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Responding to substance abuse and offending in Indigenous communities: review of diversion programs

Jacqueline Joudo

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Foreword

The overrepresentation of Indigenous people in the criminal justice system has long been a concern. Research has shown levels of substance use to be high among Indigenous offenders. The link between substance use and offending is a key area of interest to policymakers, researchers and practitioners, and has provided the impetus for a proliferation of diversionary programs and initiatives aimed at reducing offending by addressing alcohol and drug use. Most states and territories have strategic plans in place to deliver Indigenous programs and services. These plans are complemented by the National Drug Strategy: Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2009, which highlights diversionary programs as a way of increasing capacity in Indigenous communities to address these alcohol and drug use problems.

In 2006, the Australian Institute of Criminology (AIC) was contracted by the Australian Government Attorney-General's Department (AGD) to examine the response of governments to Indigenous substance use and related offending. Primarily this revolved around examining the type and extent of diversion programs currently operating, as well as issues around accessibility and barriers to participation and completion. Australian diversion programs range from well-developed and legislated schemes to informal arrangements among local communities, police, alcohol and drug workers, and courts. The majority of diversionary options currently available in Australia primarily target juvenile offenders and drug-related offenders. The intention of diversion programs is to divert the offender away from, or minimise their probability of, proceeding further into the criminal justice system.

Based on consultations with 55 stakeholders across Australia and program documentation in 2006, two Indigenous-specific diversion programs were identified at the police level (Queensland and Western Australia) and 13 at the courts level. Although there appear to be few programs designed exclusively for Aboriginal or Torres Strait Islander people, efforts have been made in most jurisdictions for mainstream programs to be culturally appropriate. Many are targeted to maximise Indigenous participation. Of the programs across Australia specifically targeting drug-related diversion, 13 were identified at the police level and 22 at the court level. However, despite the existence of a number of drug-related diversionary programs, consultations and limited evaluations conducted to date suggest that Indigenous people are less likely than non-Indigenous people to be referred to the programs and may be less likely to complete them. Program accessibility for Indigenous offenders was identified by stakeholders as a key barrier to participation, one reason given being that a number of programs under the Illicit Drug Diversion Initiative had criteria that excluded people with a history of violent offences, alcohol dependence issues or prior incarceration. Another reason

relates to the remote geographical location of many Indigenous communities – remoteness presents a substantial service delivery challenge, as it is often not economically or practically feasible to run programs in remote areas. While data on program participation and completion rates were not available and therefore not provided in this report, stakeholder feedback regarding the likelihood of Indigenous compared with non-Indigenous program completion was somewhat mixed. Some suggested that, once referred to a program, Indigenous participants were no more or less likely to complete than were non-Indigenous participants. Others suggested that rates of completion were lower among Indigenous offenders and attributed this to a lack of appropriate treatment services.

The findings suggest there is a strong need to consider the drug use problems specific to Indigenous offenders and to consider expanding programs to include substances such as alcohol and inhalants, which generally fall outside the scope of many drug diversion initiatives. Exclusion criteria relating to prior criminal history could also be reviewed on a case by case basis. Accessibility of and participation in diversion programs remains a key area to be evaluated and quantified, as it is only if Indigenous people are able to access and participate in programs that their effectiveness can be gauged.

Dr Judy Putt
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Acronyms

ABS	Australia Bureau of Statistics
ADD	All Drug Diversion
AGD	Australian Government Attorney-General's Department
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
AJSD	Aboriginal Justice Strategic Directions
BIR	Brief Intervention Regime
CADAS	Court Alcohol and Drug Assessment Service
CARDS	Court Assessment and Referral Drug Scheme
CES	Cannabis Education Session
CIN	Cannabis Infringement Notice
COAG	Council of Australian Governments
CREDIT	Court Referral and Evaluation for Drug Intervention and Treatment (Vic)
CREDIT NT	Court Referral and Evaluation for Drug Intervention and Treatment (NT)
CSO	Community Service Order
CSR	Court Supervision Regime
DUCO	Drug Use Careers of Offenders study
DUMA	Drug Use Monitoring in Australia project
FVOIP	Family Violence Offender Intervention Program
GASR	Geraldton Alternative Sentencing Regime
HREOC	Human Rights and Equal Opportunity Commissioner
IDDI	Illicit Drug Diversion Initiative
IDP	Indigenous Diversion Program
ISP	Intensive Supervision Program
JJT	Juvenile Justice Team
MERIT	Magistrates Early Referral Into Treatment
MST	Multi-Systemic Therapy
NATSSIS	National Aboriginal and Torres Strait Islander Social Survey
NDICP	National Deaths in Custody Program

NDMDS	National Diversion Minimum Data set
NHMP	National Homicide Monitoring Program
PDDI	Police Drug Diversion Initiative
PDDP	Police Drug Diversion Program
POP	Pre-sentence Opportunity Program
PSO	Pre-Sentence Order
QIADP	Queensland Indigenous Alcohol Diversion Program
QMERIT	Queensland Magistrates Early Referral into Treatment Program
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SCRGSP	Steering Committee for the Review of Government Service Provision
STIR	Supervised Treatment Intervention Regime
VALS	Victorian Aboriginal Legal Service

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Executive summary

Introduction

- The Australian Institute of Criminology (AIC) was contracted by the Australian Government Attorney-General's Department (AGD) to examine the way that Australian governments had sought to address Indigenous substance use and related offending.
- The study was planned over two stages, with Stage 1 involving a comprehensive summary of the diversion programs currently operating across Australia and the issues relating to Indigenous offending and access to diversion programs. The extent to which Indigenous offenders are diverted, the outcomes of their participation and the barriers to their ability to both access and successfully complete programs will be examined in Stage 2 of the study. This report presents the findings of Stage 1.
- Stage 1 was qualitative in nature and involved the examination of a range of reference materials, including the research literature, legislation and policy. Consultations were also conducted in all states and territories with relevant justice, corrections, police, health and other program personnel. Thirty-six interviews, primarily conducted face-to-face, took place across the states and territories with approximately 55 stakeholders. Those consulted ranged from program staff to policy practitioners who were directly involved with diversion programs.
- Various tasks designed to inform the direction of Stage 2 of the study were undertaken, including an audit of the available data sources regarding the extent of Indigenous contact with the criminal justice system and the distribution of a questionnaire to gather consistent information regarding the variables contained within various program datasets. The results of these tasks are listed in appendixes A and B.

Indigenous people and the criminal justice system

Offending by Indigenous people

- The disproportionately high number of Indigenous people coming into contact with the criminal justice system has long been an issue of concern in Australian justice.
- Indigenous offenders are more likely to begin offending regularly at younger ages than their non-Indigenous counterparts and are generally more likely to be younger than non-Indigenous offenders when they first commit an offence.
- The most common serious offences with which Indigenous offenders are charged and sentenced to imprisonment are property and violent offences.
- Indigenous offenders are more likely to receive custodial sentences for property and violent offences, and more likely to have further contact with the criminal justice system, once they come into contact with it, than their non-Indigenous counterparts.

Substance use among Indigenous people

- High levels of substance use are reported among Indigenous offenders in studies examining the link between drugs and criminal offending.
- Substance use is highly prevalent among Indigenous Australians and alcohol is often the primary area of concern in relation to Indigenous substance use and offending, although illicit drug use is an issue in metropolitan areas.
- Generally, drug use tends to begin at earlier ages for Indigenous than non-Indigenous users.
- The inhalation of volatile substances, such as petrol, paint and glue, is a serious problem among some Indigenous communities and has been attributed to the breakdown of family and community ties.
- Indigenous offenders are generally more likely to report being under the influence of alcohol at the time of the offence or arrest and more likely to attribute their offending to substance use than are non-Indigenous offenders, although this can differ in terms of offences and drug used.

