

Justice or an Unjust System?

Aboriginal over-
representation in
South Australia's
juvenile justice system

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Executive Summary

This report examines, primarily through a series of interviews with key stakeholders, the systemic factors contributing to the continuing over-representation of Aboriginal young people in the South Australian juvenile justice system.

There is little doubt that Aboriginal people are over-represented in the SA juvenile justice system. The evidence suggests that similar trends are reflected across the nation and are also present in the adult population. However, this report focuses only on the juvenile system in South Australia.

At its broadest, the juvenile justice system comprises all interactions with law enforcement. While this could include out-of-home care, the focus of this report is on the custodial and non-custodial system applying once a breach of the law is identified. In this part of the system, both the overall number of Aboriginal young people within it and the rate (per 100,000 population) have both decreased in recent years. However, the level of over-representation (that is discrepancy between rates for Aboriginal and non-Aboriginal people) has actually increased (because the rate of involvement of the general young population has decreased at a greater rate).

The figures are stark:

- Aboriginal young people comprise only 4% of the total population aged 10-17 years old, but make up 46% of young people in detention and 34% of young people under community-based supervision;
- Aboriginal young people are 12.5 times more likely to be involved with the juvenile justice system than non-Aboriginal young people, and 19.7 times more likely to be in detention;
- This level of over-representation is higher for young people than for the adult population: Aboriginal young people 19 times more likely to be imprisoned, by comparison with 16 times more likely for adults;
- Over the five year period from 2009-2013 South Australia's rate of contact of Aboriginal young people with the juvenile justice system was the second highest in the country and well above the national average;
- In 2013-14, the cost of incarcerating a young person in South Australia was \$1,000 per young person per day, while the cost of community supervision was \$73 per young person, per day;
- The current cost of detention and non-custodial supervision of Aboriginal young people in South Australia is \$13.3m per year;
- If there was no over-representation, that is, if the rate of detention and community supervision of Aboriginal young people was the same as for the general young population, there would be fewer Aboriginal young people in the SA juvenile justice system, and a saving to the state budget of over \$12m per annum.

Several key inquiries and commissions have investigated issues of over-representation, providing a vastly underutilised resource for addressing the over-representation of Aboriginal people in the justice system. The interviews and voices in this report add depth to this literature and suggest a need to revisit those reports and to re-address many of the recommendations which have not been carried through systematically or effectively.

The overarching message from both the literature and the Aboriginal stakeholders interviewed was that structures and policy approaches matter: narrow justice-based responses, and the separation of juvenile justice systems from broader welfare concerns and supports, fail to address the broad social context which facilitates offending and do not provide the supports that vulnerable young people need. Most importantly, lack of self-determination in law and justice matters – that is, lack of involvement and empowerment at all levels of the system – is significant to the issue of over-representation of Aboriginal young people, both because it disempowers Aboriginal people generally and leads to the failure of government policy which attempts to address the problem (from the top-down).

A long-term commitment is needed from the State Government to strengthen the capacity of Aboriginal services in order to increase self-determination in both policy and practice and to deliver the services which will provide the necessary supports to Aboriginal young people and address the causes of offending.

Key Recommendations

South Australia's youth justice policies and practices should be informed by principles of self-determination – of involving and empowering Aboriginal people at all levels of the system.

As a first and key step toward such self-determination, the state government should develop an Indigenous Justice Agreement in partnership with local Aboriginal communities and organisations. Such an agreement would in all likelihood cover all aspects of the justice system, but also contain youth justice specific programs and policies and would be the cornerstone for all subsequent policy, practice, evaluation and monitoring.

Within this framework, Justice Reinvestment initiatives should be developed specifically targeting over-representation in the juvenile justice system.

Acknowledgements

Much of the work for this project was undertaken by Emma McArthur, postgraduate student from Flinders University as part of a Social Work Masters program placement. In consultation with SACOSS staff, Emma organised and conducted all interviews with stakeholders and wrote early drafts of this report, but responsibility for the report and any errors or omissions remains with SACOSS.

SACOSS would like to thank and acknowledge the following people who have participated in this project:

- The South Australian Aboriginal Coalition for Social Justice for consultation and feedback;
- Tauto Sansbury for providing cultural support, mentoring and feedback;
- The various stakeholders from youth justice services in South Australia who provided information, data and feedback for this project.

Research Approach

This report investigates the systemic issues that contribute to the over-representation of Aboriginal young people in the South Australian juvenile justice system. The research reviewed relevant literature, reports and policy documents from comparable jurisdictions to ascertain better models for practice and initiatives that showed promise.

Key stakeholders from the juvenile justice system were also identified and invited for interview. The interview sample consisted of 24 participants, over half of whom were Aboriginal. Some worked within government and others were from the non-government sector. Most participants were interviewed on one occasion, however, three Aboriginal participants and one non-Aboriginal participant were interviewed a second time. Feedback was sought from a number of participants during the drafting of the final report and suggestions were incorporated.

A number of consistent themes emerged from the Aboriginal stakeholders interviewed and the report gives primacy to these perspectives. This is imperative because, as will be explained further in the report, Aboriginal leadership is essential in successfully tackling the symptoms of disadvantage and marginalisation that contribute to the over-representation of Aboriginal young people in the justice system.

At this point it is necessary to note the absence in this report of voices of young Aboriginal people who are involved in the justice system. This omission is largely due to the limited timeframe of this project that did not allow for the appropriate university and state government departmental ethical obligations to be met, particularly given the sensitivity of the subject matter. This is a significant gap, given the fact that marginalisation is compounded when no attention is paid to the lived experience of those affected and several studies on juvenile justice have highlighted the need for qualitative research that gives opportunity for the voices of young people to be 'heard', in order to inform policy and practice.

Naming Convention

SACOSS recognises the diversity of Aboriginal and Torres Strait Islander peoples and that there are many different Aboriginal groups and peoples in South Australia. However, for stylistic and grammatical simplicity, 'Aboriginal people' or 'Aboriginal person' is used in this report rather than identifying any particular group or using the longer version of Aboriginal and Torres Strait Islander.

When referring to literature or documents, the term Indigenous is used where it is used in the source document.

Facts and Figures

Over-representation

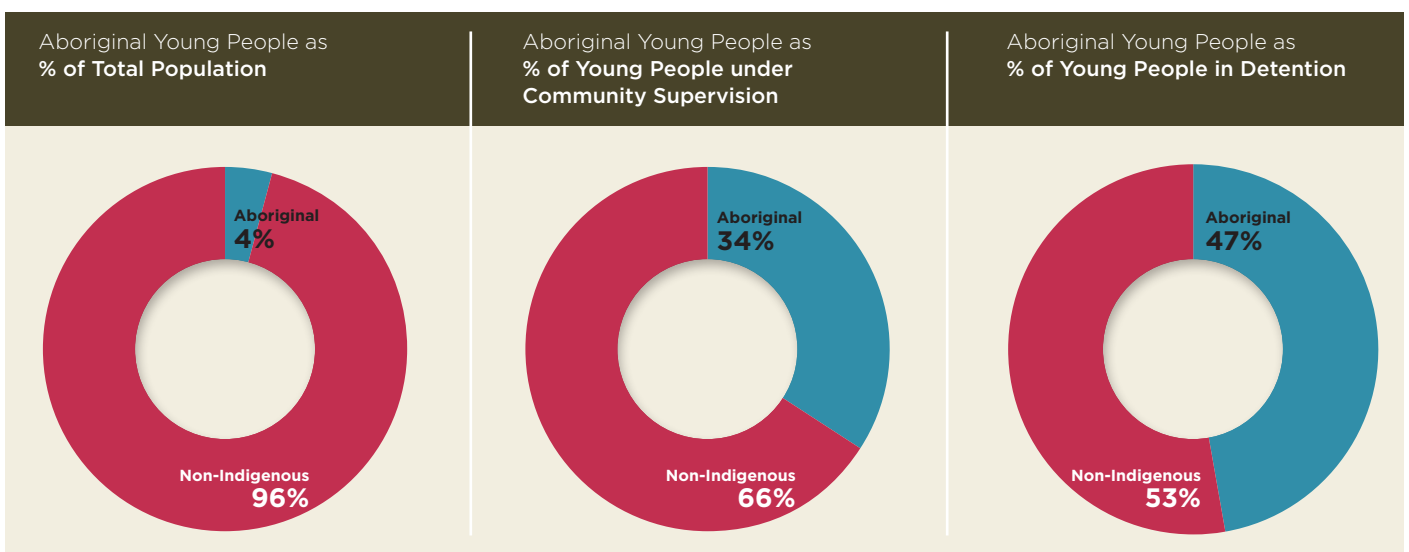
In 2011, the Federal Parliament's House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011, p.2) held an inquiry into the 'high level of involvement of Indigenous juveniles and young adults in the criminal justice system', and described the continuing over-representation of Aboriginal young people as a 'national disgrace'.

