ | ✔ | ✔ |</p>
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<th>Description</th>
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<tr>
<td>Recommendation 15</td>
<td>The number of members on the Young Offenders Advisory Council is reduced to organisations directly involved in the juvenile justice system (as per paragraph 203) and they be appropriately represented by senior Government representatives.</td>
<td>✓</td>
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<td>Recommendation 16</td>
<td>The Young Offenders Advisory Council establish and monitor diversionary targets for the NSW juvenile justice system. These targets should be reviewed and incorporated into the next version of the NSW State Plan.</td>
<td>✓</td>
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<tr>
<td>Recommendation 17</td>
<td>Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.</td>
<td>✓</td>
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<tr>
<td>Recommendation 18</td>
<td>The NSW Police Force and Department of Justice and Attorney General establish ongoing monitoring arrangements to ensure that appropriate bail conditions are being imposed on children and young people (i.e. bail conditions that are commensurate with the offence and are no more onerous than is required by the Bail Act 1978). The NSW Police Force and the Department of Justice and Attorney General provide regular reports to the Bail Working Party to inform its research.</td>
<td>✓</td>
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<tr>
<td>Recommendation 19</td>
<td>The systems and protocols are established to ensure that all children and young people have the capacity to understand and comply with bail conditions before they are imposed.</td>
<td>✓</td>
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<td>Recommendation 20</td>
<td>Juvenile Justice assume the legislative responsibility for placing children and young people in suitable accommodation when they are given reside as directed bail conditions. Juvenile Justice be appropriately funded through the Keep Them Safe reforms to undertake this responsibility in conjunction with the community sector.</td>
<td>✓</td>
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<tr>
<td>Recommendation 21</td>
<td>Juvenile Justice review the situation of every child and young person remanded in custody because of a lack of suitable accommodation every 48 hours to ascertain whether an accommodation option has become available.</td>
<td>✓</td>
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</table>
**Recommendation 22**: Juvenile Justice work closely with the NSW Police Force as part of the implementation of the Bail Hotline to ensure its ongoing utilisation and success.

| ✓ | ✓ | ✓ |

**Recommendation 23**: Juvenile Justice establish service level agreements with existing accommodation service providers to guarantee placements for children and young people who would be held on remand if they were unable to find suitable accommodation. Sufficient funding be provided to ensure that current and future demand is met.

| ✓ | ✓ | ✓ |

**Recommendation 24**: As part of the service level agreements described in Recommendation 23, Juvenile Justice provide personnel for additional supervision requirements and advice on court processes and support during bail hearings.

| ✓ | ✓ | ✓ |

**Recommendation 25**: A study is conducted on the impacts of amending legislation to hear traffic offences for children and young people in the Children’s Court.

| ✓ | ✓ | ✓ |

**Strategic Approach to Children and Young People**

**Recommendation 26**: The findings of this Review be incorporated into relevant State Plan Priority Delivery Plans and subsequent reviews of the State Plan.

| ✓ | ✓ | ✓ |

**Recommendation 27**: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

| ✓ | ✓ | ✓ |

**Recommendation 28**: The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.

| ✓ | ✓ | ✓ |

**Recommendation 29**: The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

| ✓ | ✓ | ✓ |
**Recommendation 30**: The NSW Government plans currently being developed for working with the NGO sector reinforce that capacity needs to be built to work with children and young people with complex needs, including those that are, or have been, involved in the juvenile justice system.

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**Young People and Children – The Juvenile Justice Continuum**

**Recommendation 31**: The Department of Human Services develop lead indicators to inform trends for the demand of juvenile justice services and programs.

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**Recommendation 32**: The Department of Human Services investigate evidence-based approaches to reduce the risk of offending and resource additional early intervention and prevention based services and programs for 9-17 year olds.

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**Recommendation 33**: The Department of Education and Training review the changes to compulsory school leaving age legislation to better understand the implications for disadvantaged youth, particularly children and young people involved in the juvenile justice system. Consideration should be given to providing additional support to re-engage these children and young people in the education system, and as a last resort, provide further exceptions for disadvantaged youth.

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**Recommendation 34**: Juvenile Justice, in conjunction with the Department of Education and Training, incorporate new compulsory school leaving age legislative requirements into its case management process for children and young people reintegrating into the community.

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**Recommendation 35**: The NSW Police Force update, or develop a new, Youth Policy Statement based on evidence-based strategies for policing children and young people.

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**Recommendation 36**: The NSW Police Force Spokesperson for Youth position be made an Assistant Commissioner.

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**Recommendation 37**: The NSW Police Force combine all functions relating to children and young people, including the current Youth Command, School Liaison Police and Youth Liaison Officers into a single...
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<tr>
<th>Recommendation</th>
<th>Summary</th>
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<tbody>
<tr>
<td><strong>Recommendation 38</strong>: The NSW Police Force consider increasing the number of dedicated officers in youth engagement and crime prevention.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 39</strong>: The NSW Police Force measure Local Area Commands’ utilisation of diversionary options under the <em>Young Offenders Act 1997</em> through the Command Performance Accountability System.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 40</strong>: The NSW Police Force increase training and education on the intent and operation of the <em>Young Offenders Act 1997</em>.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 41</strong>: The NSW Police Force develop a risk management framework, and associated education and training, to apply a risk-based approach to children and young people found to be breaching their bail conditions.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 42</strong>: The Commission for Children and Young People conduct a special inquiry into NSW police practices affecting children and young people and their impact on community relationships.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 43</strong>: Community Services attend court with children and young people under the care of the Minister for Community Services or Chief Executive of Community Services.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 44</strong>: An independent study is undertaken into the current capacity of the Legal Aid Commission to adequately represent children and young people and ensure they understand the court process.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 45</strong>: The NSW Government review the services delivered by the Aboriginal Legal Service and determine whether any additional special purpose funding is required to deliver NSW specific requirements. Future policy and/or legislative change should also consider funding implications for the Aboriginal Legal Service.</td>
<td>✓ ✓ ✓</td>
</tr>
<tr>
<td><strong>Recommendation 46</strong>: The Children’s Court be given its own status separate from Local Courts, and specialist Children’s Court magistrates hear all children matters through the implementation of a circuit rotation system.</td>
<td>✓ ✓ ✓</td>
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<td>Recommendation</td>
<td>Description</td>
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<tr>
<td><strong>Recommendation 47</strong></td>
<td>The requirements for the education and development of magistrates in hearing Children’s Court matters are strengthened. This includes ensuring these requirements are adhered to and that a magistrate cannot sit in a Children’s Court unless they have successfully completed the training and education requirements.</td>
</tr>
<tr>
<td><strong>Recommendation 48</strong></td>
<td>The utilisation of sentencing options in rural and remote communities is monitored to establish whether an increased allocation of resources is required to facilitate a more comprehensive application of sentencing options under the Children (Criminal Proceedings) Act 1987. This is as per the recommendation made by the Law Reform Commission.</td>
</tr>
<tr>
<td><strong>Recommendation 49</strong></td>
<td>The NSW Government undertake an independent evaluation of the Youth Drug and Alcohol Court to determine its effectiveness in reducing offending and drug use, and make recommendations regarding its ongoing role in the NSW juvenile justice system.</td>
</tr>
<tr>
<td><strong>Recommendation 51</strong></td>
<td>Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.</td>
</tr>
<tr>
<td><strong>Recommendation 52</strong></td>
<td>NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.</td>
</tr>
<tr>
<td><strong>Recommendation 53</strong></td>
<td>If the Review’s recommendations on reducing the number of juveniles on remand are not implemented, Juvenile Justice develop contingency plans incorporating capital strategies and policy approaches to handle greater numbers than they can accommodate.</td>
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<tr>
<td>Recommendation</td>
<td>Details</td>
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<tr>
<td><strong>54</strong></td>
<td>The NSW Government conduct an independent evaluation of the management and operation of the Kariong Juvenile Correctional Centre as recommended by the Select Committee on Juvenile Offenders.</td>
</tr>
<tr>
<td><strong>55</strong></td>
<td>Juvenile Justice is funded to ensure that conditions at Emu Plains Juvenile Justice Centre comply with Australasian Juvenile Justice Administrators’ standards for juvenile justice facilities.</td>
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<tr>
<td><strong>56</strong></td>
<td>The Intensive Supervision Program is comprehensively evaluated, and if found to be effective, funded to expand to other suitable areas of New South Wales.</td>
</tr>
<tr>
<td><strong>57</strong></td>
<td>The evaluation of Youth Conduct Orders investigate any adverse impacts on the overall operation of the <em>Young Offenders Act 1997</em> and specifically, whether children and young people eligible for less intrusive diversionary options were placed on Youth Conduct Orders.</td>
</tr>
<tr>
<td><strong>58</strong></td>
<td>The evaluation of Youth Conduct Orders investigate the effectiveness of the Anti-Social Behaviour Pilot Project, the extent to which it compliments/duplicates Youth Conduct Orders and any erosion of the <em>Young Offenders Act 1997</em>.</td>
</tr>
<tr>
<td><strong>59</strong></td>
<td>Ageing, Disability and Home Care and Juvenile Justice work together to improve the rate of referrals and acceptances of children and young people into the Criminal Justice Program. This may involve developing a separate evaluation criteria for entry into the program for children and young people and the setting of targets to monitor performance.</td>
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<tr>
<td><strong>60</strong></td>
<td>In light of the 2009 health surveys, Juvenile Justice review the Disability Action Plan 2007-2011 to ensure it will address the intellectual disability issues of children and young people in custody.</td>
</tr>
<tr>
<td><strong>61</strong></td>
<td>The Justice Health Adolescent Court and Community Team develop an action plan to address the issues identified as part of the Bureau of Crime Statistics and Research evaluation.</td>
</tr>
<tr>
<td><strong>62</strong></td>
<td>The Justice Health Adolescent Court and Community Team is funded to expand their court liaison and diversion services for children and young people with mental health problems to all NSW Local</td>
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Courts, including regional areas.