Diversion: definition, rationale and types

- The concept of diversion refers to changing the direction or course of a person away from the traditional criminal justice system completely or to minimising progression through the justice system.
- Diversion has several objectives, including:
 - avoiding the negative labelling and stigma associated with criminal conduct and contact with the criminal justice system
 - preventing further offending by minimising a person's contact with and progression through the criminal justice system
 - reducing the number of people reaching the courts and prisons, thereby lightening the heavy caseload of courts and reducing delays as well as costs of court processes and incarceration
 - reducing unnecessary social controls
 - providing appropriate interventions to offenders in need of treatment or other services.
- Mechanisms by which people are diverted are available at various points of the justice system, including pre-arrest, pre-trial, pre-sentence and post-sentence. The process and impact of diversion differ according to the point at which a person enters the criminal justice system.

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- Diversion programs are in place in every Australian state and territory and most are related to drug diversion, as it is this area in which most development has occurred.

Legislation

- The majority of diversion programs that are legislatively based utilise existing legislative provisions. Some, such as the New South Wales and Queensland drug courts and the Victorian Koori Court, are based on legislation created specifically to establish the courts. Others, such as the New South Wales Circle Sentencing Court, were established through the amendment of existing legislation.
- The legislative framework for diversion programs in all jurisdictions outlines goals, the mechanism by which the offender will be diverted (warning, caution or fine), the referring entities, program processes and components, and the penalties/rewards upon completion.
- All states and territories, with the exception of the Australian Capital Territory and Victoria where police officers use their discretionary power, have legislation providing for the diversion of juveniles from the criminal justice system via cautioning by police. Legislation that provides for the diversion of adults from the criminal justice system is aimed largely at those adults whose offences are drug related or were influenced by their drug use.

Diversion programs across Australia: police, court and Indigenous-specific programs

- There are numerous diversionary programs in place across Australia. Mechanisms for diverting both adults and juveniles operate at different points of the criminal justice system and, more often than not, are targeted towards drug offenders. All of the courts and programs reviewed in this report operate under similar basic eligibility criteria; some are more inclusive than others, and there are variations in the processes and outcomes for each.
- Juveniles are warned, cautioned or referred to conferences in all jurisdictions, whereas the cautioning of adults for non drug-related offences is rare, other than cautioning for minor traffic offences.
- Cautioning and diversion to education, assessment and/or treatment are options in the majority of jurisdictions, and extend to adults and juveniles. Primarily these options are pre-arrest and pre-trial, but there are drug courts operating in most of the larger jurisdictions (NSW, Vic, Qld, WA and SA) and a recently established Alcohol Court in the Northern Territory.

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- Offenders who may not have access to court programs, such as Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) and Magistrates Early Referral Into Treatment (MERIT), but for whom substance use has been identified as a significant issue, may be identified and referred to treatment or offence-specific programs, such as the Tasmanian Family Violence Offender Intervention Program, through mental health services and courts.
 - The Indigenous-specific diversion programs currently operating are almost exclusively targeted towards offenders who have committed drug offences or those whose offending has been clearly linked with their substance use behaviour. Participants highlighted that most programs adopted a holistic approach and it was possible to refer offenders to types of treatment other than those for drug and alcohol use.
 - Mainstream diversion programs in Australia are aimed at several key groups considered vulnerable – youths, drug offenders and the mentally impaired.
 - Although there are few Indigenous-specific diversion options available across Australia, efforts have been made in most jurisdictions for mainstream programs to be culturally appropriate. It should be noted that mainstream programs in many remote areas with high Indigenous populations are, in practice and by virtue of geography, almost Indigenous-specific diversion programs.

Indigenous participation in, and access to, diversion

- Unfortunately, for the majority of programs which have been evaluated and for which the evaluations are available, Indigenous people were found to be less likely to be referred and accepted to the programs.
- Many of the key participants were unable to provide statistics on the current numbers of Indigenous participants in diversion programs. This was due largely to three reasons:
 - inaccurate data collection on identification of Indigenous status (see Appendix A for a brief discussion of this issue), leading to a high number of unknowns for Indigenous status
 - the lengthy and time-consuming process of gaining approval to provide such information for publication in the report. Several participants were still awaiting approval at the time of finalising this report.
 - current internal program evaluations which prevented the release of any statistics prior to publication of the agencies' evaluations.

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- Anecdotal evidence regarding the likelihood of program completion by Indigenous participants compared with their non-Indigenous counterparts was somewhat mixed. Some suggested that once referred to a program, Indigenous participants were no more or less likely to complete or fail to complete than were non-Indigenous participants and that, once accepted into the program, participants all faced the same basic difficulties. Others reported that rates of successful completion were much lower among Indigenous offenders than non-Indigenous offenders and attributed this to a lack of appropriate treatment services available for this group of the population.

Impact of diversion among Indigenous offender groups

- A further finding in relation to Indigenous offenders who have participated in various forms of diversion is that they are more likely to reoffend following a diversion episode than are non-Indigenous offenders who have been diverted.
- Diversionary options such as drug courts and cautioning programs are assessed as successful or unsuccessful based largely on their impact on reoffending rates. Although research in the area to date indicates some decline, reoffending among Indigenous participants generally remains higher than that of non-Indigenous offenders. However, the Indigenous Sentinel Study (Urbis Keys Young 2003) reported that there seemed to be positive impacts in reducing drug use and offending among Indigenous participants of select drug diversion programs, although this was based on the very limited information available.

Indigenous access to diversion

- Numerous issues influencing Indigenous access to diversion programs have been identified in some of the research and evaluations outlined in this report. The issues were primarily the same as those identified in key stakeholder consultations as part of the Indigenous Sentinel Study. That is, Indigenous offenders are:
 - less likely to make an admission of guilt to police
 - more likely to have multiple charges
 - more likely to have previous criminal convictions (particularly for violent offences)
 - more likely to have drug misuse problems that are not covered by the drug diversion programs (such as alcohol and inhalants)
 - more likely to have a co-existing mental illness.

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- Another issue that was often raised as one of the more significant barriers to Indigenous people accessing programs was the remoteness of many Indigenous communities. The geographical location of many Indigenous communities presents the greatest challenge for criminal justice agencies in terms of service delivery.
 - It is also important to emphasise that the programs described in this report vary in many ways, especially in terms of exclusion and/or inclusion criteria, so while offenders charged with multiple offences may be excluded from participating in one program, they are not necessarily excluded from another. The issue becomes more about whether the continuum of diversion programs offered within jurisdictions is comprehensive enough in terms of the targets.

Conclusions and future research directions

Policy implications

- As eligibility criteria was often cited as the most significant barrier to Indigenous people accessing diversion programs, there is a very real need to consider the drug use problems specific to Indigenous offenders and to consider the expansion of programs to cover substances such as alcohol and inhalants, which generally fall outside the scope of many drug diversion initiatives.
- Further considerations for improving access would be to ensure the wider dissemination of information about diversion programs among Indigenous communities. This would be enhanced by ensuring a thorough understanding of the available programs among Aboriginal Legal Service solicitors or client officers who would then be better placed to explain the programs to their clients prior to decisions being made about whether to admit guilt.
- While there are valid reasons for excluding those with offending histories, particularly those including violence, it is important to note that these are offenders who are likely to benefit from drug and alcohol treatment services to which they may not otherwise have access. Assessment for suitability that is undertaken on a case-by-case basis has the potential to make diversion available to Indigenous offenders who are currently automatically excluded but who may not pose a threat to treatment providers.
- It is important for the negative impact of eligibility criteria, although unintended, to be understood in terms of impact on Indigenous people and, where feasible, it may be advantageous to review and amend these criteria.

Future research directions

- The current report considered the diversion of Indigenous offenders from the criminal justice system and the nature of Indigenous contact with the justice system, highlighting the effect of socioeconomic disadvantage on offending and substance use, and the impact of coming into contact with the criminal justice system among this group.
- One of the objectives of Stage 2 of this research is to provide a comprehensive evaluation of the extent to which Indigenous people are diverted across all the diversionary programs reviewed in this initial phase.
- Stage 2 will also examine differences between Indigenous and non-Indigenous program participants, taking into consideration the type of drug(s) identified as problematic and completion rates for each group, as evidence reported in this first phase indicated that the two groups differ significantly in these areas. These issues raise questions concerning the accessibility and appropriateness of some drug diversion programs and will be examined in the next phase.
- Stage 2 of the project will also seek to assess the impact of the barriers discussed in Indigenous participation. As reported here, these issues are specifically from the viewpoint of relevant criminal justice agencies and Stage 2 will involve discussing program accessibility with Indigenous communities in order to get a better sense of the relevance of these perceived barriers.
- Stage 2 will also seek to identify how the criminal justice system could respond better to young and adult Aboriginal and Torres Strait Islander offenders with substance use issues.