In absolute terms, the number of Aboriginal young people in the juvenile justice system in South Australia is not huge, although as a proportion of the young Aboriginal population the numbers are significant. In 2012-13, there was an average of 23 Aboriginal young people in detention each day in South Australia, with a further 97 under community supervision. This represented 46% of young people in detention and 34% of young people under community-based supervision, while Aboriginal young people comprise only 4% of the total population aged 10-17 years old (Productivity Commission, 2015, Tables 16A9, 16A10).

Taken together, this figure of an average of 120 Aboriginal young people per day in the juvenile justice system represents a rate of 1,760 per 100,000 Aboriginal young people. By comparison, the non-indigenous rate is 140.4 per 100,000. In other words, Aboriginal young people are 12.5 times more likely to be involved with the juvenile justice system than non-Indigenous young people, and 19.7 times more likely to be in detention (SACOSS calculations based on data in PC, 2015, Tables 16A.9, 16A.10). The Australian Institute of Health and Welfare (2014a) summary paints an even bleaker picture, suggesting Aboriginal young people are 14 times more likely to be under community-based supervision and 24 times more likely to be in detention than the non-Aboriginal population.

On either of these figures, there is little doubt that there is a massive over-representation of Aboriginal young people in detention, and in the juvenile justice system more generally.

Figure 1: Justice Demographics – Young People



Comparison with Adult Population

This significant over-representation of Aboriginal young people in custody mirrors (and arguably pre-figures) the trends in the adult population where there is also a chronic problem of over-representation. In 2013-14, 23% of the adult prison population in South Australia was Aboriginal with Aboriginal people being imprisoned at a rate of 2,298.5 per 100,000 Aboriginal adults. This translates to Aboriginal adults being 16 times more likely than non-Aboriginal adults to be in prison (Productivity Commission, 2015, Table 8A.4). Thus, while this rate of Aboriginal adult imprisonment is much higher than the figures cited above in relation to Aboriginal young people, the over-representation rate (that is discrepancy between Aboriginal and non-Aboriginal imprisonment rates) is higher for young people than for the adult population: Aboriginal young people are 19 times more likely to be imprisoned, by comparison with 16 times for adults.

While all these statistics are unacceptably high, the greater discrepancy in juvenile imprisonment rates is particularly alarming.

Changes Over Time

This issue of over-representation has been a long-standing one. It was most famously highlighted in the 1991 Royal Commission into Aboriginal Deaths in Custody, and while there have been some changes since then, the data tracking changes over time reveals some important trends.

The landmark *Bringing Them Home* report (HREOC, 1997) provided figures on rates of imprisonment from the mid-1990s. Table 1 compares the 1996 data from that report to the current figures.

The headline figures here are alarming as they show that, far from closing the gap, the level of over-representation has increased markedly and Aboriginal young people now make up a greater proportion of the youth population in detention than 17 years ago. However, the figures in the middle of the table show that the rates of detention – for both Aboriginal and non-Aboriginal young people – has decreased substantially so that, *despite increasing over-representation, young Aboriginal people are less likely to be in detention now than in the mid-1990s.*

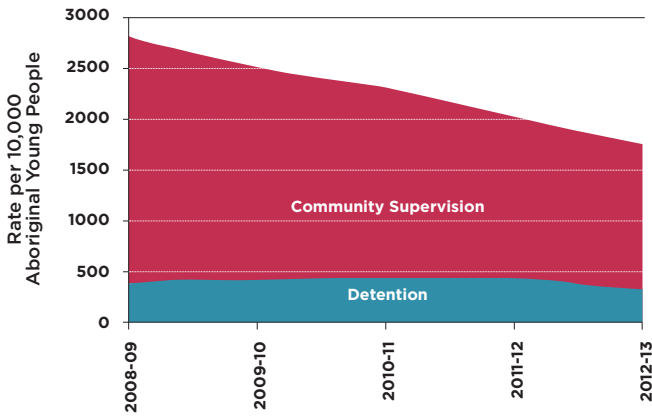
The key here is that while the rate of detention of Aboriginal young people has dropped by 40% from its 1996 level, the rate for non-Aboriginal young people has dropped much faster (by nearly 60%) – resulting in greater levels of over-representation among those fewer young people in detention. In turn, this suggests that the strategies, policies and practices that have been adopted to keep young children out of detention are working less well for Aboriginal young people than for the general population, or that there are other factors intervening to prevent a similar decrease in detention of Aboriginal young people. Either way, the figures suggest that there are significant race-based differences in outcomes that need to be addressed.

There is a similar trend for young people under community supervision. The *Bringing Them Home* report does not have relevant statistics on community supervision, but the Productivity Commission figures show that over the last 5 years the rate of young Aboriginal people in *detention* has been fairly stable (2012-13 was slightly lower although it is too early to say if this is a welcome trend or simply a one-off variation), but the rate of community supervision has declined significantly (as evident in Figure 2).

Table 1: Over-representation in Detention: Time-lapse statistics

	1996	2013	Direction
Aboriginal young people as proportion of young people in detention	22%	46%	↑
Rate of detention of young people per 100,000 of relevant population group:			
• Aboriginal	572	337	↓
• Non-Aboriginal	42	17	↓
Over-representation Ratio (ie. no. of times more likely an Aboriginal young person is to be in detention than a non-Aboriginal young person)	13.7	19	↑

Figure 2: Contact with the Juvenile Justice System - Aboriginal Young People



Source: SACOSS calculations based on data in PC (2015), Tables 16A.9, 16A.10

Figure 2 clearly shows that we are not seeing a simple swapping of community service for detention orders, but rather the overall rate of contact with the juvenile justice system has come down. This is presumably a welcome decline, but again, despite this overall decrease in the rate of community supervision, the over-representation figures are higher in 2012-13 than five years earlier. The proportion of young people on community supervision who are Aboriginal increased from 34 to 36%, while the over-representation rate went from Aboriginal young people being 11.5 times more likely than non-Aboriginal young people to be under community supervision in 2008-09 to 14.3 times in 2012-13.

The Economic Cost of Detention

Apart from the personal and social costs of keeping young people in detention, there are significant economic costs for the government and community. The Productivity Commission (2015, Table 23, 24) reported

the cost of incarceration of a young person in South Australia in 2013-14 to be \$1,000 per young person, per day. By comparison, the cost of community supervision was a fraction of this at \$73 per young person, per day.

The total cost to the South Australian Government in 2013-14 of incarcerating young people was over \$21m, while the cost of community supervision was half that (\$10.5m) for dealing with 5.7 times as many young people (Productivity Commission 2015, Tables 16A.23 & 24).

Given the proportion of those in detention and under community supervision that are Aboriginal, this equates to a cost to the SA budget of \$13.3m for keeping Aboriginal young people in detention and under community supervision.

However, the real budget cost of over-representation can be seen in Table 2. The figures are SACOSS calculations based on the Productivity Commission data, but are approximations as lack of data and data discrepancies meant that the over-representation rates from 2012-13 were used for the 2013-14 figures. However, it is unlikely the over-representation rates changed markedly and what is indisputable is that there are significant budget savings available if the rate of over-representation can be addressed.

Essentially, if there was no over-representation – that is, if the rate of detention or community supervision was the same for Aboriginal young people as for non-Aboriginal young people, there would be few Aboriginal kids in the system and most of the current \$13m spent in this area could be saved.

Again, the costs to the budget do not represent the only costs of over-representation, as these do not include costs of police, courts or potential re-offending and future welfare and prison costs. And beyond these economic costs are the far more personal and community costs borne by some of the most vulnerable and disadvantaged individuals and families in our state.

Table 2: Over-representation Costs and Potential Savings to the State Budget

	Detention	Community Supervision	Total	Potential Budget Saving
Current Total Annual Expenditure \$000	21,049	10,513	31,562	
Current Annual Expenditure on Aboriginal Young People \$000	9,682	3,574	13,256	
Annual expenditure if there was no over-representation** \$000	426	225	650	12,606

**ie. rate of detention and community supervision per 100,000 was the same for Aboriginal and non-Aboriginal young people
Source: SACOSS calculations based on data in PC (2015), Tables 16A.9, 16A.10, 23 & 24