**Recommendation 63**: The Department of Education and Training establish a service for children and young people exiting community orders or custody to enrol them in education and training opportunities.  

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**Recommendation 64**: Juvenile Justice prepare a Strategic Workforce Plan to 2020 in order to develop a sustainable and capable workforce.  

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**Recommendation 65**: The role of Juvenile Justice is extended to provide services and programs to young offenders on a voluntary basis beyond their court ordered mandate (control and supervised orders) in order to ensure successful reintegration into the community and reduce re-offending. This will involve additional funding of approximately $1.932 million for the delivery of internal and NGO delivered services.  

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**Indigenous Overrepresentation**

**Recommendation 66**: Aboriginal Affairs incorporate the findings of this report into the current review of Two Ways Together.  

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**Recommendation 67**: The NSW Police Force improve the monitoring and evaluation of ‘Objective Four: Divert Aboriginal youth from crime and anti-social behaviour’ of the Aboriginal Strategic Direction 2007-2011.  

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**Recommendation 68**: The Department of Human Services Executive provide oversight for the Juvenile Justice Aboriginal Strategic Plan 2007-2011.  

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**Recommendation 69**: The Juvenile Justice Aboriginal Strategic Plan 2007-2011 be aligned with the Department of Justice and Attorney General Aboriginal Justice Plan.  

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**Recommendation 70**: Juvenile Justice incorporate the development of Aboriginal Cultural Support Plans into case planning processes for all Aboriginal children and young people under community and control orders.  

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**Recommendation 71:** The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.

| ✓ | ✓ | ✓ |

**Recommendation 72:** The Department of Human Services develop and implement a Reconciliation Action Plan as per Reconciliation Australia’s guidelines.

| ✓ | ✓ | ✓ |

**Recommendation 73:** Ageing, Disability and Home Care review its Justice Services Policy to ensure that the best practice principles outlined in the Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems report are incorporated and translated into specific strategies and actions.

| ✓ | ✓ | ✓ |

**Recommendation 74:** The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.

| ✓ |

**Recommendation 75:** The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.

| ✓ |

**Young Women and Culturally Diverse Groups**

**Recommendation 76:** Juvenile Justice develop a Juvenile Justice Girls’ and Young Women’s Action Plan that provides a renewed policy framework for responding to the needs of girls and young women.

| ✓ | ✓ | ✓ |

**Recommendation 77:** Juvenile Justice ensure their plan for gathering and analysing data on culturally and linguistically diverse groups is cognisant of localised issues, and ensuring the effectiveness of their work with groups from over-represented culturally and linguistically diverse backgrounds.

| ✓ | ✓ | ✓ |
Recommended Option

It is recommended that Option 3: A Change in Thinking – Justice Reinvestment is adopted by the NSW Government. This is because it provides the greatest return on investment through tangible benefits such as reduced crime, reduced re-offending and cost savings for Government, and provides long term benefits to the community. It seeks to address the key issue of Indigenous overrepresentation and by doing so will substantially reduce offending rates. Implementing this option represents a challenge to government because it involves major reform and requires new thinking. However, the Review believes that the benefits significantly outweigh any potential risks and provides the best opportunity to reduce re-offending and provides the community with the most significant long term benefits.

533. The foundation for this Option is the implementation of Justice Reinvestment. It seeks to divert funds that would otherwise be spent on building additional juvenile justice centres to services and programs that address the underlying causes of crime in local communities. It is therefore important to understand the current cost of juvenile detention, and the likely future costs of constructing juvenile justice centres.

534. NSW spent just over $103 million on juvenile detention in 2007-2008. The NSW Auditor-General’s Report to Parliament recently reported that the average daily cost per juvenile in custodial services in NSW in 2007/08 was $541 (a slight decrease from $556 in 2006/07). This compares to $16 a day for community-based services and $10 a day for youth justice conferencing.

535. The construction of a 15 bed juvenile justice centre unit will incur capital costs of $8.5 million, and $2.8 million in recurring costs (excluding costs for Justice Health and Education services). It estimated that on current trends a further 309 beds are required by 2015/16 to meet forecast demand. This equates to approximate costs of $348.14 million over the next six years ($175.1 million in capital costs, and $173.04 million in recurrent expenditure assuming the juvenile justice centre capacity is operational for the last three years of the six year period). Additional costs for Justice Health and Education services would be in the order of several million dollars.

536. Despite spending upwards of $100 million a year on juvenile justice centres (with this figure likely to increase), NSW is achieving a poor return on investment for this spending. It is not effective in reducing juvenile re-offending, it exerts no specific deterrent effect, and despite increased numbers in juvenile justice centres, there is no commensurate decrease in juvenile involvement in violent and property crime. Additionally, 90% of Indigenous children and young people, and 52% of non Indigenous children and young people, will go on to appear before an adult criminal court. Similar findings are evident in other jurisdictions, with long term international detention and crime...
trends showing that increased numbers of juveniles in detention does not decrease crime. The data also shows that these children and young people often do not develop social skills, have higher recidivism rates, are less likely to naturally ‘age out’ of illegal behaviour, are more likely to suffer from mental illness, and less likely to succeed at education and employment.558

537. Conversely, investment in early intervention, prevention and community based programs and services is the most cost-effective means to reduce offending (and re-offending) and deliver better social outcomes. Enclosure 1 – Review of Effective Practice in Juvenile Justice analyses a number of effective programs which are shown to reduce re-offending by up to 22%. Additionally, evidence shows that the most effective programs in terms of reduced offending and more positive life outcomes are those administered in the community (as opposed to juvenile justice systems). They are also significantly cheaper than juvenile detention. Examples of effective programs include Juvenile drug courts, Restorative justice for low-risk offenders, Aggression Replacement Training, Multi-systemic Therapy, Functional Family Therapy and Multidimensional Treatment Foster Care.559

538. A major publication produced in the UK (Backing the Future) makes a compelling case for significant investment in prevention services for children and young people. It argues that targeted interventions for the most vulnerable children will deliver wide benefits to society, reduce the need to deal with the impact of problems later, and break the intergenerational cycle of deprivation. The report estimates the cost of doing nothing to address social problems in the UK at almost £4 trillion over a 20 year period. This includes problems such as crime, mental illness, family dysfunction and breakdown, drug abuse and obesity. It demonstrates that investment in targeted prevention interventions and universal childcare services could help address as much as £1.5 trillion worth of the cost of these social problems. After factoring in transition costs (from the current system to a preventative approach), it is estimated that the returns to the UK economy would total £486 billion over 20 years. Analysis demonstrated that for every £1 invested annually in targeted early intervention and prevention services, society benefits by between £7.60 and £9.20.560

539. These findings provide a compelling economic and social case for change and significant investment in the future of society through children and young people. As the Backing the Future report highlights, the implementation of such reform requires a fundamental shift in thinking, and prevention by its very nature, requires a much more pro-active response. It will require transition away from public services which intervene only after ‘risk’ factors are displayed and subsequently identified. Interventions are needed when problems arise to stop them becoming entrenched. The Backing the Future report proposes a two phased approach, first involving significant investment in targeted interventions for those most vulnerable or likely to suffer negative outcomes, then making these improvements permanent through deeper structural change. This approach will involve a sharp increase in immediate costs, however, the forecast social and economic returns are great. For

559 ibid.
example, between 2010 and 2020, the total costs of interventions would be £191 billion, however, the total saving would be £460 billion.  

540. There is also a substantial body of evidence in the United States to support the effectiveness of Justice Reinvestment. The avoidance of future prison construction in Washington State through evidence based options for adult corrections programs, juvenile corrections programs, and prevention has saved approximately $2 billion and reduced crime rates. Justice reinvestment has been adopted in a number of states including Arizona, Connecticut, Kansas, Michigan, Nevada, New Hampshire, Ohio, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin. For example, Kansas has experienced a 7.5% reduction in their prison population, and the re-offending rate for people on parole has dropped by 35% since adopting Justice Reinvestment. Additionally, Oregon has reduced youth incarceration by 72%, which is the biggest ever decrease in juvenile detention according to the National Centre for Juvenile Justice.

541. This evidence shows the significant costs of juvenile justice centres, the poor outcomes it delivers, and the effectiveness of prevention and early intervention. This provides the basis for implementing Justice Reinvestment as recommended in Option 3. This means that NSW needs to identify the communities that will benefit most from investment. Data provided to the Social Justice Report suggests that locations such as Mt Druitt, Dubbo, Kempsey, Bourke and Wagga Wagga all have high levels of Indigenous detention (and detention across all children and young people) and could benefit from Justice Reinvestment strategies.

542. It is recommended that a portion of the funds that would be spent on detention in NSW is diverted to these (or similar) communities, noting that some funding will need to be retained for detention as a measure of last resort. As outlined above, the most effective reinvestment strategies are those focused on early intervention and prevention of offending behaviour. This is likely to involve expanding existing programs such as the Intensive Support Program (currently being piloted in Western Sydney and Newcastle), and investing in new services and programs specific to the local needs of the communities. In doing so, the community becomes the focus of reinvestment, as opposed to the individuals involved in crime.