Introduction

That Indigenous Australians continue to be overrepresented in the criminal justice system is widely acknowledged. This issue was highlighted by the Royal Commission into Aboriginal Deaths in Custody (Australia. RCIADIC 1991) and among its recommendations was the need to divert Indigenous people from contact with the criminal justice system wherever possible. Most Australian jurisdictions have put in place Aboriginal justice agreements, which outline their commitment to addressing the issue of Indigenous disadvantage with specific regard to lowering the rate of Indigenous overrepresentation in the criminal justice system. Most of the existing Indigenous diversion programs have been developed under the auspices of these agreements. Diversion is seen as an important means of reducing Indigenous contact with the criminal justice system. As substance abuse may have contributed to the offending in many instances, it is important to consider two main forms of diversion – drug diversion and mainstream diversion for all kinds of offences.

The AIC was contracted by the AGD to examine the way that Australian governments had sought to address Indigenous substance use and related offending. This involved undertaking an audit of the diversion programs, drug and otherwise, which currently operate in the jurisdictions with the purpose of diverting Indigenous offenders. Alongside the audit of available programs, the first phase of this study also aimed to identify the nature of offending by Indigenous populations and the existing databases that would help to inform the second stage of the study, which would attempt to identify the extent of Indigenous offending and involvement in diversion programs.

The project was not limited to considering drug diversion alone, but examined all diversion schemes that seek to remove offenders with substance misuse issues from the criminal justice system and place them into the health system for their substance abuse issues to be addressed. For the purposes of the study, diversion was limited to programs that can accept offenders once they have come into contact with the criminal justice system. Crime prevention initiatives, while diversionary in nature, fell outside the scope of this project. Similarly, diversion pre and post-imprisonment, with the exception of drug court programs, was excluded from the study.

Methodology

Stage 1 of the project was qualitative in nature and involved the examination of a range of reference materials. A review of literature, legislation and policy forms the basis of much of the introductory information contained in this report. Further to that, consultations were conducted in all states and territories with relevant justice, corrections, police, health and other program personnel. Thirty-six interviews were conducted with approximately 55 stakeholders, ranging from program staff to policy practitioners who were directly involved with diversion programs. The interviews were primarily conducted face-to-face in all states

and territories. Appendix D provides a list of the agencies from which relevant staff were interviewed or contacted during Stage 1 of the study. The information gathered during this consultation phase supplements the reviews conducted.

An audit of the available data sources, which can inform Stage 2 of the study regarding the extent of Indigenous contact with the criminal justice system, was conducted and is summarised in Appendix B. A questionnaire was also mailed out to the relevant program personnel to gather consistent information regarding the variables within program datasets. The purpose of this questionnaire was to inform the development of Stage 2 of the study by identifying as early as possible those datasets that do not report Indigenous status. A summary of the information provided during Stage 1 can be found in Appendix C. Some participants also reported statistics on Indigenous participation in the programs, which is presented in the section 'Indigenous participation'. At the time of submitting this report, several questionnaires were outstanding and could not be included.

During the consultations, there was a great deal of enquiry about the term 'diversion' and to what it refers. This was especially so when participants were asked to nominate all diversion programs operating in their state or territory that dealt specifically with, and provided a mechanism for, diversion of Indigenous offenders for various offence types. Although the terms of reference for this project were explained to those who were contacted and interviewed, it may be that slightly different interpretations were used by key participants to identify relevant programs within their jurisdictions. As a result, it would be prudent to circulate the Stage 1 report and ask for comments and updates on the list of diversionary programs at the outset of Stage 2.

It is important to emphasise that the participants in Stage 1 were selected because of their ability to inform the study of the programs in operation. In the first instance, the project sought to identify how state and territory governments responded to the issue of Indigenous overrepresentation and it should be noted that the views expressed regarding this and other issues, such as access to programs, are from that perspective. The proposal for Stage 2, presented at the end of this report, includes surveys/consultations with Indigenous communities and offenders who will also be asked to comment on these and other issues.

Report structure

This report is divided into four main parts:

- The first provides an overview of Indigenous contact with the criminal justice system, considering overrepresentation, type and level of offending, and the impact of substance use among this population. A summary of the responses of state and territory governments to the problem of Indigenous overrepresentation in the criminal justice system follows.

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- Section 'Diversion: definition, rationale and types' defines and outlines the concept of diversion and the points in the system at which it can take place. The legislative provisions in place for many programs are also reviewed in this section.
 - Section 'Current diversion practice and programs in Australia' summarises the diversion programs currently available in Australia. The programs are divided under two main headings: Indigenous-specific and mainstream programs. The programs under both sections are listed under police or court diversion.
 - Section 'Indigenous participation' discusses the level of participation of Indigenous offenders in diversion programs and discusses the issues raised by stakeholders during the consultation phase that were barriers to Indigenous people accessing mainstream diversion programs.

The conclusion sets out the research proposed for Stage 2 of the project.

Terminology

The terms 'Indigenous' and 'Aboriginal' are used interchangeably within the report and refer to both Aboriginal and Torres Strait Islander people. Regional-specific terms such as 'Koori' are also used where appropriate.

For the purposes of this report, 'diversion' refers to diversion from the criminal justice system once an individual has come into contact with it in some way. Furthermore, the goal was not to identify the hundreds of diversion programs in operation but to identify those mechanisms/schemes via which offenders may be diverted to treatment, counselling and/or education programs that might impact on substance abuse and subsequent offending.

Indigenous people and the criminal justice system

The disproportionately high number of Indigenous people coming into contact with the criminal justice system has long been an issue of concern in Australian justice (Memmott et al. 2001; Woodward 2003). It gained a great deal more attention when the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) examined the high rate of Indigenous deaths in custody and when the final report was released in 1991. The RCIADIC highlighted the seriousness of the problem surrounding Indigenous overrepresentation in the justice system from which it believed the high rate of Indigenous deaths in custody stemmed. Among its 339 recommendations was the need for imprisonment to be seen as a sanction of last resort (no. 92) and for police to use cautioning rather than arrest where possible (no. 239). The problem of overrepresentation has been attributed by some to systemic or institutional bias and is interpreted as a failure to implement these recommendations (Cunneen & McDonald 1997). Others have argued that Indigenous people are overrepresented in the criminal justice system as a result of the type of offences they commit and the frequency with which they commit them (Snowball & Weatherburn 2006; Weatherburn, Fitzgerald & Hua 2003). A discussion and review of the literature regarding overrepresentation, the impact of socioeconomic factors and government responses to the problem is in Appendix A. This chapter reviews the nature and type of offending committed by Indigenous Australians and also considers the impact of substance use on offending among this group.

Offending among Indigenous people

Early offending

Studies comparing the likelihood of continuing through the criminal justice system after initial contact show that Indigenous offenders are more likely to have further contact than their non-Indigenous counterparts (Chen et al. 2005; Cunningham 2007; Ferrante, Maller & Loh 2004). A recent study investigating the progression from juvenile to adult offending in New South Wales found that those who first appeared in court between the ages of 10 and 14 years were to reappear and more likely to end up with a custodial sentence (Chen et al. 2005). This age effect was most apparent for Indigenous males who were substantially less likely to reappear before an adult court and to receive a custodial sentence if they were older at the time of first court appearance. Findings indicated that Indigenous juveniles were more likely to have at least one adult court appearance (90.5% compared with 52.6% for non-Indigenous juveniles) and more likely to have at least one adult custodial appearance (36.1% compared with 9.7%). Other research has also found that young Indigenous male offenders are also more likely to enter the adult criminal justice system than their non-Indigenous counterparts, which may be directly related to the number of prior arrests and convictions, and therefore a lower likelihood of avoiding incarceration (Chen et al. 2005; Lynch, Buckman & Krenske 2003; Weatherburn, Fitzgerald & Hua 2003).