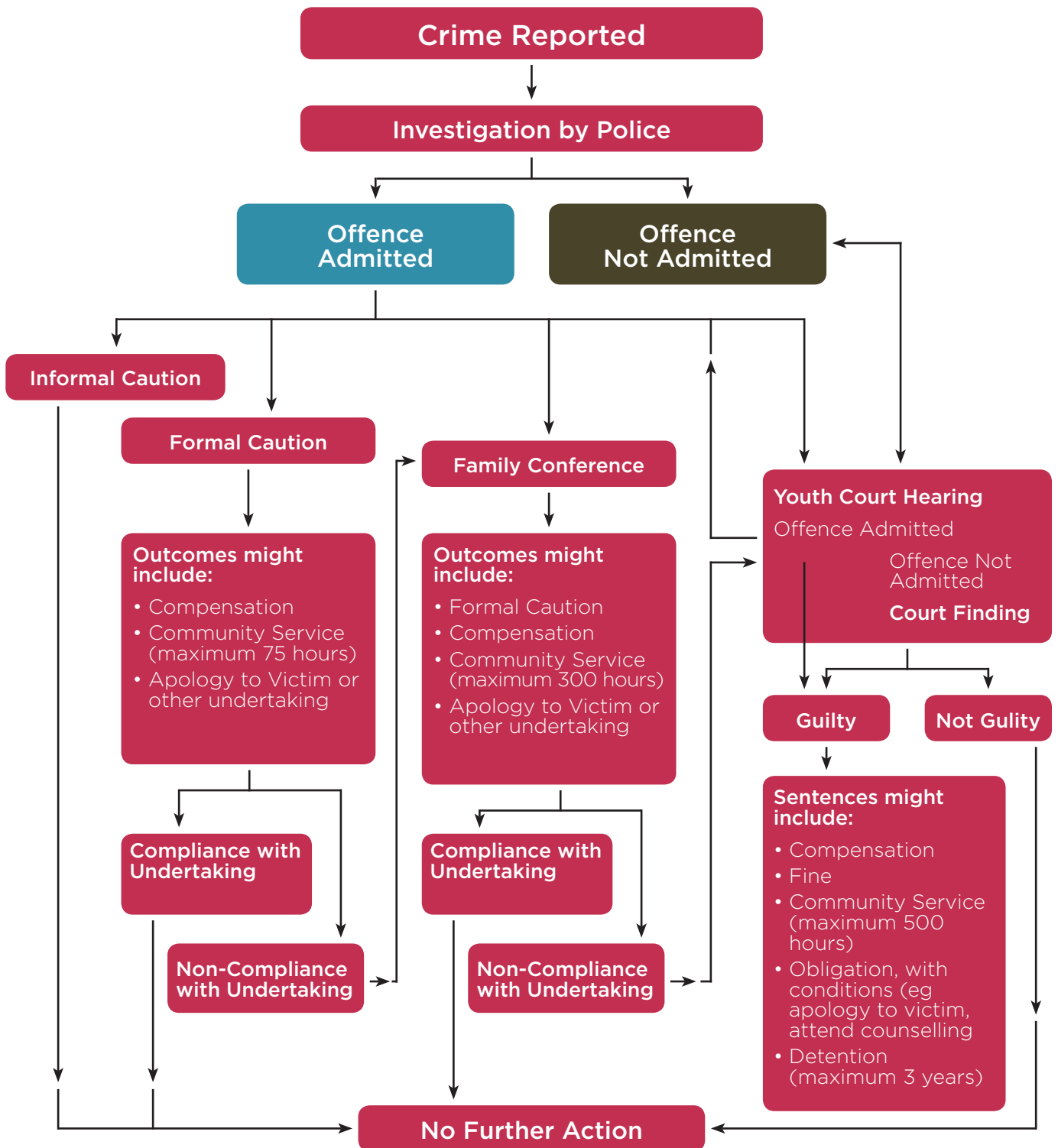
The Youth Justice System in SA

This report includes discussion and commentary on our current youth justice system in South Australia. Therefore, it is necessary to understand the current approach to youth justice in the state, and its processes and outcomes. Following directly from here is an outline of the formal processes that a young person involved with the justice system will encounter. After this, drawing specifically from the perspective of Aboriginal stakeholders on the subject of over-representation, a number of the key issues with the current youth justice system are highlighted.

The Youth Justice System

The youth justice system in South Australia is difficult to describe simply, but the Commissioner for Victims' Rights website has a diagram (reproduced in Figure 3) charting the formal processes upon the reporting of a crime.

Figure 3: Youth Justice Process



Source: Commissioner for Victims' Rights, 2015

Figure 3 shows there are a variety of options as to both process and outcomes. What is missing from the diagram is an array of community and support services which can be mobilised and form part of the Aboriginal young person's experience of the juvenile justice system, even though they may not be a formal part of that system.

Structurally this separation means that there are a number of agencies which deal with or relate to the youth justice system. The primary responsibility for Youth Justice sits in the Department of Communities and Social Inclusion, but the fact that Figure 3 is derived from the website of the Commissioner for Victims' Rights suggests that there are a number of government/statutory stakeholders. There are also a number of non-government organisations that provide relevant services, such as Aboriginal Legal Rights Movement, Red Cross, Service to Youth Council and Whitelion.

It is important to note that building a cohesive picture of juvenile justice services for Aboriginal young people at risk has been challenging due to lack of transparency, coordination and clear delineation of agency responsibility.

Current Practice – Stakeholder Reflections

There is a widely debated tension between welfare and justice responses to juvenile offending (Cunneen & White 2011; Wundersitz & Hunter 2005), but the approach on balance in South Australia has shifted toward a more justice orientated response which may undermine the system's ability to deliver holistic support.

The SA *Young Offenders Act* 1993 separated welfare and justice approaches, and moved towards a justice-oriented approach, emphasising the accountability of the young person, protection of the community and deterrence from crime (Cunneen & White 2011; Wundersitz & Hunter 2005). It is important to note, that many advocates encouraged the shift away from the welfare approaches of the 1960s and 1970s because of the belief that welfare responses had been used to justify intrusive and harmful interventions in the lives of young people and their families (Wundersitz & Hunter 2005 p.3).

The backlash against harmful welfare approaches is particularly understandable for Aboriginal people, however, the statistics included in the first section of this report show that over-representation continues to be a problem despite the shift to a justice approach. The justice approach has been somewhat successful with the decreasing numbers of young people

“There is a widely debated tension between welfare and justice responses to juvenile offending, but the approach on balance in South Australia has shifted toward a more justice orientated response which may undermine the system's ability to deliver holistic support.”

incarcerated, but the effect has been disproportionate, reducing the incarceration of non-Aboriginal young people more so than Aboriginal young people. The net result has therefore been an increase in Aboriginal over-representation. Certainly our conversations with Aboriginal stakeholders have highlighted concerns with the current approach, which many say is more punitive, and not currently effective in meeting the needs of Aboriginal young people.

Neglecting the welfare issues of children is problematic because, for example, the links between child protection and juvenile justice are significant and the same children and young people may be caught up in these two disparate systems (Cunneen & White 2011). The irony is that in one system they are labelled as a 'vulnerable child' in need of protection, and in the other they are a 'youth offender' who is held accountable and punishable for their actions. Either way, it is important to acknowledge that there may be welfare, as well as justice issues to consider when a young person has contact with the justice system.

Silos of Practice

It appears that, despite the commitment to 'joined-up services', there remain silos within the systems of government, and more needs to be done to improve coordination across services in different departments to ensure that Aboriginal young people are not being incarcerated as a result of failures to address their needs in a culturally appropriate and holistic way.

Several stakeholders interviewed for this project were concerned that Aboriginal young people under the guardianship of the Minister for Education and Child Development were not being dealt with or receiving services to meet their needs. Concerns were also raised

with regards to the narrow focus of the Youth Justice Directorate whose only responsibility is the supervision and case management of young people in the juvenile justice system.

It is worth noting at this point that many stakeholders suggested that 'silos' were an issue across the whole of the justice system (or government), not only between juvenile justice and child protection services. It was suggested that very little coordination exists between departments and services, rendering it impossible to track a young person through 'the system'.

The 2011 machinery of government changes which saw Families SA moved from the department which also had responsibility for youth justice (the Department for Families and Communities), while implemented to produce a more holistic focus on child development, has had the effect of exacerbating silos in the youth justice area.

The Youth Justice Directorate is within the Department of Communities and Social Inclusion (DCSI) and no longer sits within the department responsible for families and children (the Department for Education and Child Development or DECD), hence the concern noted above about their narrow focus. Further, the Metropolitan Aboriginal Youth and Families Services [MAYFS], after being placed within the Youth Justice Directorate, now sits within the Assets and Facilities division of DCSI. Whatever the logic behind this decision, this is likely to be an uneasy place for MAYFS to be situated and is potentially isolating for such an important government service.

MAYFS is one of the few dedicated Aboriginal teams within the government. It is responsible for delivering a range of culturally appropriate services to Aboriginal young people, including the Panyappi Mentoring program, which has been the subject of two positive evaluations (Haswell et al. 2013; Stacey 2004). The later evaluation (Haswell 2013) was conducted during the period of departmental restructuring, and concerns were raised by stakeholders interviewed for the evaluation about the impact of the split upon the services MAYFS provided. The review itself noted the importance of the services and the need for provision of greater and more stable resources.

A Punitive System

Punitive responses to juvenile offending can result in higher rates of recidivism, particularly if they involve a custodial sentence (Lynch, Buckman & Krenske 2003). Aboriginal young people are more likely to come into

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contact with the juvenile justice system at a younger age (AIHW 2012), which is also associated with an increased risk of reoffending (Cunneen & White 2011). Consequently Aboriginal young people are at greater risk of having multiple contacts with the juvenile justice system (AIHW 2012) and of becoming entrenched within the system, with long-term socioeconomic consequences.