543. In developing its Justice Reinvestment policy, it is recommended that NSW adopt a similar approach to that used in the United States. It is a four phase approach that comprises:

a. **Step 1: Analyse.** Reviewing detention admission data to determine what is driving increases in the population. Geographic analysis is used to identify communities that have disproportionate numbers in detention, and how money is being spent on programs and services.

---

561 Ibid.
565 Review submission received from the Aboriginal and Torres Strait Islander Social Justice Commissioner.
b. **Step 2: Provide.** Generating various options that consider the characteristics of the state’s justice system and tailor them to better manage the growth in detention population and increase public safety. These options include strategies to prevent offending, reduce re-offending, focus community-supervision and holding offenders accountable for the successful completion of programs such as drug treatment and job training.

c. **Step 3 Quantify.** Determine how much can be saved, and how much investment can be avoided, through adopting options identified in Step 2. Plans are developed for reinvesting a portion of these savings in new or enhanced initiatives in local communities.

d. **Step 4: Measure.** Setting performance measures and projected outcomes, for example, costs saved or avoided, re-offending rates, and indicators of community capacity. This may also involve establishing systems that can collect and analyse data and provide periodic reports to policy makers. These reports can be used to determine whether initiatives are being implemented effectively, and as a result, expected benefits are being realised, to determine whether adjustments need to be made.\(^{566}\)

544. Such an approach is consistent with the NSW State Plan which recognises that early intervention can stop problems from getting worse, or prevent them from developing. The Plan makes a commitment to shift the state’s efforts to realise greater social and economic benefits. This will be achieved through embedding early intervention into Government, shifting resources to support early intervention and prevention, and gaining a better understanding of the costs and benefits of early intervention.\(^{567}\) Adopting the four phase approach outlined previously will provide a proven approach to achieve these commitments.

545. The Implementation Plan below provides a recommended implementation plan for Option 3, including recommendations, accountabilities (lead department/agency and contributors) and indicative timeframes. In implementing this, or any other, option, the NSW Government needs to ensure that implementation is monitored closely and the program fidelity is maintained.

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### Implementation Plan for ‘Option 3: A Change in Thinking – Justice Reinvestment’

<table>
<thead>
<tr>
<th>ID</th>
<th>Recommendation</th>
<th>Lead Department/ Agency</th>
<th>Contributors</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
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#### Political Context

1. The major political parties in NSW develop a bipartisan approach to juvenile justice that sets out the underpinning philosophy and principles of the NSW juvenile justice system.
   - Lead Department/ Agency: DPC
   - Contributors: Juvenile Justice
   - Timeline: 2010 [progress bar]

2. The NSW Government and the Legislation Review Committee of the NSW Parliament introduce a children and young person’s impact statement into legislation and policy development and amendment processes.
   - Lead Department/ Agency: DPC
   - Contributors: DJAG
   - Timeline: 2010 [progress bar]

3. No juvenile justice pilot program be approved without an evaluation framework and associated funding.
   - Lead Department/ Agency: DPC
   - Contributors: DHS, NSW Police Force, DJAG, Health, DET
   - Timeline: 2010 [progress bar]

4. A common evaluation framework for all programs and pilots related to juvenile justice is developed.
   - Lead Department/ Agency: DPC
   - Contributors: DHS, NSW Police Force, DJAG, Health, DET
   - Timeline: 2010 [progress bar]

5. The NSW Government conduct community forums to better educate the public on all aspects of the juvenile justice system.
   - Lead Department/ Agency: DPC
   - Contributors: Juvenile Justice
   - Timeline: 2010 [progress bar]