A major survey conducted by the AIC of prisoners and juveniles in detention centres found that Indigenous offenders were more likely to begin offending *regularly* at younger ages than their non-Indigenous counterparts and were more likely to be younger than non-Indigenous offenders when they first committed a property or violent offence (Makkai & Payne 2003; Putt, Payne & Milner 2005). Indigenous male prisoners had an average age of 29 years compared with 34 years for non-Indigenous offenders in the sample (Makkai & Payne 2003). Indigenous male prisoners were also younger, at 13 years, than non-Indigenous offenders, at 14 years, when they first committed a property offence. Similarly, Indigenous offenders were a year younger than non-Indigenous offenders (19 years compared with 20 years) when first committing violent offences (Putt, Payne & Milner 2005). Indigenous women prisoners were also found to be younger on average than non-Indigenous women (Johnson 2004).

A study of young people cautioned by police in Queensland found that Indigenous youths were more likely to receive a supervised order than non-Indigenous youths, an indication that their offending was generally more serious than that of the non-Indigenous group (Dennison, Stewart & Hurren 2006). Indigenous males have also been found to be younger, on average, when first arrested by police than non-Indigenous males (Putt, Payne & Milner 2005). Analysis of data from the Drug Use Monitoring in Australia (DUMA) program indicated that Indigenous detainees reported being first arrested at the age of 14 on average, while non-Indigenous detainees reported being 19 years when first arrested by police. Indigenous persons made up 13 percent of all police detainees between 1999 and 2005 and 16 percent of all detainees who were arrested.

When compared with non-Indigenous prisoners, Indigenous prisoners are significantly more likely to have a history of juvenile detention and incarceration as an adult (Kinner 2006). Forty-one and 84 percent of Indigenous prisoners in Queensland were found to have been incarcerated as juveniles and adults, respectively. In comparison, only 14 and 56 percent of non-Indigenous prisoners had a history of juvenile and adult incarceration. Indigenous male prisoners were more likely than their non-Indigenous counterparts to have been incarcerated as juveniles (42% compared with 26%; Makkai & Payne 2003).

Recidivism

Rates of recorded reoffending are higher among Indigenous than non-Indigenous offenders. In a study of the risk of reoffending among a sample of New South Wales parolees, it was found that Indigenous parolees were 1.4 times more likely to reoffend following release than were non-Indigenous parolees (Jones et al. 2006). In a major investigation of reoffending among 5,476 juveniles who first appeared before the New South Wales Children's Court in 1995, it was found that the reappearances rate for Indigenous juveniles was 187 percent higher than that for non-Indigenous juveniles (Chen et al. 2005). Both Indigenous males and females had a higher number of average reappearances than their non-Indigenous peers:

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- Indigenous males appearing before the court between the ages of 10 and 14 had an average of 12 reappearances over an eight-year period compared with four reappearances over the same time period for non-Indigenous males
 - Indigenous females who first appeared before the court between the ages of 10 and 14 had an average of six reappearances compared with two reappearances for non-Indigenous females
 - the Indigenous group also had a shorter time to reappearance, with 1.5 years between the first and second appearances, than the non-Indigenous group at 4.4 years.

Types of offending

The most common serious offences with which Indigenous detainees in the DUMA sample were charged were property (28%), violent (25%), and disorder offences (10%; Putt, Payne & Milner 2005). However, research has frequently shown that Indigenous people are more likely to be charged or convicted of violent and/or public order offences, and that this is more the case among prisoners, as indicated by the following:

- Indigenous people in New South Wales were found more likely to appear before the courts for violent and public order offences (Weatherburn, Lind & Hua 2003)
- Indigenous people are more likely to be arrested than non-Indigenous people for certain offence groups, such as public order offences (Jochelson 1997)
- in Western Australia, Indigenous defendants were more than twice as likely to be charged with burglary offences than non-Indigenous defendants (34% compared with 16%) and almost twice as likely to be charged with assault offences (11% compared with 6.2%); they were also more likely to receive a custodial sentence for assault (78.7% compared with 61.6%) and burglary offences (59.5% compared with 47.9%) than non-Indigenous defendants (Loh & Ferrante 2003)
- of those who died in police custody or during custody-related pursuits between 1990 and 2005, most had committed theft-related offences (38%), followed by good order offences (24%) and violent offences (22%) immediately prior to the final period in custody (Joudo 2006)
- the most recent prisoner census data reveal that almost 60 percent of the Indigenous prisoner population had a violent offence as their most serious offence, compared with almost half of non-Indigenous prisoners, and acts intended to cause injury (28%) and unlawful entry with intent (14%) were the two most common violent offences for which Indigenous prisoners were sentenced (ABS 2006c)

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- Indigenous adult male prisoners were more likely to be regular violent offenders and regular multiple offenders, based on their self-reported offending; regular violent offending was twice as high among Indigenous female prisoners as non-Indigenous prisoners and the rate of escalation from ever having committed a violent offence to regular violent offending was also higher for Indigenous women in prison than non-Indigenous women in prison (23% vs 15%; Johnson 2004; Makkai & Payne 2003)
 - the most serious offence committed by Indigenous persons who died in prison custody between 1980 and 2005 was often violent in nature: 58 percent of Indigenous prisoners who died had committed violent offences, followed by 24 percent who had committed theft-related offences (Joudo 2006).

Substance use and offending among Indigenous people

Substance use is another issue that has a substantial impact on the Indigenous population. Drug and alcohol use are highly prevalent among Indigenous Australians, and their use has been shown to begin at earlier ages for Indigenous than non-Indigenous users (AIHW 1995; Forero et al. 1999; Gray et al. 1996). In some rural and remote areas, the younger age of first-time users of cannabis, tobacco and alcohol may be explained in part by the socialisation practices of young Aboriginal people following older kin around, and being introduced to these substances through their kin network and peers (Delahunty & Putt 2006). Practices in some communities that encourage young people to take personal responsibility for their finances can also mean that young Indigenous people have greater and easier opportunities to obtain alcohol and other substances (Delahunty & Putt 2006).

Alcohol has been widely acknowledged as having a significant impact upon Indigenous people. Aboriginal men and women consume alcohol in higher quantities than non-Aboriginal people (ADCA 2000). Of the 61 percent of respondents to the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) who reported consuming alcohol in the 12 months preceding the survey, almost half (46%) considered their alcohol consumption to be low risk, 9.6 percent considered it risky and 5.6 percent reported consumption which fell into the high risk category (ABS 2004b).

Findings from the National Drug Strategy Household Survey indicated that Indigenous people were more likely than non-Indigenous people to have alcohol consumption characterised as risky or high risk (AIHW 2005). Interestingly, Indigenous respondents to the survey were more likely than non-Indigenous respondents to associate use of tobacco, alcohol and marijuana with a drug problem. Excess alcohol consumption (27.1%) was considered to be the most

serious concern for communities, followed by other drugs, which includes inhalants (26.9%), heroin use (16.7%) and tobacco smoking (16.6%). Only 13 percent of Indigenous respondents considered marijuana/cannabis use to be the most serious concern in the community, although this was higher than for non-Indigenous respondents.

Data from the household survey also indicated that illicit drug use is widespread among the Indigenous population. Indigenous respondents were almost twice as likely (27%) as non-Indigenous respondents (15%) to report recent drug use. When questioned regarding illicit drug use excluding marijuana/cannabis, Indigenous people were almost one-and-a-half times (11.6%) more likely than non-Indigenous people (8.1%) to report recent use (AIHW 2005). Aside from cannabis use, illicit drug use is less of a problem in rural and remote settings (see Delahunty & Putt 2006 for a thorough review of substance use among Indigenous people in rural and remote areas).