Many stakeholders interviewed suggested that the separation of youth justice and welfare provision and the situating of those functions in different departments has resulted in an increasingly more punitive juvenile justice system. Without the balance of welfare concerns in the department, the approach focuses on the young person and their behaviour, but does not adequately address the broader structural issues that may be affecting them. Several stakeholders have stated that the Youth Justice Directorate has become 'more like a mini correctional services' system in recent years, and that there is 'little restorative justice in action or rehabilitation'.

These stakeholder observations would appear hard to reconcile with the statistics showing a declining number of people in the system, and decreased rates of detention. But the fact that these observations were made may be significant in relation to issues of over-representation. Aside from its expense, some commentators question the effectiveness of detention as a method of rehabilitation. They argue that it stigmatises young people and fails to address the underlying causes for contact with the juvenile justice system (McKenzie 2013).

Significantly, this may not be a race-neutral process because when the label of 'offender' is attached to an Aboriginal young person, it compounds the negative perspectives of adolescence that permeate discourses in modern society (Howard & Johnson 2000). A brief look at the media reporting of the so-called 'Gang of 49', gives testament to the pervasive nature these discourses (Due 2013). These discourses can have significant

implications for juvenile justice policy and practice and consequently upon the wellbeing of the young people involved, particularly on their sense of identity (Halsey 2006).

Diversions practices

Diversions practices aim to divert young people away from traditional court processes, using interventions such as police caution or family conferencing (See Figure 3). However, research has shown that Aboriginal young people are less likely to receive diversionary measures (Allard et al 2009; Snowball 2008) and tend to receive more punitive outcomes when discretionary decisions are made (Cunneen 2011 pp. 157-170). Whilst the reasons for this disparity are complex, the failure to divert Aboriginal young people is significant given the important role that diversion plays in keeping young people out of detention (HRSCATSIA 2011).

The successful use of diversionary practices for the white population may be a contributing factor to their decreasing rates of incarceration compared with Aboriginal young people who, according to the Aboriginal Legal Rights Movement [ALRM] (2014), are less likely to be diverted away from court processes. In part this is due to the requirement that to be 'diverted' in South Australia a young person must admit to the offence. Given the relatively powerless position of the young person compared with the police, and because Aboriginal young people are more likely to be arrested than reported by police for a variety of reasons, the advice given to Aboriginal young people by ALRM has been to not answer questions before the matter is diverted to court for fair hearing and representation. This is then an automatic barrier to diversionary processes under the current system.

Recent positive steps have been taken by SAPOL with the current policy being that if an admission is made then the young person will automatically be diverted with a caution or family conference (ALRM 2014). SACOSS has also been advised that a cultural training program for SAPOL is being developed with ALRM. The program is designed for new police cadets and explores the way in which they may utilise their considerable discretionary powers to facilitate the diversion for Aboriginal young people. Nevertheless stakeholders have stressed that more action still needs to be taken to increase cultural awareness and competency within government departments, SAPOL and mainstream services.

“Aboriginal young people are less likely to receive diversionary measures and tend to receive more punitive outcomes when discretionary decisions are made.”

Culturally appropriate services

Although Aboriginal law and justice issues in South Australia are, in theory, guided by the National Indigenous Law and Justice Framework (Standing Committee of Attorneys-General Working Group on Indigenous Justice 2010), the lack of Aboriginal community engagement and participation in juvenile justice in South Australia has been repeatedly raised by Aboriginal stakeholders as a concern. Issues relating to Aboriginal leadership and self-determination were identified as significant in the South Australian context by the *To Break the Cycle* report (Cappo 2007) which identified that the juvenile justice system was lacking in the following ways:

- Lack of consultation and involvement of Aboriginal communities in the formation of solutions and development of programs;
- Lack of opportunity for meaningful participation by Aboriginal young people in issues that directly affect them;
- Lack of access to culturally appropriate services for young people at risk e.g. drug and alcohol services.

Considering the significant over-representation of Aboriginal young people in detention and/or under community supervision, having so few Aboriginal people employed within the Youth Justice Directorate restricts the cultural competency of the department. That said, DCSI has exceeded its target of 2% of Aboriginal employees and in 2012-13 had 3.3% of employees identifying as Aboriginal (DCSI 2014 p.20). The DCSI Aboriginal Employment Strategy 2014-2016 has lifted the target to 4% (DCSI 2014), however, it would be appropriate to lift this target much further to reflect the proportion of Aboriginal people involved in the department's target client groups.

One stakeholder reported that there have been recent attempts to create more culturally appropriate assessment tools within the Youth Justice Directorate. For example, the implementation of 'Circles of Trust' tool aims to assist case managers with gathering information about a young person's kinship and/

or supportive relationships and to identify strengths with in their family and network. This is an important step in improving the cultural competence within youth justice and for prioritising the factors that strengthen Aboriginal social and emotional wellbeing such as kinship and connection to cultural identity. However, Aboriginal stakeholders have suggested that improvements are needed in provision of psychological services within the Youth Justice Directorate to increase the cultural appropriateness of psychological assessments for Aboriginal young people, as this can impact the transitions of the young person through the justice system. Unfortunately, the Youth Justice Psychology services declined to be interviewed for this report, so SACOSS is unable to consider if there are any current attempts by the division to increase the cultural appropriateness of their assessments and other psychological tools.

Aside from the lack of culturally appropriate services for Aboriginal young people in the justice system, is a severe underinvestment in those that do exist. The government-run Panyappi and Journey to Respect programs were examples highlighted by Aboriginal stakeholders. Also of concern is the decline in Aboriginal Youth NGO services with a loss of funding for the Kumangka Youth Service and inadequate and insecure funding of ALRM, which impacts their capacity to provide sufficient support and advocate for Aboriginal young people in the justice system.

The disinvestment in Aboriginal controlled services broadly (in Youth Justice and elsewhere) was part of the impetus to set up the South Australian Aboriginal Coalition for Social Justice [SAACSJ]. This is a group of Aboriginal community members and workers from Aboriginal services in South Australia (supported by SACOSS) who meet regularly with the purpose to build capacity within the Aboriginal community to address the social justice issues for Aboriginal people. A primary focus has been to support the creation of effective partnerships between mainstream NGOs and Aboriginal organisations through its *Aboriginal Cultural Protocols and Principles* (2015). It is hoped that this will inform and guide appropriate approaches by non-Aboriginal community organisations, and empower Aboriginal organisations, so that self-determination and community participation are possible. Ideally, these principles should be recognised by governments and incorporated into practice within government departments.

Theories of Over-representation

Having considered the current youth justice system in SA, its approach, and some of the issues from the perspective of Aboriginal stakeholders in the last section, this report will now revisit the theory about Aboriginal over-representation in justice systems, the complex factors and how and why systemic racism occurs. This allows for a fuller exploration of the issues relating to over-representation and will allow us to direct our attention to important areas for improvement, which will be the subject of the final sections of this report.

Contributing Social Factors

There appears to be a general consensus in the literature that the over-representation of Aboriginal young people in the juvenile justice system is a complex problem, related to multiple layers of disadvantage experienced by many Aboriginal people as a result of colonisation and past government policies (Baker 2001; Blagg et al 2005; Cunneen 2006; Cunneen & White 2011; Higgins & Davies 2014; Department of Justice 2003). This has led to social disconnection and loss of cultural identity for some Aboriginal communities, which place Aboriginal young people at risk of contact with the juvenile justice system (Dudgeon, Milroy & Walker 2014; Higgins & Davis 2014; Victorian Department of Justice 2003).

Similarly, the House of Representatives Standing Committee inquiry highlighted that contact with the justice system is a symptom of the chronic socioeconomic disadvantage experienced by many Aboriginal people (HRSCATSIA 2011). It also emphasised that the lives of Aboriginal young people who become involved with the justice system may be complicated by a range of factors, including:

- Intergenerational trauma
- Alcohol and drug use
- Mental illness
- Foetal alcohol spectrum disorder
- Homelessness
- Disengagement from education
- Family dysfunction, violence and separation, and
- Child abuse or neglect.

In particular, previous assimilation policies and the legacy of the Stolen Generations have left their mark on many Aboriginal families. In 1991, the Royal Commission into Aboriginal Deaths in Custody drew the nation's attention to the intergenerational trauma experienced by Aboriginal people as a result of government policies and practices. It made the following, rather sobering statement:

'The horror of a regime that took young Aboriginal children, sought to cut them off suddenly from all contact with their families and communities, instil in them a repugnance of all things Aboriginal, and prepare them harshly for a life as the lowest level of worker in a prejudiced white community.' (cited by Peeters, Hamann & Kelly 2014 p. 494)

In 1997, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families exposed the abuse and trauma, disconnection from land, culture and family, and the denial of education experienced by the Stolen Generations. The subsequent *Bringing Them Home* report again raised the issue of the over-representation in the juvenile justice system and highlighted how the criminalisation of Aboriginal young people was continuing the process of forced separation (Human Rights and Equal Opportunities Commission [HREOC] 1997).