#### Legislation

6. Amend the Children (Criminal Proceedings) Act 1987 (Section 50) and Bail Act 1978 (Section 5) to reverse the precedence so that children specific legislation applies to all aspects of bail proceedings.
   - Lead Department/ Agency: DJAG
   - Contributors: Children’s Court
   - Timeline: 2010 [progress bar]
<p>| 7 | If Recommendation 6 is not accepted, then amend the Bail Act 1978 to introduce separate criteria for young people, consistent with the principles in Section 6 of the Children (Criminal Proceedings) Act 1987. | DJAG | Children's Court | N/A |
| 8 | The Department of Justice and Attorney General monitor the effectiveness of cautioning and any unintended consequences caused by limiting the amount of cautions that can be received. | DJAG | Children's Court, NSW Police, Juvenile Justice | N/A |
| 9 | Juvenile Justice incorporate targets for the improvement of completion of outcome plans into its Strategic Plan. | Juvenile Justice | N/A | N/A |
| 10 | Juvenile Justice, with the assistance of NSW Police and the Children's Court, explicitly incorporate the improvement of participation of victims in youth justice conferencing into their Strategic Plan. | Juvenile Justice | Children's Court, NSW Police | N/A |
| 11 | Juvenile Justice, in conjunction with the NSW Police Force and the Children's Court, develop a plan to reduce delays in the conduct of youth justice conferences in order to meet the timeframes stipulated by the Young Offenders Act 1997. | Juvenile Justice | Children's Court, NSW Police | N/A |
| 12 | Juvenile Justice strengthens the youth justice conferencing process to incorporate an improved risk and needs assessment. This will involve the establishment of necessary systems (people, process and technology) to allow information to be gathered, and where appropriate, action taken to provide additional support to individuals and families. | Juvenile Justice | N/A |
| 13 | The Department of Justice and Attorney General review the Law Reform Commission's recommendations regarding specific exclusions and inclusions of offences covered by the Young Offenders Act 1997. | DJAG | N/A |
| 14 | The Young Offenders Advisory Council establish a modified terms of reference in legislation to include a monitoring role of the juvenile justice system, including the use of diversionary options available under the Young Offenders Act 1997. | Juvenile Justice | N/A |
| 15 | The number of members on the Young Offenders Advisory Council is reduced to organisations directly involved in the juvenile justice system (as per paragraph 203) and they be appropriately represented by senior Government representatives. | Juvenile Justice | NSW Police, Children's Court |</p>
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<th>The Young Offenders Advisory Council establish and monitor diversionary targets for the NSW juvenile justice system. These targets should be reviewed and incorporated into the next version of the NSW State Plan.</th>
<th>Young Offenders Advisory Council</th>
<th>DPC</th>
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<td>17</td>
<td>Information sharing protocols and systems are established to enable a single point of contact at the Children's Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.</td>
<td>Children's Court</td>
<td>DHS, NSW Police Force, Health, DET, DJAG</td>
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<td>18</td>
<td>The NSW Police Force and Department of Justice and Attorney General establish ongoing monitoring arrangements to ensure that appropriate bail conditions are being imposed on children and young people (i.e. bail conditions that are commensurate with the offence and are no more onerous than is required by the Bail Act 1978). The NSW Police Force and the Department of Justice and Attorney General provide regular reports to the Bail Working Party to inform its research.</td>
<td>DJAG, NSW Police</td>
<td>N/A</td>
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<tr>
<td>19</td>
<td>The systems and protocols are established to ensure that all children and young people have the capacity to understand and comply with bail conditions before they are imposed.</td>
<td>Children's Court</td>
<td>DJAG</td>
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<td>20</td>
<td>Juvenile Justice assume the legislative responsibility for placing children and young people in suitable accommodation when they are given reside as directed bail conditions. Juvenile Justice be appropriately funded through the Keep Them Safe reforms to undertake this responsibility in conjunction with the community sector.</td>
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<td>21</td>
<td>Juvenile Justice review the situation of every child and young person remanded in custody because of a lack of suitable accommodation every 48 hours to ascertain whether an accommodation option has become available.</td>
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<td>22</td>
<td>Juvenile Justice work closely with the NSW Police Force as part of the implementation of the Bail Hotline to ensure its ongoing utilisation and success.</td>
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<td>23</td>
<td>Juvenile Justice establish service level agreements with existing accommodation service providers to guarantee placements for children and young people who would be held on remand if they were unable to find suitable accommodation. Sufficient funding be provided to ensure that current and future demand is met.</td>
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<td>24</td>
<td>As part of the service level agreements described in Recommendation 24, Juvenile Justice provide personnel for additional supervision requirements and advice on court processes and support during bail hearings.</td>
<td>Juvenile Justice</td>
<td>NGOs</td>
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<td>25</td>
<td>A study is conducted on the impacts of amending legislation to hear traffic offences for children and young people in the Children’s Court.</td>
<td>DJAG</td>
<td>Children's Court</td>
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<td>The findings of this Review be incorporated into relevant State Plan Priority Delivery Plans.</td>
<td>DPC</td>
<td>Juvenile Justice</td>
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<td>26</td>
<td>The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.</td>
<td>DPC</td>
<td>DHS, NSW Police Force, Health, DET, DJAG, Treasury</td>
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<td>27</td>
<td>The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.</td>
<td>DPC</td>
<td>DHS, NSW Police Force, Health, DET</td>
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<td>30</td>
<td>The NSW Government plans currently being developed for working with the NGO sector reinforce that capacity needs to be built to work with children and young people with complex needs, including those that are, or have been, involved in the juvenile justice system.</td>
<td>DPC</td>
<td>Juvenile Justice, NGOs</td>
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<td>31</td>
<td>The Department of Human Services develop lead indicators to inform trends for the demand of juvenile justice services and programs.</td>
<td>DHS</td>
<td>NSW Police Force, Health, DET</td>
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<td>32</td>
<td>The Department of Human Services investigate evidence-based approaches to reduce the risk of offending and resource additional early intervention and prevention based services and programs for 9-17 year olds.</td>
<td>DHS</td>
<td>NSW Police Force, Health, DET</td>
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<td>33</td>
<td>The Department of Education and Training review the changes to compulsory school leaving age legislation to better understand the implications for disadvantaged youth, particularly children and young people involved in the juvenile justice system. Consideration should be given to providing additional support to re-engage these children and young people in the education system, and as a last resort, provide further exceptions for disadvantaged youth.</td>
<td>DET</td>
<td>DHS</td>
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<td>Responsible Party 2</td>
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<td>34</td>
<td>Juvenile Justice, in conjunction with the Department of Education and Training, incorporate new compulsory school leaving age legislative requirements into its case management process for children and young people reintegrating into the community.</td>
<td>Juvenile Justice</td>
<td>DET</td>
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<td>35</td>
<td>The NSW Police Force update, or develop a new, Youth Policy Statement based on evidence-based strategies for policing children and young people.</td>
<td>NSW Police</td>
<td>Juvenile Justice</td>
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<td>36</td>
<td>The NSW Police Force Spokesperson for Youth position be made an Assistant Commissioner.</td>
<td>NSW Police</td>
<td>N/A</td>
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<td>37</td>
<td>The NSW Police Force combine all functions relating to children and young people, including the current Youth Command, School Liaison Police and Youth Liaison Officers into a single Command.</td>
<td>NSW Police</td>
<td>N/A</td>
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<td>38</td>
<td>The NSW Police Force consider increasing the number of dedicated officers in youth engagement and crime prevention.</td>
<td>NSW Police</td>
<td>N/A</td>
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<td>39</td>
<td>The NSW Police Force measure Local Area Commands' utilisation of diversionary options under the Young Offenders Act 1997 through the Command Performance Accountability System.</td>
<td>NSW Police</td>
<td>DJAG</td>
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<td>40</td>
<td>The NSW Police Force increase training and education on the intent and operation of the Young Offenders Act 1997.</td>
<td>NSW Police</td>
<td>DJAG</td>
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<tr>
<td>Step</td>
<td>Activity Description</td>
<td>Responsible Parties</td>
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<td>41</td>
<td>The NSW Police Force develop a risk management framework, and associated education and training, to apply a risk-based approach to children and young people found to be breaching their bail conditions.</td>
<td>NSW Police, Children's Court, DJAG</td>
<td></td>
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<td>42</td>
<td>The Commission for Children and Young People conduct a special inquiry into NSW police practices affecting children and young people and their impact on community relationships.</td>
<td>CCYP, NSW Police</td>
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<td>43</td>
<td>Community Services attend court with children and young people under the care of the Minister for Community Services or Chief Executive of Community Services.</td>
<td>Community Services, Children's Court</td>
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<td>44</td>
<td>An independent study is undertaken into the current capacity of the Legal Aid Commission to adequately represent children and young people and ensure they understand the court process.</td>
<td>DJAG, Legal Aid</td>
<td></td>
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<tr>
<td>45</td>
<td>The NSW Government review the services delivered by the Aboriginal Legal Service and determine whether any additional special purpose funding is required to deliver NSW specific requirements. Future policy and/or legislative change should also consider funding implications for the Aboriginal Legal Service.</td>
<td>DJAG, Aboriginal Legal Service</td>
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<td>The Children’s Court be given its own status separate from Local Courts, and specialist Children’s Court magistrates hear all children matters through the implementation of a circuit rotation system.</td>
<td>DJAG</td>
<td>Children’s Court</td>
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<td>46</td>
<td>The requirements for the education and development of magistrates in hearing Children’s Court matters are strengthened. This includes ensuring these requirements are adhered to and that a magistrate cannot sit in a Children’s Court unless they have successfully completed the training and education requirements.</td>
<td>DJAG</td>
<td>Children’s Court</td>
</tr>
<tr>
<td>47</td>
<td>The utilisation of sentencing options in rural and remote communities is monitored to establish whether an increased allocation of resources is required to facilitate a more comprehensive application of sentencing options under the Children (Criminal Proceedings) Act 1987. This is as per the recommendation made by the Law Reform Commission.</td>
<td>DJAG</td>
<td>N/A</td>
</tr>
<tr>
<td>48</td>
<td>The NSW Government undertake an independent evaluation of the Youth Drug and Alcohol Court to determine its effectiveness in reducing offending and drug use, and make recommendations regarding its ongoing role in the NSW juvenile justice system.</td>
<td>BOCSAR</td>
<td>DJAG, Juvenile Justice</td>
</tr>
<tr>
<td>50</td>
<td>The Bureau of Crime Statistics and Research conduct an evaluation of the Work and Development Orders.</td>
<td>BOCSAR</td>
<td>DJAG</td>
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<tr>
<td>51</td>
<td>Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.</td>
<td>Juvenile Justice</td>
<td>DHS, NSW Police Force, Health, DET, DJAG</td>
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<td>52</td>
<td>NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.</td>
<td>Juvenile Justice</td>
<td>DHS, NSW Police Force, Health, DET, DJAG</td>
</tr>
<tr>
<td>53</td>
<td>If the Review’s recommendations on reducing the number of juveniles on remand are not implemented, Juvenile Justice develop contingency plans incorporating capital strategies and policy approaches to handle greater numbers than they can accommodate.</td>
<td>Juvenile Justice</td>
<td>N/A</td>
</tr>
<tr>
<td>54</td>
<td>The NSW Government conduct an independent evaluation of the management and operation of the Kariong Juvenile Correctional Centre as recommended by the Select Committee on Juvenile Offenders.</td>
<td>DPC</td>
<td>Juvenile Justice, Corrective Services</td>
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<tr>
<td>Page</td>
<td>Text</td>
<td>Source</td>
<td>N/A</td>
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</tr>
<tr>
<td>55</td>
<td>Juvenile Justice is funded to ensure that conditions at Emu Plains Juvenile Justice Centre comply with Australasian Juvenile Justice Administrators’ standards for juvenile justice facilities.</td>
<td>Juvenile Justice</td>
<td>N/A</td>
</tr>
<tr>
<td>56</td>
<td>The Intensive Supervision Program is comprehensively evaluated, and if found to be effective, funded to expand to other suitable areas of New South Wales.</td>
<td>Juvenile Justice</td>
<td>N/A</td>
</tr>
<tr>
<td>57</td>
<td>The evaluation of Youth Conduct Orders investigate any adverse impacts on the overall operation of the Young Offenders Act 1997 and specifically, whether children and young people eligible for less intrusive diversionary options were placed on Youth Conduct Orders.</td>
<td>DPC</td>
<td>Juvenile Justice</td>
</tr>
<tr>
<td>58</td>
<td>The evaluation of Youth Conduct Orders investigate the effectiveness of the Anti-Social Behaviour Pilot Project, the extent to which it compliments/duplicates Youth Conduct Orders and any erosion of the Young Offenders Act 1997.</td>
<td>DPC</td>
<td>Juvenile Justice</td>
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<tr>
<td>Action Number</td>
<td>Initiative</td>
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<tr>
<td>59</td>
<td>Ageing, Disability and Home Care and Juvenile Justice work together to improve the rate of referrals and acceptances of children and young people into the Criminal Justice Program. This may involve developing a separate evaluation criteria for entry into the program for children and young people and the setting of targets to monitor performance.</td>
<td>ADHC</td>
<td>Juvenile Justice</td>
</tr>
<tr>
<td>60</td>
<td>In light of the 2009 health surveys, Juvenile Justice review the Disability Action Plan 2007-2011 to ensure it will address the intellectual disability issues of children and young people in custody.</td>
<td>Juvenile Justice</td>
<td>ADHC</td>
</tr>
<tr>
<td>61</td>
<td>The Justice Health Adolescent Court and Community Team develop an action plan to address the issues identified as part of the Bureau of Crime Statistics and Research evaluation.</td>
<td>Health</td>
<td>BOCSAR, Juvenile Justice</td>
</tr>
<tr>
<td>62</td>
<td>The Justice Health Adolescent Court and Community Team is funded to expand their court liaison and diversion services for children and young people with mental health problems to all NSW Local Courts, including regional areas.</td>
<td>Health</td>
<td>DJAG</td>
</tr>
<tr>
<td>63</td>
<td>The Department of Education and Training establish a service for children and young people exiting community orders or custody to enrol them in education and training opportunities.</td>
<td>DET</td>
<td>Juvenile Justice</td>
</tr>
<tr>
<td>No.</td>
<td>Action Description</td>
<td>Responsible Party</td>
<td>Supporting Parties</td>
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</tr>
<tr>
<td>64</td>
<td>Juvenile Justice prepare a Strategic Workforce Plan to 2020 in order to develop a sustainable and capable workforce.</td>
<td>Juvenile Justice</td>
<td>N/A</td>
</tr>
<tr>
<td>65</td>
<td>The role of Juvenile Justice is extended to provide services and programs to young offenders on a voluntary basis beyond their court ordered mandate (control and supervised orders) in order to ensure successful reintegration into the community and reduce re-offending. This will involve additional funding of approximately $1.932 million for the delivery of internal and NGO delivered services.</td>
<td>Juvenile Justice</td>
<td>NGOs</td>
</tr>
</tbody>
</table>