The link between drugs and offending has long been of interest in criminology and, although causality is yet to be proved, there is a correlation between the two. There is a great deal of evidence to suggest that alcohol plays a major role in much of the offending by Indigenous people. Indigenous detainees who participated in the DUMA program reported that 17 percent of offences committed were drug related. At the time of detainment, 72 percent of Indigenous participants tested positive to cannabis (compared with 54% of non-Indigenous participants), 24 percent tested positive to benzodiazepines (22% of non-Indigenous detainees) and 29 percent tested positive to methylamphetamines (26% of non-Indigenous detainees). Overall, 79 percent of Indigenous detainees tested positive to any drug at the time of being detained by police, compared with 67 percent of non-Indigenous detainees (DUMA computer file 1999–2005). In addition, the use of inhalants has been linked with an increased likelihood of committing burglary, assault or wilful damage offences (Brady 1992).

In other AIC research it was found that:

- two-and-a-half times more Indigenous adult male prisoners than non-Indigenous adult male prisoners had used alcohol at the time of arrest or commission of the offence (Putt, Payne & Milner 2005), while 69 percent of Indigenous male prisoners had used alcohol compared with 27 percent of non-Indigenous male prisoners
- more than one-half (55%) of custody incidents involving Indigenous persons were for arrests and another 31 percent involved taking the person into protective custody (Taylor & Bareja 2005). The majority of these incidents were related to public drunkenness. Of those arrested, most Indigenous detainees were arrested for public order offences. Almost one-quarter (24%) of Indigenous detainees were arrested for offences which included trespass, conspiracy, disorderly conduct, betting and gambling, and liquor and tobacco offences among others.

The inhalation of volatile substances, such as petrol, paint and glue, is also a serious problem among some Indigenous communities, with petrol sniffing confined primarily to remote communities. Unpublished data from the DUMA program indicate that Indigenous people detained by police are more likely than non-Indigenous detainees to self-report use of inhalants in key city locations. While almost seven percent of Indigenous detainees surveyed in 2004 and 2005 reported using inhalants in the prior 12 months, only two percent of non-Indigenous detainees did. Use of inhalants, particularly petrol sniffing, emerged in remote Indigenous communities in the 1960s and 1970s (d'Abbs & Brady 2004) and, while the actual prevalence of inhalant use in Indigenous communities remains undetermined, the intensity of petrol sniffing is said to have increased over the past 20 years (HREOC 2003). It is known that petrol sniffing has long been a concern among some Indigenous communities and is predominantly a substance used by young people (Ministerial Council on Drug Strategy 2004). Studies have found that Indigenous youths are more likely than non-Indigenous youths to use inhalants frequently and for a longer duration (an average of eight years; Burns, d'Abbs & Currie 1995; Carroll, Houghton & Odgers 1998; Rose, Daly & Midford 1992).

Summary

It is widely acknowledged that Indigenous people are overrepresented in the criminal justice system. Research has shown that Indigenous offenders are more likely than non-Indigenous offenders to:

- begin offending regularly at younger ages
- be younger when they first commit an offence
- receive custodial sentences for property and violent offences
- have further contact with the criminal justice system, once they come into contact with it.

Studies examining the link between drugs and criminal offending have also reported higher levels of substance use among Indigenous offenders. In fact, the high prevalence of substance use in the Indigenous population has been widely reported, with alcohol often identified as the substance of primary concern, although illicit drug use is an issue in metropolitan areas.

There are numerous socioeconomic factors which are believed to have a significant impact on the offending and substance use of Indigenous people. These are summarised in Appendix A, which also provides further contextual information on the overrepresentation of Indigenous people in the criminal justice system and the policy responses of all state and territory governments to this problem.

Diversion: definition, rationale and types

Definition and rationale

There has been much discussion about diversion programs and their impact on the Australian criminal justice system over the past decade. The term divert is derived from the Latin *diverstere*, which means to turn in separate ways. Thus the concept of diversion refers to changing the direction or course of a person away from further contact with the processes of the traditional criminal justice system. Diversion has several objectives, including:

- avoiding the negative labelling and stigma associated with criminal conduct and contact with the criminal justice system
- preventing further offending by minimising a person's contact with, and progression through, the criminal justice system
- reducing the number of people reaching the courts and prisons, thereby lightening the heavy caseload of courts and reducing delays as well as in costs of court processes and incarceration
- reducing unnecessary social controls
- providing appropriate interventions to those offenders who are in need of treatment or other services.

The premise behind diversion is straightforward. By turning the offender away from further, and more serious, contact with the criminal justice system, there is a greater chance of preventing further offending. For example, the rise of drug diversion in Australia was in part a response to the growing recognition that traditional criminal sanctions were having little impact on drug and drug-related offenders. In situations where an offender's drug use is linked with their offending behaviour, criminal sanctions are less likely to be as effective in reducing reoffending than diversion into treatment programs. By treating problem drug use, offending behaviour may also be reduced, as drugs are no longer an impetus for offending. It has been said that there are three key elements required for a crime to be committed: a motivated offender, a suitable target and the absence of capable guardians (Graycar & Grabosky 2002). Diversion attempts to lower the incidence of crime by changing the motivation of the offender.

The concept of diversion is underpinned by two main theories: labelling and restorative justice. Labelling is largely concerned with the negative consequences of contact with the criminal justice system and 'asserts that the primary cause of offending is the process of criminal stigmatisation itself' (Coumarelos & Weatherburn 1995: 55). It has been argued that involvement in the criminal justice system is likely to have disproportionately negative consequences for those offenders who are unlikely to reoffend and whose offences are minor. For many offenders, their first contact with police is their last and it is unnecessarily harsh to push these types of offenders through the system. There is also the concern that

unnecessary contact with the criminal justice system will have negative consequences such as being labelled as troubled, problematic or criminal, which can manifest itself in further offending. By providing opportunities for offenders to be diverted from the criminal justice system, the risk of criminal stigmatisation can be reduced.

The second theory underpinning diversionary schemes – restorative justice – is the basis for many options, such as conferencing and circle sentencing. It is an approach to justice that advocates the active involvement of communities and individuals in the criminal justice process; it provides the opportunity for empowerment and increased relevance of outcomes through direct involvement in the system and influence over punishment and sanction options. This approach has found support among Indigenous communities (LaPrairie 1995).

No discussion of diversionary options would be complete without consideration of the various cautions raised about diversion. These include the potentially discriminatory practices resulting from the use of police discretion and issues surrounding coercing people into treatment, among others. One possible consequence of diversion is net-widening. Net-widening refers to the argument put forth by Cohen (1985: 38) that the efforts to ‘destructure’ (using diversion, deinstitutionalisation or decriminalisation processes to reduce the scope of the traditional criminal justice system) have led to ‘wider, strong and different nets’ by which more, rather than fewer, people are potentially criminalised through contact with the criminal justice system. Previously an officer may simply have issued a verbal warning or taken no action for minor offences. Research has shown that diversion programs that were intended to divert juveniles from the criminal justice system actually increased the number of juveniles coming into contact with the system via the police (Wundersitz 1997). Diversionary options provide an opportunity for people to be diverted from the formal criminal justice system into less formal processes and the net-widening argument refers to the fact that such options draw more people into the system, albeit informally, than was possible without diversion. The danger of diversion lies in the fact that once a person is in the ‘net’, they are more likely to progress through the system, experiencing more serious contact.

Another aspect of net-widening, referred to as ‘mesh-thinning’, emphasises that the added intensity of treatment programs such as urinalysis, curfews, electronic monitoring and others, can increase the rate of non-compliance and the consequences associated with that failure (Clancey & Howard 2006). The issue of net-widening is a serious one given that ‘contact with the formal system can contaminate young people who would otherwise avoid involvement in further criminal activity if just left alone’ (Blagg & Wilkie 1995: 56) but does not entirely negate the impact of diversionary options. The potential impact of diversion on offending rates, particularly among the Indigenous population, is considerable and it is of utmost importance not to abandon the concept of diversion, but to consider both negative and positive consequences from the outset. The requirements of any episode of diversion should be no more onerous than the traditional sanction that would have been imposed in a given case.

Forms of diversion

Diversion can come in two main forms: diversion away from the justice system completely or diversion that minimises the progression of offenders through the justice system, thereby limiting their contact with the system and any negative consequences it may cause. The two forms of diversion take effect at different points in time, but the underlying goal of reducing offending by limiting contact with the criminal justice system remains the same. Historically, diversion became prominent in the Australian juvenile justice system with the concern over labelling providing an impetus for the development of alternatives to traditional processes of punishment (Coumarelos & Weatherburn 1995), and was soon adopted as the need for alternatives to punishment for drug-related offences (excluding trafficking offences) became apparent.