The prominent academic Fiona Stanley (2008) has argued that forced removal may be the 'single most important antecedent factor in the many causal pathways into today's poor outcomes' for Aboriginal people. This concern extends beyond incarceration as Aboriginal children are also over-represented in statistics on children being separated from their families by both juvenile justice and child protection systems. In 2012-13 South Australian Aboriginal children comprised approximately 30% of all children in out-of-home care (AIHW 2014b p.52). A recent conference on the over-representation of Aboriginal children in out-of-home care highlighted the need for better investment in culturally appropriate early intervention and prevention programs in order to reverse this trend (Secretariat of National Aboriginal & Islander Child Care [SNAICC] 2014)..

“...contact with the justice system is a symptom of the chronic socioeconomic disadvantage experienced by many Aboriginal people...”

Systemic Racism and Discrimination

Conversations with stakeholders have suggested revisiting the recommendations of both the Royal Commission into Aboriginal Deaths in Custody (1991), and the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Commonwealth of Australia 1997), paid considerable attention to the ongoing effects of colonisation upon Aboriginal communities, and highlighted the systemic disadvantage and institutional racism experienced by Aboriginal people. In 2005, a Victorian study into systemic racism and over-representation highlighted various overlapping areas of systemic racism and discrimination within the justice system (Blagg et al 2005 pp.15-16). Clearly this a complex issue, however a number of systemic factors have been highlighted that may contribute to over-representation such as (HRSCATSIA 2011):

- Over-policing of Aboriginal communities;
- Lack of cultural competence;
- Language barriers;
- Poor police and community relations;
- Police decision making in the diversion process;
- Lack of appropriate diversionary programs;
- Lack of adequate legal representation;
- Lack of community engagement and participation; and,
- Lack of culturally specific services.

The role of systemic racism in the over-representation of Aboriginal people in the justice system is something that is widely debated (AIHW 2012; Allard 2011; Blagg et al 2005; Cultural and Indigenous Research Centre [CIRCA], 2013; Cunneen, 2006; Richards, Rosevear & Gilbert, 2011; Snowball, 2008). It is worth pointing out that systemic racism does not concern the views or actions of individuals, but rather the unequal impact of laws, policies or practices, which is reflected in outcomes and results, rather than intentions (Blagg et al, 2005, p.12; Dudgeon et al 2014). This is not to say that individual racism does not impact Aboriginal people, but the point here is to highlight the systemic factors that discriminate against Aboriginal people.

The To Break the Cycle (2007) report into repeat offending by the South Australian Commissioner for Social Inclusion noted certain tensions in the relationships between the Aboriginal community and the police in South Australia, as well as the effects of police surveillance on relationships between the police and young people (Cappo 2007). From our conversations with stakeholders, it is apparent that despite considerable effort on both sides, these tensions still exist. Given the long legacy of mistrust between the police and Aboriginal people as a result of past policing practices (Cunneen & White 2011), and the fact that the police are the first point of contact with the justice system, further effort must be made to overcome barriers to effective working relationships between Aboriginal communities and the police.

It can be seen from the information contained in this report and other key reports and inquiries, that in order to address the over-representation of Aboriginal young people in the justice system, changes need to occur at a systemic level in order to increase the cultural safety of Aboriginal young people within the justice system. In other words, the cultural competency of the system at all levels needs to be increased to reduce the effects of 'systemic whiteness'.

Self-determination as a Central Concept of Justice

In 2009, The National Indigenous Law and Justice Framework was endorsed by the Standing Committee of Attorneys-General. It is described as a national approach 'to addressing serious and complex issues that mar the interaction between Aboriginal and Torres Strait Islander Peoples and the justice system in Australia' (Standing Committee of Attorneys-General Working Group in Indigenous Justice 2010 p.4).

This framework contains key principles that seek to improve justice systems across Australia in order to eliminate all forms of systemic racism and disadvantage, reduce over-representation, increase community safety, strengthen Aboriginal communities and improve social and emotional wellbeing. Importantly, the framework highlights that this cannot be achieved without genuine and effective involvement of Aboriginal people at all levels of the system. It also emphasises the importance of the report of the RCIADIC (1991) as a 'foundation document' for guiding policy and practice in order to address the systemic issues that discriminate against Aboriginal and Torres Strait Islander people.

The RCIADIC (1991) provided a comprehensive set of recommendations that aimed to reduce over-representation. In conversations with stakeholders, many people pointed to the failure to adequately implement the recommendations of the Royal Commission as significant in the continuing issue of over-representation in the juvenile justice system. The importance of the RCIADIC was highlighted in the 1997 *Bringing Them Home* report (Commonwealth of Australia 1997 p.491), which stated:

'Recommendation 42: That to address the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people the Council of Australian Governmentspursue the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody which address underlying issues of social disadvantage'

The recommendations in the *Bringing Them Home* report proposed a national legislative framework to implement self-determination and increase Aboriginal autonomy in child welfare and juvenile justice issues (Cunneen & White 2011). However, as with the recommendations from the RCIADIC, the response from government appears to have been inadequate (Cunneen & White 2011; Tilbury 2009).

Self-determination in the justice system

Both the RCIADIC (1991) and the *Bringing Them Home* (Commonwealth of Australia 1997) reports suggested that a measure of self-determination was needed in order to decolonise the 'white' institutions of Australian society and in addressing over-representation. The right to self-determination is recognised in a number of key documents, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the United Nations Declaration on the Rights of Indigenous Peoples to which Australia is a signatory.

A lack of self-determination in juvenile justice services across Australia has been highlighted as a fundamental systemic barrier to progressive reform. Without avenues to understand and engage with the powerful juvenile justice system, Aboriginal young people may suffer from marginalisation and stigmatisation, and in some cases this could be considered as denial of their fundamental human rights (Cunneen & White 2011).

The 2011 House of Representatives Standing Committee inquiry into the over-representation of Aboriginal young people in the justice system (HRSCATSIA 2011, pp.ix-x) recognised the importance of engagement and empowerment of Aboriginal people and communities to drive change in a respectful manner:

"To effect change in the area of Indigenous disadvantage and disproportionate incarceration rates, the following principles must be applied:

- *Engage and empower Indigenous communities in the development and implementation of policy and programs*
- *Address the needs of Indigenous families and communities as a whole*
- *Integrate and coordinate initiatives by government agencies, non-government agencies, and local individuals and groups*
- *Focus on early intervention and the wellbeing of Indigenous children rather than punitive responses, and*
- *Engage Indigenous leaders and elders in positions of responsibility and respect."*

Community participation and engagement through partnerships between justice agencies and Aboriginal communities in the development, implementation and evaluation of Aboriginal justice initiatives, are also key principles under the National Indigenous Law and Justice Framework.

Aboriginal Participation in SA

Despite engagement, empowerment and self-determination being recognised as key to fundamental change, our current systems are performing poorly in these areas. This section considers some of the important areas where better engagement could be achieved. Most relate to Aboriginal justice generally rather than youth-specific programs or initiatives, but they include youth justice components and/or have implications for the juvenile justice system.

Aboriginal Justice Action Plan 2008-2014

The Aboriginal Justice Action Plan [AJAP] 2008-2014 was developed in response to the To Break the Cycle and Children on APY Lands Commission of Inquiry reports. The plan was linked to South Australia's Strategic Plan (SASP) targets and was described on the South Australian Attorney-General's website (Government of South Australia 2014) as:

'A plan identifying the strategic directions, roles and responsibilities of Justice agencies and opportunities for cross-agency collaboration, which will improve criminal and social justice outcomes for Aboriginal South Australians'

Many of the Plan's priority areas and targets which are taken directly from the SASP are worthwhile. The Aboriginal Action Plan shows recognition of the broad scope of justice issues for Aboriginal people, including targets to reduce victim reported crime, promote positive interaction between Aboriginal Youth and Police but also implementing 'Community Development approach[es]... to enable Justice agencies to work in partnership with the Aboriginal community to develop locally based solutions to law and justice concerns' (Government of South Australia 2009 p.4).

The Aboriginal Justice Action Plan is now out of date and there does not seem to have been an evaluation of its effectiveness. Also, the South Australian Government has made not announcements as to what will replace the Aboriginal Justice Action Plan. This gap in strategic direction is concerning. However, it also presents an opportunity for new work in this area of Aboriginal engagement.

The Justice Reform Agenda

Deputy Premier and State Attorney-General, John Rau, has made a commitment in South Australia to break down the silos in the justice system under the justice reform portfolio. This has involved establishing a Criminal Justice Reform Council as an advisory body on justice sector reform matters. The council consists of senior representatives from:

- Department of Communities and Social Inclusion
- Correctional Services
- SA Police
- Courts Administration Authority
- Department of Public Prosecutions
- Legal Services Commission.