### Indigenous Overrepresentation

<table>
<thead>
<tr>
<th>No.</th>
<th>Action Description</th>
<th>Responsible Party</th>
<th>Supporting Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>66</td>
<td>Aboriginal Affairs incorporate the findings of this report into the current review of Two Ways Together.</td>
<td>Aboriginal Affairs</td>
<td>Juvenile Justice</td>
</tr>
<tr>
<td>67</td>
<td>The NSW Police Force improve the monitoring and evaluation of 'Objective Four: Divert Aboriginal youth from crime and anti-social behaviour' of the Aboriginal Strategic Direction 2007-2011.</td>
<td>NSW Police</td>
<td>Aboriginal Affairs, Juvenile Justice</td>
</tr>
<tr>
<td>68</td>
<td>The Department of Human Services Executive provide oversight for the Juvenile Justice Aboriginal Strategic Plan 2007-2011.</td>
<td>DHS</td>
<td>DJAG, Aboriginal Affairs</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td>Responsible Parties</td>
<td>Implementation Details</td>
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</tr>
<tr>
<td>69</td>
<td>The Juvenile Justice Aboriginal Strategic Plan 2007-2011 be aligned with the Department of Justice and Attorney General Aboriginal Justice Plan.</td>
<td>Juvenile Justice, DJAG</td>
<td></td>
</tr>
<tr>
<td>70</td>
<td>Juvenile Justice incorporate the development of Aboriginal Cultural Support Plans into case planning processes for all Aboriginal children and young people under community and control orders.</td>
<td>Juvenile Justice, Aboriginal Affairs</td>
<td></td>
</tr>
<tr>
<td>71</td>
<td>The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.</td>
<td>DJAG, Children’s Court, Juvenile Justice, Aboriginal Affairs</td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>The Department of Human Services develop and implement a Reconciliation Action Plan as per Reconciliation Australia’s guidelines.</td>
<td>DHS, NGOs</td>
<td></td>
</tr>
<tr>
<td>73</td>
<td>Ageing, Disability and Home Care review its Justice Services Policy to ensure that the best practice principles outlined in the Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems report are incorporated and translated into specific strategies and actions.</td>
<td>ADHC, Aboriginal Affairs, Juvenile Justice</td>
<td></td>
</tr>
<tr>
<td>74</td>
<td>The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.</td>
<td>Aboriginal Affairs, DPC, DHS, NSW Police Force, Health, DET, DJAG</td>
<td></td>
</tr>
</tbody>
</table>
The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.

### Young Women and Culturally Diverse Groups

| 76 | Juvenile Justice develop a Juvenile Justice Girls' and Young Women's Action Plan that provides a renewed policy framework for responding to the needs of girls and young women. | Juvenile Justice | N/A |

| 77 | Juvenile Justice ensure their plan for gathering and analysing data on culturally and linguistically diverse groups is cognisant of localised issues, and ensuring the effectiveness of their work with groups from over-represented culturally and linguistically diverse backgrounds. | Juvenile Justice | N/A |
Annex A – Stakeholder Interview List

Stakeholder interviews were conducted with the following organisations and individuals:

**Non-Government Organisation Stakeholders:**

+ Aboriginal and Torres Strait Islander Social Justice Commissioner (Tom Calma).
+ Aboriginal Legal Service (Caleb Franklin).
+ Barnardos Australia (Bill Hoyles, Vik Craig).
+ Boystown and Senior Official Visitor Program (Michael McDonald).
+ Centacare Catholic Community Services (Bron Parker).
+ Charles Sturt University (Tony Thompson).
+ Council of Social Service of New South Wales (Dev Mukherjee).
+ Enough is Enough (Ken Marslew).
+ Law Society (Juvenile Justice Committee and Criminal Law Committee).
+ Local Government and Shires Associations of NSW (Noel Baum).
+ Mission Australia (Anne Hampshire, Jiorji Ravulo, Leonie Green).
+ Monash University (Chris Trotter).
+ Police and Community Youth Clubs (Chris Gardiner).
+ Public Interest Advocacy Centre (Brenda Bailey).
+ Public Interest Law Clearing House (Gina Vizza).
+ Representative group of young people.
+ South Sydney Youth Service (Darren Ryan).
+ Southern and Family Youth Services (Frank Prothero, Narelle Clay).
+ UnitingCare Children, Young People and Families (Clare Blakemore, Romola Hollywood, Yvette Doyle).
+ University of New South Wales (Chris Cunneen, Eileen Baldry).
+ Young Offenders Advisory Council (Michael Mahoney).
+ Youth Action and Policy Association (Emily May, Ray Reodica).
Youth Justice Coalition (Katrina Wong).

Youth Off The Streets (Father Chris Riley).

**Government Stakeholders:**

+ Aboriginal Affairs (Peter Swain).
+ Ageing, Disability and Home Care (Melinda Smith).
+ Department of Justice and Attorney General (Brendan Thomas, Kathrina Lo).
+ Bureau of Crime Statistics and Research (Don Weatherburn).
+ Children’s Court (Magistrate Gary Still, Katherine McFarlane).
+ Commission of Children and Young People (Gaye Phillips, Lou-Anne Lind).
+ Community Services (Janet Vickers, Jenny Mason,).
+ Corrective Services (Luke Grant).
+ Department of Education and Training (David McKae).
+ Department of Health (Julie Carter, Una Champion).
+ Department of Human Services (Jenny Mason).
+ Department of Premier and Cabinet (Anne Campbell, Michael Ramsay, Nathan Rudder, Ross Bennett, Susan Calvert).
+ Juvenile Justice (Debra Cole, Eric Heller, Father Andrew Granc, Kay Elphick, Margaret Brunetta, Megan Wilson, Peter Muir).
+ Legal Aid Commission (Alan Kirkland, Debra Maher and Te’re Sia).
+ NSW Police Force (Frank Mennili, Ken Finch, Luke Moore, Michael Maroney).
+ Office of the Director of Public Prosecutions (Johanna Pheils).
+ Ombudsman’s Office (Steve Kinmond).
+ Treasury (Brian Cheney, Caralee McLiesh, Len Powrie).
+ Youth Drug and Alcohol Court (Hilary Hannam).

**Members of Parliament:**

+ Adrian Piccoli, Shadow Minister for Police and Spokesperson for Juvenile Justice.
+ Graham West, Minister for Juvenile Justice.
+ Greg Smith, Shadow Minister for Justice.
+ Linda Burney, Minister for Community Services.

Other Jurisdiction Stakeholders:
+ Australian Capital Territory Department of Disability, Housing and Community Services, Youth (Michael Reid).
+ New Zealand Child, Youth and Family Services, Youth Justice (Chris Polaschek).
+ Northern Territory Department of Justice, Corrective Services, Juvenile Detention (Peter Curwen-Walker).
+ Queensland Department of Communities, Service Delivery (Cathy Taylor).
+ South Australia Department for Families and Communities Families, Youth Justice Directorate (Bernadette McGinness).
+ Tasmania Department of Health and Human Services, Disability Child Youth & Family Services (Michael Plaister).
+ Victoria Department of Human Services Youth Services and Youth Justice (Liz Hughes, Alex Kamanev).
+ Victoria Police (Leanne Sargent).
+ Western Australia Department of Community Services (Lex McCulloch).
Annex B – Written Submissions Received

The Review received written submissions from the following organisations and individuals:

+ Community Justice Coalition.
+ Ian Nisbet, Psychologist.
+ Ike Ellis APM, retired Assistant Commissioner of Police.
+ Joshua Sylvester and Tammy Momdjian.
+ Law Society of NSW, Juvenile Justice Committee.
+ Michaela Wengert.
+ Michelle Kilgower, Operations Manager, Tirkandi Inaburra Cultural and Development Centre.
+ National Children’s and Youth Law Centre.
+ Noel Beddoe.
+ NSW Council for Intellectual Disability & Intellectual Disability Rights Service.
+ Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner.
# Annex C – List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADHC</td>
<td>Ageing, Disability and Home Care</td>
</tr>
<tr>
<td>AIC</td>
<td>Australian Institute of Criminology</td>
</tr>
<tr>
<td>AJAC</td>
<td>Aboriginal Justice Advisory Council</td>
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<td>AJJA</td>
<td>Australasian Juvenile Justice Administrators</td>
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<tr>
<td>ALS</td>
<td>Aboriginal Legal Service</td>
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<tr>
<td>ARC</td>
<td>Australian Research Council</td>
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<tr>
<td>the Bail Act</td>
<td>the Bail Act 1978 (NSW)</td>
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<tr>
<td>BOCSAR</td>
<td>Bureau of Crime Statistics and Research</td>
</tr>
<tr>
<td>C(CP)A</td>
<td>Children (Criminal Proceedings) Act 1987 (NSW)</td>
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<tr>
<td>CALD</td>
<td>Culturally and linguistically diverse</td>
</tr>
<tr>
<td>CAN</td>
<td>Court Attendance Notice</td>
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<tr>
<td>CCYP</td>
<td>Commission for Children and Young People</td>
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<tr>
<td>COMPAS</td>
<td>Command Performance Accountability System</td>
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<tr>
<td>CREDIT</td>
<td>Court Referred Eligible Defendants into Treatment</td>
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<tr>
<td>CROC</td>
<td>Convention on the Rights of Children</td>
</tr>
<tr>
<td>DCS</td>
<td>Department of Corrective Services</td>
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<tr>
<td>DET</td>
<td>Department of Education and Training</td>
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<tr>
<td>DJAG</td>
<td>Department of Justice and Attorney General</td>
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<tr>
<td>DPC</td>
<td>Department of Premier and Cabinet</td>
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<tr>
<td>Emu Plains</td>
<td>Emu Plains Juvenile Justice Centre</td>
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<tr>
<td>the Green Paper</td>
<td>The Future Directions for Juvenile Justice in New South Wales</td>
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<tr>
<td>JJO</td>
<td>Juvenile Justice Officer</td>
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<tr>
<td>JTAP</td>
<td>Joint Tenancy Assistance Program</td>
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<tr>
<td>Juvenile Justice</td>
<td>Department of Juvenile Justice</td>
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<tr>
<td>Kariong</td>
<td>Kariong Juvenile Correctional Centre</td>
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<tr>
<td>Legal Aid</td>
<td>Legal Aid Commission</td>
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<td>MERIT</td>
<td>Magistrates Early Referral in Treatment</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>NCOSS</td>
<td>Council of Social Service of New South Wales</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>NGO</td>
<td>Non-government organisations</td>
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<tr>
<td>Noetic</td>
<td>Noetic Solutions Pty Ltd</td>
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<tr>
<td>NSW Police</td>
<td>NSW Police Force</td>
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<tr>
<td>ODPP</td>
<td>Office of the Director of Public Prosecutions</td>
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<tr>
<td>PCYC</td>
<td>Police and Community Youth Club</td>
</tr>
<tr>
<td>RCMG</td>
<td>Regional Coordination Management Groups</td>
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<tr>
<td>Review</td>
<td>Strategic review of juvenile justice in NSW</td>
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<tr>
<td>SAAP</td>
<td>Supported Accommodation Assistance Program</td>
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<tr>
<td>SLA</td>
<td>Service Level Agreement</td>
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<tr>
<td>SLP</td>
<td>School Liaison Police</td>
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<tr>
<td>SPGM</td>
<td>Semi Parametric Group-Based Method</td>
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<tr>
<td>SYO</td>
<td>Specialist Youth Officer</td>
</tr>
<tr>
<td>Tirkandi Inaburra</td>
<td>Tirkandi Inaburra Cultural and Development Centre</td>
</tr>
<tr>
<td>Wood Report</td>
<td>Special Commission of Inquiry into Child Protection Services in NSW</td>
</tr>
<tr>
<td>YDAC</td>
<td>Youth Drug and Alcohol Court</td>
</tr>
<tr>
<td>YJAC</td>
<td>Youth Justice Advisory Committee</td>
</tr>
<tr>
<td>YLO</td>
<td>Youth Liaison Officer</td>
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<tr>
<td>Young Offenders Act</td>
<td>Young Offenders Act 1997 (NSW)</td>
</tr>
<tr>
<td>YOAC</td>
<td>Young Offenders Advisory Council</td>
</tr>
</tbody>
</table>
Annex D – Recommendations Grouped by Organisation

Aboriginal Affairs: Recommendation 66: Aboriginal Affairs incorporate the findings of this report into the current review of Two Ways Together.

Aboriginal Legal Service: Recommendation 74: The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.

Ageing, Disability and Home Care: Recommendation 75: The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.


Children’s Court: Recommendation 68: The Department of Human Services Executive provide oversight for the Juvenile Justice Aboriginal Strategic Plan 2007-2011.
Recommendation 70: Juvenile Justice incorporate the development of Aboriginal Cultural Support Plans into case planning processes for all Aboriginal children and young people under community and control orders.

Recommendation 71: The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.

Recommendation 73: Ageing, Disability and Home Care review its Justice Services Policy to ensure that the best practice principles outlined in the Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems report are incorporated and translated into specific strategies and actions.

Aboriginal Legal Service

Contributor

Recommendation 45: The NSW Government review the services delivered by the Aboriginal Legal Service and determine whether any additional special purpose funding is required to deliver NSW specific requirements. Future policy and/or legislative change should also consider funding implications for the Aboriginal Legal Service.

Ageing, Disability and Home Care

Lead Department/Agency

Recommendation 59: Ageing, Disability and Home Care and Juvenile Justice work together to improve the rate of referrals and acceptances of children and young people into the Criminal Justice Program. This may involve developing a separate evaluation criteria for entry into the program for children and young people and the setting of targets to monitor performance.

Recommendation 73: Ageing, Disability and Home Care review its Justice Services Policy to ensure that the best practice principles outlined in the Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems report are incorporated and translated into specific strategies and actions.

Contributor

Recommendation 60: In light of the 2009 health surveys, Juvenile Justice review the Disability Action Plan 2007-2011 to ensure it will address the intellectual disability issues of children and young people in custody.

Bureau of Crime Statistics and Research

Lead Department/Agency

Recommendation 49: The NSW Government undertake an independent evaluation of the Youth Drug and Alcohol Court to determine its effectiveness in reducing offending and drug use, and make recommendations regarding its ongoing role in the NSW juvenile justice system.

Contributor

1. **Recommendation 61**: The Justice Health Adolescent Court and Community Team develop an action plan to address the issues identified as part of the Bureau of Crime Statistics and Research evaluation.

Children’s Court

Lead Department/Agency

1. **Recommendation 17**: Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.

1. **Recommendation 19**: The systems and protocols are established to ensure that all children and young people have the capacity to understand and comply with bail conditions before they are imposed.

Contributor

1. **Recommendation 6**: Amend the Children (Criminal Proceedings) Act 1987 (Section 50) and Bail Act 1978 (Section 5) to reverse the precedence so that children specific legislation applies to all aspects of bail proceedings.

1. **Recommendation 7**: If Recommendation 6 is not accepted, then amend the Bail Act 1978 to introduce separate criteria for young people, consistent with the principles in Section 6 of the Children (Criminal Proceedings) Act 1987.

1. **Recommendation 8**: The Department of Justice and Attorney General monitor the effectiveness of cautioning and any unintended consequences caused by limiting the amount of cautions that can be received.

1. **Recommendation 10**: Juvenile Justice, with the assistance of NSW Police and the Children’s Court, explicitly incorporate the improvement of participation of victims in youth justice conferencing into their Strategic Plan.

1. **Recommendation 11**: Juvenile Justice, in conjunction with the NSW Police Force and the Children’s Court, develop a plan to reduce delays in the conduct of youth justice conferences in order to meet the timeframes stipulated by the Young Offenders Act 1997.

1. **Recommendation 15**: The number of members on the Young Offenders Advisory Council is reduced to organisations directly involved in the juvenile justice system (as per paragraph 203) and they be appropriately represented by senior Government representatives.

1. **Recommendation 25**: A study is conducted on the impacts of amending legislation to hear traffic offences for children and young people in the Children’s Court.

1. **Recommendation 41**: The NSW Police Force develop a risk management framework, and associated education and training, to apply a risk-based approach to children and young people found to be breaching their bail conditions.
Recommendation 43: Community Services attend court with children and young people under the care of the Minister for Community Services or Chief Executive of Community Services.

Recommendation 46: The Children’s Court be given its own status separate from Local Courts, and specialist Children’s Court magistrates hear all children matters through the implementation of a circuit rotation system.

Recommendation 47: The requirements for the education and development of magistrates in hearing Children’s Court matters are strengthened. This includes ensuring these requirements are adhered to and that a magistrate cannot sit in a Children’s Court unless they have successfully completed the training and education requirements.

Recommendation 71: The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.

Commission for Children and Young People

Lead Department/Agency

Recommendation 42: The Commission for Children and Young People conduct a special inquiry into NSW police practices affecting children and young people and their impact on community relationships.

Community Services

Lead Department/Agency

Recommendation 43: Community Services attend court with children and young people under the care of the Minister for Community Services or Chief Executive of Community Services.

Corrective Services

Contributor

Recommendation 54: The NSW Government conduct an independent evaluation of the management and operation of the Kariong Juvenile Correctional Centre as recommended by the Select Committee on Juvenile Offenders.

Department of Education and Training

Lead Department/Agency

Recommendation 33: The Department of Education and Training review the changes to compulsory school leaving age legislation to better understand the implications for disadvantaged youth, particularly children and young people involved in the juvenile justice system. Consideration should be given to providing additional support to re-engage these children and young people in the education system, and as a last resort, provide further exceptions for disadvantaged youth.
Recommendation 63: The Department of Education and Training establish a service for children and young people exiting community orders or custody to enrol them in education and training opportunities.

Contributor

Recommendation 3: No juvenile justice pilot program be approved without an evaluation framework and associated funding.

Recommendation 4: A common evaluation framework for all programs and pilots related to juvenile justice is developed.

Recommendation 17: Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.

Recommendation 27: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

Recommendation 28: The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.

Recommendation 29: The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

Recommendation 31: The Department of Human Services develop lead indicators to inform trends for the demand of juvenile justice services and programs.

Recommendation 32: The Department of Human Services investigate evidence-based approaches to reduce the risk of offending and resource additional early intervention and prevention based services and programs for 9-17 year olds.

Recommendation 34: Juvenile Justice, in conjunction with the Department of Education and Training, incorporate new compulsory school leaving age legislative requirements into its case management process for children and young people reintegrating into the community.

Recommendation 51: Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.

Recommendation 52: NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.

Recommendation 74: The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.
Recommendation 75: The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.