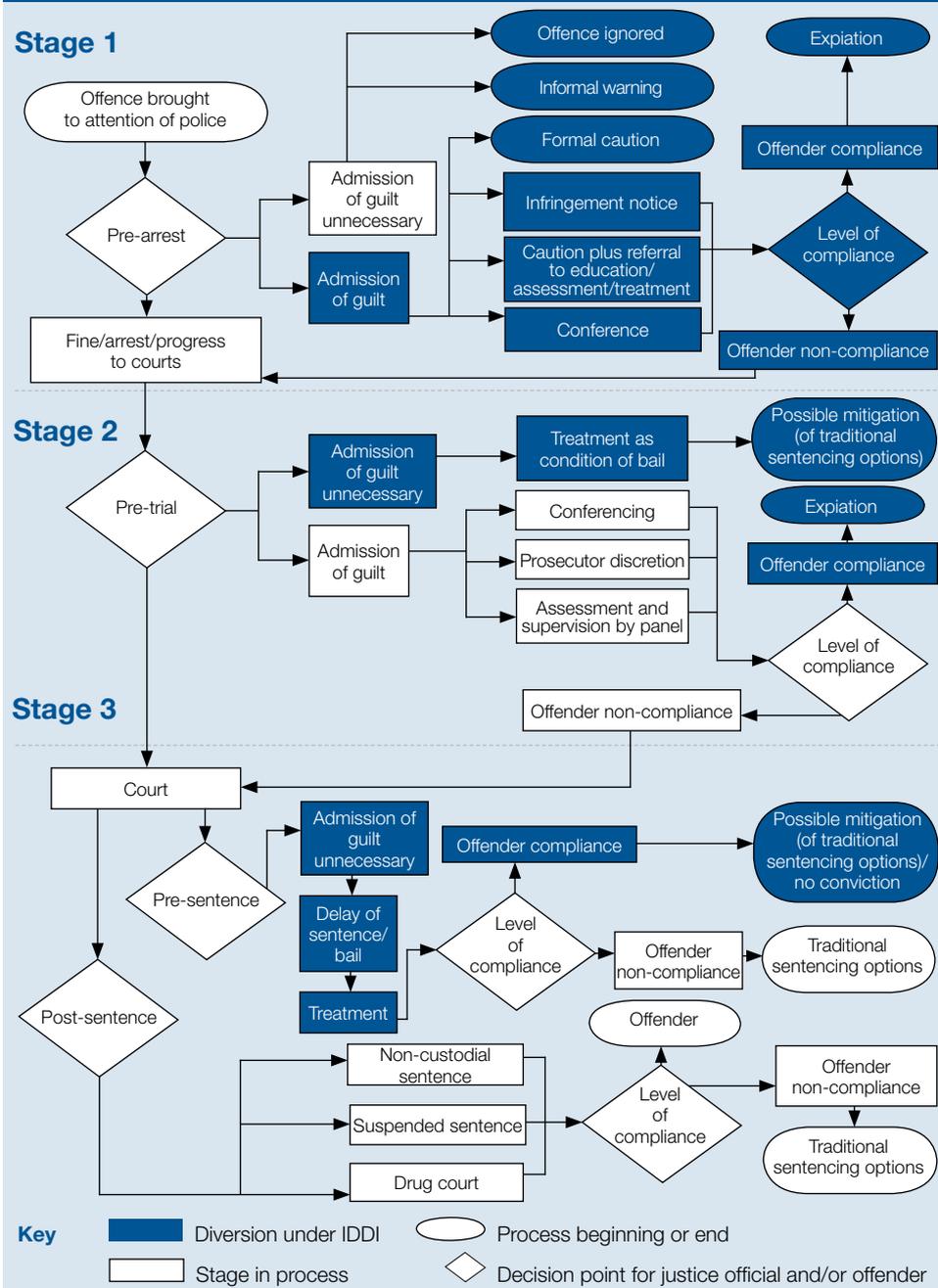
The majority of diversionary options currently available in Australia target two groups: juvenile and drug-related offenders. Furthermore, most diversionary options, such as police cautioning, are targeted at first-time or low-level offenders. The principle is that the intervention must not be more onerous than the punishment that the offence would otherwise have attracted. In its most traditional form, diversion represents the deflecting of an offender from the criminal justice system at the first point of contact with the system, invariably following contact with police. Due to the largely discretionary nature of policing, police cautioning always operated informally across Australia but has now been formalised in most jurisdictions. As the gatekeepers of the criminal justice system, police officers are in a position to offer diversion at the earliest possible point following contact with the justice system.

A more modern definition of diversion must include the second form of diversion that encompasses secondary and tertiary options, available for those already within the criminal justice system. Diversion at these points seeks to minimise the offender's progression through the criminal justice system. Court diversion is an example of secondary diversion and early release of prisoners into treatment is an example of tertiary level diversion. The goal at these points in the process is to move eligible offenders out of the criminal justice system to prevent, where possible, any further contact that may have negative consequences for the offender and their future criminal behaviour. Every Australian jurisdiction has diversionary options in place to minimise progression through the justice system in recognition of the need to provide comprehensive diversionary options in order to maximise reductions in offending for all offenders.

Levels of diversion

The process and impact of diversion differ according to the point at which a person enters the criminal justice system. Figure 1 from an unpublished report by Borzycki and Willis (2005) illustrates the various pre-custodial diversionary pathways available in the Australian

Figure 1: Diversion in Australia



Note: Non-diversionary criminal justice responses (i.e. traditional policing and sentencing options) are not portrayed unless they are used in response to offender non-compliance with diversion requirements.

Adapted from Makkai 2000; Spooner, Hall and Mattick (1999)
 Source: Borzycki and Willis (2005)

criminal justice system. Among the points of difference across the various programs and jurisdictions highlighted by Borzycki and Willis (2005) were the following:

- an admission of guilt is not required for all diversion programs
- offenders must consent to participate to be eligible for diversion
- eligibility criteria differ widely from program to program
- for drug diversion, the type of drug varies, with some programs available only for cannabis use, while some deal with other illicit drug users and some also deal with illicit use of licit drugs
- not all programs are available for all age groups and some are specifically designed for Indigenous offenders
- the level of discretion varies at the decision-making points – in some jurisdictions diversion is discretionary while in others it is mandatory
- the number of repeat diversions varies widely across the programs and jurisdictions with some allowing only one chance and others offering unlimited diversion episodes.

Although mechanisms by which people are diverted are available at different points of the criminal justice system, this report is concerned with pre-arrest, pre-trial, pre-sentence and post-sentence. The options available at these stages are summarised below:

- Pre-arrest – this is diversion in its purest form and occurs at the point when an offence is first detected and prior to a charge being laid by police. Pre-arrest is the earliest point at which diversion can take place following an offence being detected. Prior to police officers laying any charges, they have several diversionary measures at their disposal. These include police discretion whereby they can choose to take no action after detecting an offence; an infringement notice which involves a fine but no record; an informal warning or formal caution; or a caution plus intervention, which involves giving a warning that is recorded and providing relevant information or referral to an intervention program.
- Pre-trial – diversion measures at this point occur when a charge is laid, but before the matter is heard before a court. Such measures can include treatment as a bail condition, with no conviction recorded if treatment is successfully completed; conferencing; and prosecutor discretion, where the prosecutor may exercise discretion and offer treatment as an alternative to proceeding with the prosecution.
- Pre-sentence – this occurs once the offender has been convicted but prior to sentencing. Measures at this point can include delay of sentence, allowing time for the offender to be assessed for eligibility to participate in a particular program. Program participation and progress can be taken into consideration at the time of sentencing, which can include sanctions for non-compliance or incentives such as no conviction recorded.