The Minister for Correctional Services and Minister for Police also sit on the Council chaired by the Attorney-General. To date there has been no Aboriginal representation on this Council, which is concerning given the over-representation of Aboriginal people in the justice system. SACOSS understands that Aboriginal Legal Rights Movement has requested a position on the council but was refused.

In addition, ALRM has advised that it has repeatedly tried to meet with the South Australian Attorney-General to discuss high incarceration rates but to date has been unsuccessful in achieving this. This sends a concerning message to Aboriginal stakeholders, many of whom expressed a frustration at the lack of genuine engagement by the State Government in this area.

Aboriginal Justice Advisory Committees

Aboriginal Justice Advisory Committees [AJAC] were established across Australia in response to the recommendations of the RCIADIC (1991). They included representatives of local Aboriginal communities who would advise state and territory governments on law and justice issues and to monitor the implementation of the Royal Commission recommendations (Allison & Cunneen 2013). In South Australia, the AJAC has had several incarnations - the latest being the Aboriginal Justice Consultative Committee. However, the Committee is no longer an independent community based committee as was first conceptualised, which is a significant loss in its current format.

More recently, the Youth Justice Aboriginal Advisory Committee [YJAAC] was created by the South Australian Government in order to advise the Youth Justice Directorate on Aboriginal juvenile justice matters and increase the cultural competency of services. However, the YJAAC is not elected by the community and therefore lacks the autonomy of the original AJACs, and stakeholders have stated that there has been a failure by the government to fully utilise this committee or use it in an appropriate way. For example, ALRM has complained about the infrequency of meetings which limits its capacity to be an effective tool for change (ALRM 2014). ALRM also advises that there have been significant changes to the YJAAC which will no longer meet directly with the Director of Youth Justice. This decision appeared to occur without any consultation with the committee.

Future Directions for South Australian Justice Policy and Practice

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Given the importance of self-determination in any strategy addressing Aboriginal justice issues – of involving and empowering Aboriginal people at all levels of the system, the primary recommendation of this report is that South Australia’s youth justice policies and practices should be informed by principles of self-determination.

To make this happen, a long-term commitment is needed from the state government to strengthen the capacity of Aboriginal services in order to increase self-determination in both policy and practice, and to deliver the support services which will provide the necessary supports to Aboriginal young people and address the causes of offending.

Under this over-arching principle and approach, a number of system improvements, initiatives, and programs are possible and have been raised by stakeholders. Two well recognised strategies or tools for justice system reform that could assist in redressing the over-representation of Aboriginal people in the youth and adult justices systems are discussed below and form the secondary recommendations of this report.

Indigenous Justice Agreements

A key first step toward implementing self-determination, and which has significant potential for tackling some of the systemic issues in the justice system for Aboriginal people, is the creation of an Indigenous Justice Agreement [IJA]. An Indigenous Justice Agreement is a negotiated agreement between government and peak Aboriginal bodies and should guide the development of justice policies and programs.

While not youth-specific, it is anticipated that any such agreement would include youth-specific components and programs and would impact on rates of over-representation in the juvenile justice system.

The IJA concept was formulated in 1997, at a national summit of stakeholders from justice systems across Australia in response to continuing high rates of incarceration of Aboriginal people, post RCIADIC. The summit recommended that state and territory governments develop bilateral agreements on justice issues which would contain targets aimed at reducing over-representation and address the following:

- Economic, and cultural issues;
- Justice issues;
- Customary law;
- Law reform; and,
- Government funding levels for programs (Allison & Cunneen 2013 p.2).

The intention of IJAs is to improve the delivery of justice programs for Aboriginal people, and significantly they should be developed through a process of partnerships and negotiation between governments and the relevant state and territory Aboriginal organisations and

“An Indigenous Justice Agreement is a negotiated agreement between government and peak Aboriginal bodies and should guide the development of justice policies and programs.”

representation structures. Several states subsequently developed IJAs over the following 10 years, and evidence suggests that IJAs have been important for creating a consistent strategic vision for law and justice issues and strengthening partnerships between government and Aboriginal organisations (Allison & Cunneen 2013). In addition, IJAs have potential to provide ongoing Aboriginal ownership of, and participation in, strategic policy development (Allison & Cunneen 2013).

An independent evaluation of the second Victorian Aboriginal Justice Agreement [VAJA2], which is considered one of the most successful IJAs in Australia, showed that it had improved justice outcomes for Aboriginal people and had reduced the number of contacts between young people and the police (Nous Group 2012). Whilst recognising the complexity of the issues, the evaluation also showed that justice agencies were more responsive and inclusive of the needs of the Aboriginal community and that community justice responses had been strengthened as a result of VAJA2. Victoria has now developed the third phase of this agreement, which seeks to build upon the achievements of the previous two agreements.

Despite making a commitment to develop an IJA at the 1997 summit (Allison & Cunneen 2013), South Australia is yet to action this commitment. As mentioned earlier in this report, in 2008 the state government implemented an Aboriginal Justice Action Plan. But it is important to note that the plan lacked vital components of an IJA. The Aboriginal Justice Action Plan was not a negotiated agreement between Aboriginal communities and the government, rather it was a ‘top down’ approach.

The South Australian Government has made no recent announcements regarding its intention to develop an IJA in South Australia in the near future. Yet, it would seem to be an important consideration in light of the decline in Aboriginal-controlled services in recent years.

In addition to the benefits of proper engagement with Aboriginal people and communities, an IJA certainly has the potential to facilitate a cohesive longer term and consistent strategic direction for government policy. This lack of strategic direction and long-term vision in Aboriginal law and justice matters has been raised as a concern in conversations with stakeholders, as well as the need for a bipartisan approach that is less dependent on election cycles. It is worth noting here that Aboriginal involvement in developing government policy was a recommendation in the Smart Justice report by Judge Peggy Fulton Hora (2010), Adelaide Thinker in Residence.

Given the strong sentiment expressed by stakeholders that the state government is paying 'lip service to the concept of engaging and empowering Aboriginal communities', it is possible that an IJA has the potential to be a step in the right direction towards self-determination for Aboriginal communities in law and justice issues. An IJA may also provide a method of improving the coordination of services for Aboriginal people in the justice system – something that stakeholders have suggested is lacking. It is important to note however, that these agreements can only be effective if they influence practice as well as policy. They must contain a framework for effective evaluation and monitoring to ensure they do not become another obsolete policy document.

An IJA in South Australia would be a significant step towards a more culturally competent and less discriminatory justice system in this state. It would provide a way for Aboriginal communities to hold the State Government accountable to its commitment to reducing the over-representation of Aboriginal people in the justice system. Moreover, the principles within an IJA of empowering local Aboriginal communities to define and find solutions to law and justice issues are the key to finding solutions that are supported by the Aboriginal community, and are therefore more likely to produce the best outcomes possible.

Justice Reinvestment

Within the framework of self-determination and in conjunction with an IJA, Justice Reinvestment initiatives should be developed specifically targeting over-representation in the juvenile justice system.

Originating in the United States but now being considered in Australia and elsewhere, Justice Reinvestment aims to divert a portion of funds spent on

incarceration to local community initiatives where it is invested in early intervention and prevention services, and to address the underlying issues that lead to involvement in the criminal justice system. This approach has been called for by Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda in the 2014 Social Justice and Native Title Report, as a way to reduce Aboriginal prison populations and stem the flow of Aboriginal young people entering the criminal justice system (Gooda 2014).

The Justice Reinvestment Senate Inquiry (Commonwealth of Australia 2013) identified four distinct stages in Justice Reinvestment: demographic/justice mapping and analysis of data, development of options, implementation and evaluation. Justice mapping involves cross-referencing geographic crime and justice data with data about social disadvantage and service gaps. This mapping allows policy makers to identify geographical areas or communities where concentrated numbers of people who offend come from and/or return to after incarceration. When communities are identified the next stage involves the development of options or strategies to reduce offending and incarceration of people in this location.

There may be technical matters to be considered, for example, changing how bail and parole is managed or providing further alternatives to incarceration in order to reduce the number of people who are incarcerated due to offending. Typically, community development approaches are used to focus on issues such as poverty, education, health, housing and employment. These should be place-based initiatives that take into account local issues and community assets. The implementation stage involves assessing the economic savings that will be produced by the local community initiatives developed. The financial savings are then reallocated to communities to facilitate the local community initiatives. During implementation and ongoing is the final stage which involved rigorous monitoring and evaluation in order to ensure the desired outcomes are achieved.

The significant value of Justice Reinvestment resides in its recognition of underlying contributory factors relating to social disadvantage and the primary and preventative approaches aimed and preventing offending pathways. The emphasis on the need for place and community based tactics means there is great potential for Justice Reinvestment initiatives to be developed and owned by community members. For Aboriginal people and communities this could provide some avenues for engagement, empowerment and self-determination.