**Department of Health**

**Lead Department/Agency**

1. **Recommendation 61:** The Justice Health Adolescent Court and Community Team develop an action plan to address the issues identified as part of the Bureau of Crime Statistics and Research evaluation.

2. **Recommendation 62:** The Justice Health Adolescent Court and Community Team is funded to expand their court liaison and diversion services for children and young people with mental health problems to all NSW Local Courts, including regional areas.

**Contributor**

1. **Recommendation 3:** No juvenile justice pilot program be approved without an evaluation framework and associated funding.

2. **Recommendation 4:** A common evaluation framework for all programs and pilots related to juvenile justice is developed.

3. **Recommendation 17:** Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.

4. **Recommendation 27:** Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

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6. **Recommendation 29:** The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

7. **Recommendation 31:** The Department of Human Services develop lead indicators to inform trends for the demand of juvenile justice services and programs.

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Department of Human Services

Lead Department/Agency

Recommendation 31: The Department of Human Services develop lead indicators to inform trends for the demand of juvenile justice services and programs.

Recommendation 32: The Department of Human Services investigate evidence-based approaches to reduce the risk of offending and resource additional early intervention and prevention based services and programs for 9-17 year olds.

Recommendation 68: The Department of Human Services Executive provide oversight for the Juvenile Justice Aboriginal Strategic Plan 2007-2011.

Recommendation 72: The Department of Human Services develop and implement a Reconciliation Action Plan as per Reconciliation Australia’s guidelines.

Contributor

Recommendation 3: No juvenile justice pilot program be approved without an evaluation framework and associated funding.

Recommendation 4: A common evaluation framework for all programs and pilots related to juvenile justice is developed.

Recommendation 17: Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.

Recommendation 27: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.
Recommendation 28: The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.

Recommendation 29: The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

Recommendation 33: The Department of Education and Training review the changes to compulsory school leaving age legislation to better understand the implications for disadvantaged youth, particularly children and young people involved in the juvenile justice system. Consideration should be given to providing additional support to re-engage these children and young people in the education system, and as a last resort, provide further exceptions for disadvantaged youth.

Recommendation 51: Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.

Recommendation 52: NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.

Recommendation 74: The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.

Recommendation 75: The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.

Department of Justice and Attorney General

Lead Department/Agency

Recommendation 6: Amend the Children (Criminal Proceedings) Act 1987 (Section 50) and Bail Act 1978 (Section 5) to reverse the precedence so that children specific legislation applies to all aspects of bail proceedings.

Recommendation 7: If Recommendation 6 is not accepted, then amend the Bail Act 1978 to introduce separate criteria for young people, consistent with the principles in Section 6 of the Children (Criminal Proceedings) Act 1987.

Recommendation 8: The Department of Justice and Attorney General monitor the effectiveness of cautioning and any unintended consequences caused by limiting the amount of cautions that can be received.

Recommendation 13: The Department of Justice and Attorney General review the Law Reform Commission’s recommendations regarding specific exclusions and inclusions of offences covered by the Young Offenders Act 1997.
Recommendation 18: The NSW Police Force and Department of Justice and Attorney General establish ongoing monitoring arrangements to ensure that appropriate bail conditions are being imposed on children and young people (i.e. bail conditions that are commensurate with the offence and are no more onerous than is required by the Bail Act 1978). The NSW Police Force and the Department of Justice and Attorney General provide regular reports to the Bail Working Party to inform its research.

Recommendation 25: A study is conducted on the impacts of amending legislation to hear traffic offences for children and young people in the Children’s Court.

Recommendation 44: An independent study is undertaken into the current capacity of the Legal Aid Commission to adequately represent children and young people and ensure they understand the court process.

Recommendation 45: The NSW Government review the services delivered by the Aboriginal Legal Service and determine whether any additional special purpose funding is required to deliver NSW specific requirements. Future policy and/or legislative change should also consider funding implications for the Aboriginal Legal Service.

Recommendation 46: The Children’s Court be given its own status separate from Local Courts, and specialist Children’s Court magistrates hear all children matters through the implementation of a circuit rotation system.

Recommendation 47: The requirements for the education and development of magistrates in hearing Children’s Court matters are strengthened. This includes ensuring these requirements are adhered to and that a magistrate cannot sit in a Children’s Court unless they have successfully completed the training and education requirements.

Recommendation 48: The utilisation of sentencing options in rural and remote communities is monitored to establish whether an increased allocation of resources is required to facilitate a more comprehensive application of sentencing options under the Children (Criminal Proceedings) Act 1987. This is as per the recommendation made by the Law Reform Commission.

Recommendation 71: The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.

Contributor

Recommendation 2: The NSW Government and the Legislation Review Committee of the NSW Parliament introduce a children and young person’s impact statement into legislation and policy development and amendment processes.

Recommendation 3: No juvenile justice pilot program be approved without an evaluation framework and associated funding.

Recommendation 4: A common evaluation framework for all programs and pilots related to juvenile justice is developed.

Recommendation 14: The Young Offenders Advisory Council establish a modified terms of reference in legislation to include a monitoring role of the juvenile justice system, including the use of diversionary options available under the Young Offenders Act 1997.
Recommendation 17: Information sharing protocols and systems are established to enable a single point of contact at the Children’s Court to source all the required information for a bail determination, and provide it to Magistrates and/or solicitor.

Recommendation 19: The systems and protocols are established to ensure that all children and young people have the capacity to understand and comply with bail conditions before they are imposed.

Recommendation 20: Juvenile Justice assume the legislative responsibility for placing children and young people in suitable accommodation when they are given reside as directed bail conditions. Juvenile Justice be appropriately funded through the Keep Them Safe reforms to undertake this responsibility in conjunction with the community sector.

Recommendation 27: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

Recommendation 28: The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.

Recommendation 29: The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

Recommendation 39: The NSW Police Force measure Local Area Commands’ utilisation of diversionary options under the Young Offenders Act 1997 through the Command Performance Accountability System.

Recommendation 40: The NSW Police Force increase training and education on the intent and operation of the Young Offenders Act 1997.

Recommendation 41: The NSW Police Force develop a risk management framework, and associated education and training, to apply a risk-based approach to children and young people found to be breaching their bail conditions.

Recommendation 49: The NSW Government undertake an independent evaluation of the Youth Drug and Alcohol Court to determine its effectiveness in reducing offending and drug use, and make recommendations regarding its ongoing role in the NSW juvenile justice system.


Recommendation 51: Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.

Recommendation 52: NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.
Recommendation 62: The Justice Health Adolescent Court and Community Team is funded to expand their court liaison and diversion services for children and young people with mental health problems to all NSW Local Courts, including regional areas.

Recommendation 68: The Department of Human Services Executive provide oversight for the Juvenile Justice Aboriginal Strategic Plan 2007-2011.


Recommendation 74: The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.

Recommendation 75: The NSW Government engage with Indigenous communities to develop long-term strategies to address the underlying causes of juvenile offending. Preventative and early intervention strategies are to be funded in local communities based on the Justice Reinvestment approach outlined in Recommendation 52.

Department of Premier and Cabinet

Lead Department/Agency

Recommendation 1: The major political parties in NSW develop a bipartisan approach to juvenile justice that sets out the underpinning philosophy and principles of the NSW juvenile justice system.

Recommendation 2: The NSW Government and the Legislation Review Committee of the NSW Parliament introduce a children and young person’s impact statement into legislation and policy development and amendment processes.

Recommendation 3: No juvenile justice pilot program be approved without an evaluation framework and associated funding.

Recommendation 4: A common evaluation framework for all programs and pilots related to juvenile justice is developed.

Recommendation 5: The NSW Government conduct community forums to better educate the public on all aspects of the juvenile justice system.

Recommendation 26: The findings of this Review be incorporated into relevant State Plan Priority Delivery Plans.

Recommendation 27: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

Recommendation 28: The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.
Recommendation 29: The strategic approach to children and young people detailed in Recommendation 27 include a mechanism to involve children and young people in Government decision-making.

Recommendation 30: The NSW Government plans currently being developed for working with the NGO sector reinforce that capacity needs to be built to work with children and young people with complex needs, including those that are, or have been, involved in the juvenile justice system.

Recommendation 54: The NSW Government conduct an independent evaluation of the management and operation of the Karriong Juvenile Correctional Centre as recommended by the Select Committee on Juvenile Offenders.

Recommendation 57: The evaluation of Youth Conduct Orders investigate any adverse impacts on the overall operation of the Young Offenders Act 1997 and specifically, whether children and young people eligible for less intrusive diversionary options were placed on Youth Conduct Orders.

Recommendation 58: The evaluation of Youth Conduct Orders investigate the effectiveness of the Anti-Social Behaviour Pilot Project, the extent to which it compliments/duplicates Youth Conduct Orders and any erosion of the Young Offenders Act 1997.

Contributor

Recommendation 74: The NSW Government conduct a stocktake of programs and services currently being delivered to Indigenous communities.

Recommendation 16: The Young Offenders Advisory Council establish and monitor diversionary targets for the NSW juvenile justice system. These targets should be reviewed and incorporated into the next version of the NSW State Plan.

Juvenile Justice

Lead Department/Agency

Recommendation 9: Juvenile Justice incorporate targets for the improvement of completion of outcome plans into its Strategic Plan.

Recommendation 10: Juvenile Justice, with the assistance of NSW Police and the Children’s Court, explicitly incorporate the improvement of participation of victims in youth justice conferencing into their Strategic Plan.