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- Post-sentence – diversionary measures can also be available as part of sentencing. These options include suspended sentences, drug courts and non-custodial sentences. Where a suspended sentence of imprisonment is handed down, there is a requirement for compliance with specific conditions such as participation in treatment, abstinence from drugs and avoidance of specific associates. Drug courts involve judicially supervised or enforced treatment programs and can be offered to offenders whose offending has been linked with their drug dependence. Non-custodial sentences may also be offered, involving a supervised order, probation or bond requiring participation in treatment as part of a sentence.

Most states and territories have diversionary interventions available at the four points of the criminal justice system outlined previously. Drugdiversion programs have been most closely linked with the spread of diversion programs and there are several which, although not primarily targeting drug offenders, also address the needs of offenders whose drug and alcohol use has been linked with their offending. During consultations, several key participants reported that most programs utilised a holistic approach and addressed the participants' offending in the context of their personal and familial history rather than addressing offending alone.

Crime prevention initiatives can also be considered diversionary given that they seek to prevent young people from committing crime and engaging in criminal behaviour, thereby avoiding contact with the criminal justice system altogether. However, this report is primarily concerned with diversion from the criminal justice system once an individual has come into contact with it in some way. Similarly, although there are options available at the post-release stage which involve providing relevant programs for offenders to avoid recontact with the criminal justice system, the focus of this report was on diversion from the justice system entirely or minimising progress through it. Accordingly, it was decided that pre and post-release programs fell outside the terms of reference of the current project.

Legislation

The majority of diversion programs which are underpinned by legislation utilise existing legislative provisions. Some programs, such as the New South Wales and Queensland drug courts and the Victorian Koori Court, are based on legislation created specifically to establish them. Other courts, such as the New South Wales Circle Sentencing Court, are formalised through the amendment of existing legislation. An analysis of the legislation for 19 specialty court programs across Australia found that new or amended legislation was necessary where the court procedures represented a significant change to the role of the magistrate or to the usual operation of the court, and where the required sentencing options were not provided under existing legislation (Payne 2005).

The legislative frameworks for diversion programs in all jurisdictions outline the goals of the program, the mechanism by which the offender will be diverted (that is, warning, caution or fine), the referring entities, the program processes and components, and the penalties/ rewards upon completion. The legislative provisions also identify the inclusion and exclusion criteria that apply and are used to assess the suitability and eligibility of offenders. For example, the *Crimes (Restorative Justice) Act 2004* (ACT) sets out the parameters within which restorative justice in the Australian Capital Territory can operate. It outlines the offences to which the Act applies for both young offenders (s 14) and adults (s 15) and the eligibility criteria for all involved, whether victims, (s 17), parents (s 18) or offenders (s 19). It then outlines the referral mechanisms and referring entities in Part 6, the issues surrounding suitability in Part 7, the conduct of conferences in Part 8 and administrative processes in Part 9. Other legislation for diversionary programs is often as comprehensive as this example.

Most of the states and territories have legislative provisions that allow for the diversion of either juveniles or adults, and some have provisions for both. All states and territories, with the exception of the Australian Capital Territory and Victoria have legislation providing for the diversion of juveniles from the criminal justice system through cautioning by police. In both the Australian Capital Territory and Victoria, police officers use their discretionary power to caution juveniles. Police and/or court cautioning have been operating for some time in Victoria and are well established, despite the lack of legislative backing. Where there is legislation that provides for the diversion of adults it is largely available for those whose offences were drug related or influenced by their drug use. Diversion available at the police level and related legislation is listed in Table 1, while Table 2 lists diversionary programs available at the court level and their accompanying legislation.

Table 1: Legislative provisions for police diversion from the criminal justice system

	Police diversion programs	Statutory provisions
New South Wales	Youth cautioning and conferencing Conferencing for young adult offenders Cannabis Cautioning Scheme	<i>Young Offenders Act 1997</i> <i>Criminal Procedure Act 1986</i> Discretionary
Victoria	Juvenile cautioning and adult shop stealing cautioning Juvenile justice group conferencing Cannabis Cautioning Program Drug Diversion Program	<i>Children and Young Persons Act 1989</i> and discretionary for adults <i>Children, Youth and Families Act 2005</i> Discretionary Discretionary
Queensland	Youth cautioning and conferencing Queensland Indigenous Alcohol Diversion Program Queensland Police Diversion Program	<i>Juvenile Justice Act 1992</i> <i>Bail Act 1980</i> <i>Police Powers and Responsibilities Act 2000; Penalties and Sentences Act 1992</i>
Western Australia	Juvenile cautioning and conferencing Cannabis infringement notice All Drug Diversion Young Person's Opportunity Program	<i>Young Offenders Act 1994</i> <i>Cannabis Control Act 2003</i> Discretionary Via the Juvenile Justice Teams which operate under the <i>Young Offenders Act 1994</i>
South Australia	Cautioning and family conferences Police Drug Diversion Program Cannabis expiation notice	<i>Young Offenders Act 1993</i> <i>Controlled Substances Act 1984</i> <i>Controlled Substances Act Amendment Act 1986</i>
Northern Territory	Juvenile Pre-diversion Scheme Cannabis Expiation Notice Scheme Illicit Drug Pre-Court Diversion Program Volatile Substance Abuse Program	<i>Youth Justice Act 2005; Police Administration Act 1978</i> <i>Misuse of Drugs Act 1990</i> <i>Volatile Substance Abuse Prevention Act 2006</i>
Tasmania	Youth Diversion Program Cannabis caution Drug Diversion	<i>Youth Justice Act 1997</i> Discretionary Discretionary
Australian Capital Territory	Police Early Intervention and Diversion program Simple cannabis offence notice Restorative justice conference	<i>Drugs of Dependence Act 1989</i> <i>Drugs of Dependence Act 1989</i> <i>Crimes (Restorative Justice) Act 2004</i>

Table 2: Legislative provisions for court diversion from the criminal justice system

	Diversion courts/programs	Statutory provisions
New South Wales	Drug Court	<i>Drug Court Act 1998</i>
	Youth Drug and Alcohol Court	<i>Children's Court Act 1987; Children's (Criminal Proceedings) Act 1987; Bail Act 1978</i>
	Circle Sentencing Court	Criminal Procedure Amendment (Circle Sentencing Intervention) Regulation 2003
	Magistrates Early Referral into Treatment	<i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i>
	Intensive Court Supervision Program	
	Wellington Options Program	<i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i>
	Rural Alcohol Diversion	<i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i>
	Statewide Community and Court Liaison Service	<i>Mental Health (Criminal Procedures) Act 1990</i>
Victoria	Drug Court	<i>Sentencing (Amendment) Act 2002</i>
	Koori Court	<i>Magistrate's Court (Koori Court) Act 2002</i>
	Court Referral and Evaluation for Drug Intervention and Treatment	<i>Sentencing (Amendment) Act 2002</i>
	Rural Outreach Diversion Worker Service	
	Deferred sentencing program	<i>Sentencing Act 1991</i>
	Criminal Justice Diversion Program	<i>Magistrates' Court Act 1989</i>
	Early School Leavers Pilot Program	
Mental Health Court Liaison Service	<i>Magistrates' Court Act 1989</i>	

Table 2: continued

	Diversion courts/programs	Statutory provisions
Queensland	Conditional Bail Program	<i>Family and Community Services Act 1987; Bail Act 1980</i>
	Homeless Persons Court Diversion Pilot Program/Special Circumstances List	Bail (Prescribed Programs) Regulation 2006
	Drug courts	<i>Queensland Drug Rehabilitation (Court Diversion) Act 2000; Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Bill 2002</i>
	Queensland Magistrates Early Referral into Treatment Pilot Program	<i>Bail Act 1980</i>
	Cairns Alcohol Remand and Rehabilitation Program	<i>Bail Act 1980</i>
	Diversion from Custody Program	
	Murri Court	<i>Penalties and Sentences Act 1992</i>
	Illicit Drugs Court Diversion Program	<i>Drugs Misuse Act 1986</i>
Western Australia	Intellectual Disability Diversion Program	<i>Bail Act 1982</i>
	Intensive Supervision Program	<i>Young Offenders Act 1994</i>
	Perth Drug Court	<i>Sentencing Act 1995; Bail Act 1982</i>
	Geraldton Alternative Sentencing Regime	<i>Sentencing Act 1995; Bail Act 1982</i>
	Indigenous Diversion Program	<i>Bail Act 1982</i>
	Pre-sentence Opportunity Program	<i>Bail Act 1982</i>
	Supervised Treatment Intervention Regime	<i>Bail Act 1982</i>
	Regional Supervised Bail Program	<i>Bail Act 1982</i>
Indigenous Community Courts	<i>Sentencing Legislation Amendment and Repeal Act 2002; Bail Act 1982</i>	