In the lead-up to the 2014 state election, the state government committed to developing two Justice Reinvestment projects (Weatherill 2014). However, progress has been slow and the process problematic. One of the projects identified relates to Aboriginal people, but it is currently stalled waiting on federal funding. Perhaps more importantly, there have been a range of stakeholder complaints about the whether the project really fits a Justice Reinvestment framework, and about the lack of consultation and co-design of the project. In this context, it cannot be stressed enough that Justice Reinvestment will only work if it involves genuine community empowerment and self-determination. Otherwise, it is destined to become simply the latest fashionable but failed, top-down policy on Aboriginal people. This in turn again highlights the importance of an Indigenous Justice Agreement to provide the right framework for a Justice Reinvestment initiative, and ideally any such project would be mandated under an IJA.

Stakeholder Ideas – Justice System Improvements

In addition to the overarching recommendations above, there were a number of suggestions made by stakeholders during the consultation process for this report that would be important system improvements. While many of these may be dealt with through the processes of an Indigenous Justice Agreement, and appropriately so, we thought it would be helpful to outline the suggestions here.

1. Increase Aboriginal self-determination in law and justice

1.1 The state government should re-establish independent Aboriginal justice advisory committees to provide a method for consultation and feedback between the government and community in law and justice issues.

1.2 The state Attorney-General should ensure that the principles of the National Indigenous Law and Justice Framework are applied across all justice agencies, including youth justice.

1.3 The state government should expand the Criminal Justice Reform Council in order to involve key Aboriginal stakeholders such as ALRM in the justice reform agenda.

1.4 The State Government should partner with local Aboriginal communities to implement a justice reinvestment approach and develop ‘grass roots’ programs for young Aboriginal people at risk.

1.5 The Youth Justice Directorate to set a goal of Aboriginal staffing levels equivalent to level of representation of Aboriginal young people in the justice system to be met within five years (at present 36%).

1.6 Develop, resource and/or expand Aboriginal run units within DCSI (eg. MAYS).

1.7 Creation of a Youth Nunga Court in Adelaide and at Elizabeth.

2. Systemic improvements for Aboriginal young people

2.1 The state government should implement a cross-government initiative to facilitate coordination and joint activity including youth justice, child protection and other services for Aboriginal young people, in order to reduce the effects of ‘silos’ within the system.

2.2 The diversionary system should be independently reviewed with particular consideration to maximising the number of Aboriginal young people being diverted. Terms of reference should include:

- The need for an admission of guilt
- Access in regional and rural areas
- Applicability and effectiveness of existing programs for Aboriginal young people.

2.3 Ensure all police officers receive culturally appropriate training relating to their use of discretionary powers to ‘report’ (as opposed to arrest) Aboriginal young offenders.

2.4 Regular cultural competency training for all staff within SAPOL in order to facilitate the creation and enhancement of relationships between SAPOL and Aboriginal communities.

2.5 Establishment of an Aboriginal supported bail accommodation and other support services to address the high numbers of Aboriginal young people on remand.

Conclusion

Incarceration of children and young people is clearly an expensive and ineffective method of dealing with juvenile offending. For Aboriginal young people, the consequence of increasingly punitive approaches to juvenile offending may be long-term involvement in the criminal justice system. For these reasons the high level of Aboriginal young people held on remand is particularly concerning.

The over-representation of Aboriginal young people in the justice system is a deeply complex issue. During the process of conducting this research, it was clear that key Aboriginal stakeholders understand the many issues contributing to the continuing over-representation, as well as where the solutions may lie. These same stakeholders are frustrated by the state government's failure to develop genuine partnerships in this area, or to recognise the need for multi-level engagement with the Aboriginal community to achieve the goal of sustainable change.

However, the current climate of justice reform has the potential to provide opportunity for improvements to be made to the justice system that may reduce the over-representation of Aboriginal people – both youth and adults. But over-representation and cultural competency improvements will be difficult to achieve if Aboriginal people are excluded from reform processes.

The effects of 'silos' within the criminal justice system appear to be compounded for young people because they may cross over and be involved with multiple services systems, for example, juvenile justice and child protection. More effort is needed to provide a holistic response aimed at meeting the individual needs of the young person and to address the issues underlying their involvement in the justice system. Culturally competent practice can only be achieved if Aboriginal people are involved in developing policy, services and programs for Aboriginal young people.

In order to address the continuing over-representation of Aboriginal young people in the justice system, the South Australian Government must revisit the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* and the *Bringing Them Home* report, as well as the *United Nations Declaration on the Rights of Indigenous Peoples*.

Using the *National Indigenous Law and Justice Framework* as a guide, the state government could make a firm and clear commitment to reducing the over-representation of Aboriginal young people in the justice system by creating genuine partnerships with Aboriginal communities and upholding the principle of self-determination in policy and practice. A South Australian negotiated Indigenous Justice Agreement would provide an opportunity to engage Aboriginal people at all levels of policy and practice, and under this framework a Justice Reinvestment approach would provide opportunities to reduce crime, and the costs associated, by engaging local communities.

Most fundamentally though, while the recommendations in this report arise from research and interviews with key stakeholders in the system, they are all tentative in that they remain the product of a research report written by three non-Aboriginal people. The need for ongoing engagement between government and Aboriginal communities, including Aboriginal young people themselves, remains

“The state government could make a firm and clear commitment to reducing the over-representation of Aboriginal young people in the justice system by creating genuine partnerships with Aboriginal communities and upholding the principle of self-determination in policy and practice.”

References

- Aboriginal Legal Rights Movement (2014). *Annual Report*, ALRM, Adelaide.
- AIHW- see Australian Institute of Health and Welfare.
- Allard, T (2011). 'Indigenous young people and the justice system- Establishing an evidence base', in A Stewart, T Allard & S Dennison (eds), *Evidenced based policy and practice in youth justice*, Federation Press, Sydney, NSW.
- Allard, T, Stewart, A, Chrzanowski, A, Ogilvie, J, Birks, D, & Little, S (2009). Police diversion of young offenders and Indigenous over-representation, Criminology Research Council, Australian Institute of Criminology, Australian Government, Canberra.
- Allison, F & Cunneen, C (2013). 'Indigenous justice agreements', *Current Initiatives*, Paper 4, June 2013, Indigenous Justice Clearing House, Australian Government, Canberra <http://www.indigenousjustice.gov.au/initiatives/initiative004.pdf>
- ALRM- see Aboriginal Legal Rights Movement
- Australian Institute of Health and Welfare (2012). *Indigenous young people in the juvenile justice system 2010-2011*, Bulletin no. 109, cat. No. AUS 164, Canberra.
- Australian Institute of Health and Welfare (2014a). *South Australian youth justice supervision in 2012-2013*, Youth Justice Fact Sheet no.22, cat no. JUV 37, Canberra.
- Australian Institute of Health and Welfare (2014b), *Child protection Australia: 2012-13*. Child Welfare series no.58. cat no. CWS 49. Canberra.
- Baker, J (2001). 'The scope for reducing indigenous imprisonment', *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, no.55, March.
- Bennett, B (2013). 'The importance of Aboriginal and Torres Strait Islander history for social work students and graduates', in B Bennett, S Green, S Gilbert & D Bessarab (eds), *Our voices: Aboriginal and Torres Strait Islander social work*, Palgrave Macmillan, South Yarra, Vic.
- Blagg, H; Morgan N; Cunneen, C & Ferrante, A (2005). *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System*, report to Equal Opportunity Commission <http://www.indigenousjustice.gov.au/db/publications/274886.html>
- Cappo, D (2007). *To Break The Cycle: prevention and rehabilitation responses to serious repeat offending by young people*, Government of South Australia.
- Cashmore, J (2011). 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents', *Family Matters*, No. 89, Australian Institute of Family Studies, Australian Government, Canberra, <http://www.aifs.gov.au/institute/pubs/fm2011/fm89/fm89d.html> (Accessed 11th December 2014)
- Commissioner for Victim's Rights (2015). 'Chart on the Juvenile Justice System' [Website] http://www.voc.sa.gov.au/images/juvenile_chart.jpg
- Commonwealth of Australia (1997). *Bringing them Home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf
- Commonwealth of Australia (2013). *Value of a justice reinvestment approach to criminal justice in Australia*, The Senate Legal and Constitutional Affairs References Committee Report, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/-/media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/justice_reinvestment/report/report.ashx
- Cultural and Indigenous Research Centre Australia (2013). *Evaluation of Indigenous Justice Programs Project A: Aboriginal and Torres Strait Islander Sentencing Courts and Conferences*, Australian Government Attorney-General's Department, <http://www.ag.gov.au/LegalSystem/Legalaidprogrammes/NationalIndigenousLawandJusticeFramework/Documents/Project%20A%20Sentencing%20Courts%20and%20Conferences.pdf>

Cunneen, C (2006). 'Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues', *Current Issues in Criminal Justice*, vol. 17, no. 3, pp.329-346.