Recommendation 11: Juvenile Justice, in conjunction with the NSW Police Force and the Children’s Court, develop a plan to reduce delays in the conduct of youth justice conferences in order to meet the timelines stipulated by the Young Offenders Act 1997.

Recommendation 12: Juvenile Justice strengthens the youth justice conferencing process to incorporate an improved risk and needs assessment. This will involve the establishment of necessary systems (people, process and technology) to allow information to be gathered, and where appropriate, action taken to provide additional support to individuals and families.
Recommendation 14: The Young Offenders Advisory Council establish a modified terms of reference in legislation to include a monitoring role of the juvenile justice system, including the use of diversionary options available under the Young Offenders Act 1997.

Recommendation 15: The number of members on the Young Offenders Advisory Council is reduced to organisations directly involved in the juvenile justice system (as per paragraph 203) and they be appropriately represented by senior Government representatives.

Recommendation 20: Juvenile Justice assume the legislative responsibility for placing children and young people in suitable accommodation when they are given reside as directed bail conditions. Juvenile Justice be appropriately funded through the Keep Them Safe reforms to undertake this responsibility in conjunction with the community sector.

Recommendation 21: Juvenile Justice review the situation of every child and young person remanded in custody because of a lack of suitable accommodation every 48 hours to ascertain whether an accommodation option has become available.

Recommendation 22: Juvenile Justice work closely with the NSW Police Force as part of the implementation of the Bail Hotline to ensure its ongoing utilisation and success.

Recommendation 23: Juvenile Justice establish service level agreements with existing accommodation service providers to guarantee placements for children and young people who would be held on remand if they were unable to find suitable accommodation. Sufficient funding be provided to ensure that current and future demand is met.

Recommendation 24: As part of the service level agreements described in Recommendation 24, Juvenile Justice provide personnel for additional supervision requirements and advice on court processes and support during bail hearings.

Recommendation 34: Juvenile Justice, in conjunction with the Department of Education and Training, incorporate new compulsory school leaving age legislative requirements into its case management process for children and young people reintegrating into the community.

Recommendation 51: Juvenile Justice, with assistance from other agencies involved in the juvenile justice continuum, establish targets to reduce re-offending rates for children and young people under supervised orders and a five year plan be implemented to meet these targets.

Recommendation 52: NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.

Recommendation 53: If the Review’s recommendations on reducing the number of juveniles on remand are not implemented, Juvenile Justice develop contingency plans incorporating capital strategies and policy approaches to handle greater numbers than they can accommodate.

Recommendation 55: Juvenile Justice is funded to ensure that conditions at Emu Plains Juvenile Justice Centre comply with Australasian Juvenile Justice Administrators’ standards for juvenile justice facilities.
Recommendation 56: The Intensive Supervision Program is comprehensively evaluated, and if found to be effective, funded to expand to other suitable areas of New South Wales.

Recommendation 60: In light of the 2009 health surveys, Juvenile Justice review the Disability Action Plan 2007-2011 to ensure it will address the intellectual disability issues of children and young people in custody.

Recommendation 64: Juvenile Justice prepare a Strategic Workforce Plan to 2020 in order to develop a sustainable and capable workforce.

Recommendation 65: The role of Juvenile Justice is extended to provide services and programs to young offenders on a voluntary basis beyond their court ordered mandate (control and supervised orders) in order to ensure successful reintegration into the community and reduce re-offending. This will involve additional funding of approximately $1.932 million for the delivery of internal and NGO delivered services.


Recommendation 70: Juvenile Justice incorporate the development of Aboriginal Cultural Support Plans into case planning processes for all Aboriginal children and young people under community and control orders.

Recommendation 76: Juvenile Justice develop a Juvenile Justice Girls’ and Young Women’s Action Plan that provides a renewed policy framework for responding to the needs of girls and young women.

Recommendation 77: Juvenile Justice ensure their plan for gathering and analysing data on culturally and linguistically diverse groups is cognisant of localised issues, and ensuring the effectiveness of their work with groups from over-represented culturally and linguistically diverse backgrounds.

Contributor

Recommendation 1: The major political parties in NSW develop a bipartisan approach to juvenile justice that sets out the underpinning philosophy and principles of the NSW juvenile justice system.

Recommendation 5: The NSW Government conduct community forums to better educate the public on all aspects of the juvenile justice system.

Recommendation 8: The Department of Justice and Attorney General monitor the effectiveness of cautioning and any unintended consequences caused by limiting the amount of cautions that can be received.

Recommendation 26: The findings of this Review be incorporated into relevant State Plan Priority Delivery Plans.

Recommendation 30: The NSW Government plans currently being developed for working with the NGO sector reinforce that capacity needs to be built to work with children and young people with complex needs, including those that are, or have been, involved in the juvenile justice system.
Recommendation 35: The NSW Police Force update, or develop a new, Youth Policy Statement based on evidence-based strategies for policing children and young people.

Recommendation 49: The NSW Government undertake an independent evaluation of the Youth Drug and Alcohol Court to determine its effectiveness in reducing offending and drug use, and make recommendations regarding its ongoing role in the NSW juvenile justice system.

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Recommendation 58: The evaluation of Youth Conduct Orders investigate the effectiveness of the Anti-Social Behaviour Pilot Project, the extent to which it compliments/duplicates Youth Conduct Orders and any erosion of the Young Offenders Act 1997.

Recommendation 59: Ageing, Disability and Home Care and Juvenile Justice work together to improve the rate of referrals and acceptances of children and young people into the Criminal Justice Program. This may involve developing a separate evaluation criteria for entry into the program for children and young people and the setting of targets to monitor performance.

Recommendation 61: The Justice Health Adolescent Court and Community Team develop an action plan to address the issues identified as part of the Bureau of Crime Statistics and Research evaluation.

Recommendation 63: The Department of Education and Training establish a service for children and young people exiting community orders or custody to enrol them in education and training opportunities.

Recommendation 66: Aboriginal Affairs incorporate the findings of this report into the current review of Two Ways Together.


Recommendation 71: The Department of Justice and Attorney General develop and implement a model for community based sentencing of Indigenous juvenile offenders.

Recommendation 73: Ageing, Disability and Home Care review its Justice Services Policy to ensure that the best practice principles outlined in the Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems report are incorporated and translated into specific strategies and actions.
Contributor

Recommendation 4: An independent study is undertaken into the current capacity of the Legal Aid Commission to adequately represent children and young people and ensure they understand the court process.

Non Government Organisations

Contributor

Recommendation 21: Juvenile Justice review the situation of every child and young person remanded in custody because of a lack of suitable accommodation every 48 hours to ascertain whether an accommodation option has become available.

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Recommendation 72: The Department of Human Services develop and implement a Reconciliation Action Plan as per Reconciliation Australia’s guidelines.

NSW Police Force

Lead Department/Agency

Recommendation 18: The NSW Police Force and Department of Justice and Attorney General establish ongoing monitoring arrangements to ensure that appropriate bail conditions are being imposed on children and young people (i.e. bail conditions that are commensurate with the offence and are no more onerous than is required by the Bail Act 1978). The NSW Police Force and the Department of Justice and Attorney General provide regular reports to the Bail Working Party to inform its research.

Recommendation 35: The NSW Police Force update, or develop a new, Youth Policy Statement based on evidence-based strategies for policing children and young people.
Recommendation 36: The NSW Police Force Spokesperson for Youth position be made an Assistant Commissioner.

Recommendation 37: The NSW Police Force combine all functions relating to children and young people, including the current Youth Command, School Liaison Police and Youth Liaison Officers into a single Command.

Recommendation 38: The NSW Police Force consider increasing the number of dedicated officers in youth engagement and crime prevention.

Recommendation 39: The NSW Police Force measure Local Area Commands’ utilisation of diversionary options under the Young Offenders Act 1997 through the Command Performance Accountability System.

Recommendation 40: The NSW Police Force increase training and education on the intent and operation of the Young Offenders Act 1997.

Recommendation 41: The NSW Police Force develop a risk management framework, and associated education and training, to apply a risk-based approach to children and young people found to be breaching their bail conditions.


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Recommendation 2: Juvenile Justice work closely with the NSW Police Force as part of the implementation of the Bail Hotline to ensure its ongoing utilisation and success.

Recommendation 7: Develop a Government strategic approach to children and young people in NSW that is underpinned by a series of operational level plans that will lead to the long term achievement of the strategy’s goals.

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Recommendation 42: The Commission for Children and Young People conduct a special inquiry into NSW police practices affecting children and young people and their impact on community relationships.

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Recommendation 52: NSW Government adopt a Justice Reinvestment policy based on diverting funds that would otherwise be spent on additional juvenile justice centres, to preventative and early intervention programs that address the underlying causes of crimes in communities.

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**NSW Treasury**

**Contributor**
Recommendation 28: The NSW Government develop a formal response to this report that outlines the required actions, accountabilities, timeframes and required resourcing (based on a detailed economic appraisal) to implement the Review recommendations.

Young Offenders Advisory Council

Lead

Recommendation 16: The Young Offenders Advisory Council establish and monitor diversionary targets for the NSW juvenile justice system. These targets should be reviewed and incorporated into the next version of the NSW State Plan.
Enclosure 1 – Review of Effective Practice in Juvenile Justice

Noetic has developed a Review of Effective Practice in Juvenile Justice publication that identifies and describes effective practice in juvenile justice with respect to evidence-based strategies, programs and services. The Review of Effective Practice in Juvenile Justice is enclosed separately.