Cunneen, C & White, R (2011). *Juvenile justice: Youth and crime in Australia*, 4th edn, Oxford University Press, Melbourne, Victoria.

DCSI- see Department for Communities and Social Inclusion

Department for Communities and Social Inclusion (2014). *Annual Report 2013-14*, Government of South Australia. Adelaide, http://www.dcsi.sa.gov.au/__data/assets/pdf_file/0012/21207/DCSI-Annual-Report-2013-14-full-colour.pdf

Dudgeon, P, Milroy, H & Walker, R (eds) (2014). *Working Together: Aboriginal and Torres Strait Islander Mental health and wellbeing Principles and Practice*, 2nd edn, Telethon Kids Institute, Kulunga Aboriginal Research Development Unit, University of Western Australia, Department of the Prime Minister and Cabinet, Australia.

Dudgeon, P, Wright, M, Paradies, Y, Garvey, D & Walker, I (2014). 'Aboriginal social, cultural and historical contexts', in P Dudgeon, H Milroy & R Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental health and wellbeing Principles and Practice*, 2nd edn, Telethon Kids Institute, Kulunga Aboriginal Research Development Unit, University of Western Australia, Department of the Prime Minister and Cabinet, Australia.

Due, C (2013). 'You Need to Protect the Community': Representations of Young Indigenous Men in Mainstream News Media Coverage of the 'gang of 49', *International Journal of Critical Indigenous Studies*, Volume 6, Number 2 http://www.kooriweb.org/foley/resources/media/volume6_number2_13due.pdf

Fulton Hora, P (2010). *Smart Justice: Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System*, Department of Premier and Cabinet, Government of South Australia. Adelaide, http://www.thinkers.sa.gov.au/lib/pdf/Hora/smartjustice_LO.pdf

Gooda, M (2014). *Social Justice and the Native Title Report 2014*, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission <https://www.humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf>

Government of South Australia. (2014). *Attorney-Generals Department* [Website] <http://www.agd.sa.gov.au/about-agd/what-we-do/publications>

Government of South Australia (2009). *Department for Justice Aboriginal Action Plan 2009-2014*, <http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/Plans%20-%20strategic%20business%20-%20and%20Reports/aboriginal-justice-action-plan.pdf>

Halsey, M (2006). 'Negotiating conditional release: juvenile narratives of repeat incarceration', *Punishment and Society-International Journal of Penology*, vol. 8, no. 2, pp. 147-181.

Haswell, MR, Blignault, I, Fitzpatrick, S & Jackson Pulver, L (2013). *The Social and Emotional Wellbeing of Indigenous Youth: Reviewing and Extending the Evidence and Examining its Implications for Policy and Practice*, Muru Marri, UNSW Sydney.

Higgins, D & Davis, K (2014). *Law and justice: prevention and early intervention programs for Indigenous youth*, Resource sheet no. 34, Closing the Gap Clearinghouse, Commonwealth of Australia, Canberra.

House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011). *Doing time - Time for Doing. Indigenous youth and the justice system*, The Parliament of the Commonwealth of Australia, http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/sentencing/report.htm

Howard, S & Johnson, B (2000). 'Resilient and Non-Resilient Behaviour in Adolescents', *Trends and issues in crime and criminal justice*, Australian Institute of Criminology, No. 183.

- Holderhead, S (2014). 'Police call for mandatory laws to keep young repeat offenders behind bars longer', *The Advertiser*, September 20th 2014, <http://www.adelaidenow.com.au/news/south-australia/police-call-for-mandatory-laws-to-keep-young-repeat-offenders-behind-bars-longer/story-fni6uo1m-1227075685543> (Accessed 11th December 2014)
- HREOC- see Human Rights and Equal Opportunities Commission
- HRSCATSIA- see House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs
- Human Rights and Equal Opportunities Commission (1997). *Bringing Them Homes: the 'Stolen Children'* report, Commonwealth of Australia, Canberra.
- Law Council of Australia (2014). *Policy Discussion Paper on Mandatory Sentencing*, Canberra, http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/discussion%20papers/MS_Discussion_Paper_Final_web.pdf
- Lynch, M, Buckman, J & Livingstone, M (2003). 'Youth justice: criminal trajectories', *Trends & issues in crime and criminal justice*, No. 265, Australian Institute of Criminology, http://www.aic.gov.au/media_library/publications/tandi2/tandi265.pdf
- McKenzie, J, (2013). *Insights from the coalface: The value of justice reinvestment for young Australians*, Australian Youth Affairs Coalition, NSW, <http://www.ayac.org.au/uploads/JRinsightsfromcoalface.pdf>
- Nous Group (2012). *Evaluation of the Aboriginal Justice Agreement: Phase 2*, Victorian Dept. of Justice.
- South Australian Aboriginal Coalition for Social Justice (2015). *Cultural Protocols and Principles Guide*, South Australian Council of Social Service, Adelaide. <http://sacoss.org.au/sites/default/files/public/documents/SA%20ACSJ%20Protocols%20and%20Principles%20final%20endorsed.pdf>
- Tomaino, J (n.d.) *Aboriginal (Nunga) Courts*, Office of Crime Statistics and Research (OSCAR), Information Bulletin #39, Government of South Australia, http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf
- Peeters, L; Hamann, S & Kelly, K (2014). 'The Marumali Program: Healing for Stolen Generations', in P Dudgeon, H Milroy & R Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental health and wellbeing Principles and Practice*, 2nd edn, Telethon Kids Institute, Kulunga Aboriginal Research Development Unit, University of Western Australia, Department of the Prime Minister and Cabinet, Australia.
- Productivity Commission (2015). *Youth Justice Services*, Report on Government Services, Chapter 16, Commonwealth of Australia, Canberra, <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/youth-justice#results>
- Richards, K , Rosevear, L & Gilbert, R (2011). 'Promising interventions for reducing Indigenous juvenile offending', *Indigenous Justice Clearing House*, Brief 10, March.
- Royal Commission into Aboriginal Deaths in Custody (1991), *National reports [Vol 1-5], and regional reports*, Australian Government Publishing Service, Canberra.
- Secretariat of National Aboriginal & Islander Child Care (2014). *Family Matters – kids safe in culture not in care*, South Australia Issues Paper, http://www.snaicc.org.au/_uploads/rsfil/03336.pdf
- Snowball, L (2008). 'Diversion of Indigenous juvenile offenders', *Trends and Issues in crime and criminal justice*, no.355, June, Australian Institute of Criminology, Australian Government, Canberra.
- Stacey, K (2004). *Panyappi Indigenous Youth Mentoring Program: external evaluation report*, Metropolitan Aboriginal Youth and Family Services, Department for Communities and Social Inclusion, South Australia, http://www.youthmentoringvic.org.au/file/file/Members/Evaluation/Evaluation%20Report_Indigenous%20Youth%20Mentoring%20Approved.pdf
- Standing Committee of Attorneys-General Working Group on Indigenous Justice (2010). *National Indigenous Law and Justice Framework, 2009-2015*, Attorneys-General Department, Commonwealth of Australia, Canberra.
- Stanley, F, (2008). *The Greatest Injustice: why we have failed to improve the health of Aboriginal people*, Annual Hawke Lecture, 6th November 2008, Adelaide.
- Stewart, AL, Livingstone, M & Dennison, S (2008). 'Transitions and turning points: Examining the links between child maltreatment and juvenile offending', *Child Abuse & Neglect*, vol. 31, pp. 51-66.
- Stockley, C (2013). 'The role of out-of-home-care in criminal justice outcomes', *Insight Magazine Online*, Victorian Council of Social Service, Issue 8, <http://vcoss.org.au/insight/issue8-crime-and-justice/>
- Tilbury, C (2009). 'The over-representation of indigenous children in the Australian child welfare system', *International Journal of Social Welfare*, Vol. 18, no.1, pp. 57-64.

United Nations (1989). *Convention on the Rights of the Child*, United Nations, Geneva, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Victorian Department of Justice (2003). *Victorian Aboriginal Justice Agreement*, Government of Victoria, <http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement?victorian%20aboriginal%20justice%20agreement>

Weatherill, J. (2014). Letter to SACOSS re SACOSS Election Platform, 28 February 2014. <http://www.sacoss.org.au/sites/default/files/public/documents/Election%20SA%202014/ALP%20Response%20to%20SACOSS.pdf>

Wundersitz, J & Hunter, N, (2005). 'Juvenile Justice in South Australia: Where are we now?', *Information Bulletin*, Office of Crime Statistics and Research, no. 40, January.

Zubrick, S; Shepherd, C; Dudgeon, P; Gee, G; Paradies, Y; Scrine, C & Walker, R (2014), 'Social determinants of social and emotional wellbeing', in P Dudgeon, H Milroy & R Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental health and wellbeing Principles and Practice*, 2nd edn, Telethon Kids Institute, Kulunga Aboriginal Research Development Unit, University of Western Australia, Department of the Prime Minister and Cabinet, Australia.

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