Table 2: continued

	Diversion courts/programs	Statutory provisions
South Australia	Breaking the Cycle Program	<i>Young Offenders Act 1993 Correctional Service Act 1982 Criminal Law (Sentencing) Act 1988</i>
	Magistrates Court Diversion Program	<i>Criminal Law Consolidation Act; Magistrates Court Act 1991; Criminal Law (Sentencing) Act 1988</i>
	Nunga Court	<i>Magistrates Court Act 1991; Criminal Law (Sentencing) Act 1988; Bail Act 1985</i>
	Adelaide Drug Court	<i>Magistrates Court Act 1991; Criminal Law (Sentencing) Act 1988; Bail Act 1985</i>
	Court Assessment and Referral Drug Scheme	<i>Magistrates Court Act 1991; Criminal Law (Sentencing) Act 1988; Bail Act 1985</i>
Northern Territory	NT Court Referral and Evaluation for Drug Intervention and Treatment	<i>Bail Act 1992</i>
	Community courts	<i>Court Act 2005; Volatile Substance Abuse Prevention Act 2005</i>
	Alcohol Court	<i>Alcohol Court Act 2006</i>
Tasmania	Court Mandated Diversion Program	<i>Bail Act 1994; Youth Justice Act 1997; Sentencing Act 1997</i>
	Aboriginal Family Violence Offender Rehabilitation Program	<i>Family Violence Act 2004</i>
Australian Capital Territory	Court Alcohol and Assessment Service	<i>Bail (Amendment) Act 1997</i>
	Treatment Referral Program	<i>Drugs of Dependence Act 1989</i>
	Ngambra Circle Sentencing Court	<i>Crimes Act 1900</i>

Summary

Every Australian jurisdiction has diversionary options in place to divert offenders away from the criminal justice system completely or minimise progression through the justice system. These options indicate recognition of the need to provide comprehensive diversionary options to reduce reoffending for as many offenders as possible. Diversion is available at various points of the justice system, including pre-arrest, pre-trial, pre-sentence and post-sentence. The process and impact of diversion differs according to the point at which a person enters the diversion process.

Diversion is underpinned by labelling theory which refers to the concern that unnecessary contact with the criminal justice system has negative consequences, such as being labelled as troubled, problematic or criminal, which can lead to further offending. The concept of diversion also represents a restorative justice approach to justice in that it advocates the active and direct involvement of communities and individuals in the criminal justice process. By allowing for the active involvement of these parties, an opportunity for empowerment is provided and the perceived relevance of sanctions can be increased.

The objectives of diversion include:

- avoiding the negative labelling and stigma associated with criminal conduct and contact with the criminal justice system
- preventing further offending by minimising a person's contact with, and progression through, the criminal justice system
- reducing the number of people reaching the courts and prisons, thereby reducing court caseloads and delays, as well as costs of court processes and incarceration
- reducing unnecessary social controls
- providing appropriate interventions those offenders in need of treatment or for other services.

Many of the diversionary programs in Australia are targeted at drug offenders, and this area has been most closely linked with the spread of diversion programs. There are several programs which also address the needs of offenders whose drug and alcohol use has been linked with their offending, although they are not targeted primarily at drug offenders.

Most of the states and territories have legislative provisions which allow for the diversion of juveniles or adults. All, with the exception of the Australian Capital Territory and Victoria, have legislation for the diversion of juveniles from the criminal justice system through cautioning by police. In both the Australian Capital Territory and Victoria, police officers use their discretionary power to caution juveniles. The majority of diversion programs underpinned by legislation utilise existing legislative provisions. Some programs, such as the New South Wales and Queensland drug courts and the Victorian Koori Court, are based on legislation created specifically to establish the courts. Other courts, such as the New South Wales Circle Sentencing Court, are formalised through the amendment of existing legislation.

Current diversion practice and programs in Australia

Diversion programs: police, court and Indigenous-specific programs

Australian diversion programs range from well-developed and legislated schemes to informal arrangements among local communities, police, alcohol and drug workers, and the courts (Bull 2003). Originally, most diversion programs were aimed at minor offenders but more serious offenders were often in as much need of treatment (Coumarelos & Weatherburn 1995). However, due to the serious nature of their offences or longer criminal histories, they were ruled ineligible for many programs. Programs have been created with these more serious offenders in mind and are now operating in some jurisdictions.

Programs are aimed at several key groups considered vulnerable – young people, drug offenders and the mentally impaired. The need to divert youths from further and more serious contact with the criminal justice system has long been recognised and all jurisdictions have some form of juvenile cautioning in place. These programs are supported by legislation in all jurisdictions except Victoria. Similarly, diversion programs for drug offenders have been available for some time, with a continuum of diversionary measures operating in most states and territories. The link between drug use and offending has been widely researched and, although it cannot be conclusively said that drug use causes crime, there is a strong link between the two. Addressing underlying illicit drug use may reduce both offending and the costs that drug use imposes on the community in terms of health, welfare and criminal justice. Other vulnerable groups, such as the mentally ill and homeless, are increasingly the focus of diversion programs. Diversions for these groups mostly occur at the court level and are also discussed in this section. Finally, there has been a move towards developing Indigenous-specific diversionary programs in recent years to tackle the problem of Indigenous overrepresentation in the criminal justice system.

The information contained in this section was largely based on consultations with the relevant stakeholders in all jurisdictions, and was supplemented by literature and internet searches, and program manuals and documentation provided by some of the stakeholders. Given that diversion can be interpreted in very different ways and that the information was primarily based on discussions with stakeholders, the list may not be exhaustive, although every effort was made to clearly define the definition and terms of reference for the project. It is also important to point out that additional programs, such as the Indigenous Alcohol Diversion Program in Queensland, had not been implemented at the time of compiling this report and have been omitted.

Some of the larger programs and the basis on which they were implemented and now operate are listed in this section for each jurisdiction. The initial review focused on Indigenous-specific programs but given the small number of these, the initial review phase was broadened to include all available diversion programs. This broader review was carried

out because no program specifically excludes Indigenous people, although some processes may act as barriers to Indigenous involvement (discussed further in 'Indigenous participation'). Several jurisdictions do not have Indigenous-specific programs in place, but efforts have been made to make the programs culturally relevant wherever possible. To gain a clear understanding of the extent to which Indigenous people are diverted it is important to consider both mainstream and Indigenous-specific programs. The following audit is not an exhaustive list of all diversion programs operating throughout Australia but a list of the mechanisms via which offenders may be diverted to treatment, counselling and/or education programs. Where the information could be obtained, evaluation findings have been reported, along with information about the stated aims of the program, its components, the target group and any exclusionary criteria.

Table 3: Mechanisms for the diversion of adults and juveniles from the criminal justice system

	Pre-arrest		Pre-trial		Pre-sentence		Post-sentence	
	Juvenile	Adult	Juvenile	Adult	Juvenile	Adult	Juvenile	Adult
NSW	✓	✓	✓	✓	✓	✓ ^a		✓
Vic	✓	✓	✓	✓	✓ ^a	✓ ^a	✓	✓
Qld	✓	✓	✓	✓ ^a	✓ ^a	✓ ^a		✓
WA	✓	✓	✓	✓	✓	✓ ^a		✓ ^a
SA	✓	✓			✓		✓	✓ ^a
Tas	✓	✓	✓		✓		✓ ^a	✓ ^a
NT	✓	✓	✓	✓		✓		
ACT	✓	✓	✓		✓	✓	✓	✓

a: Includes an Indigenous-specific intervention

Indigenous drug and other diversion programs

With the continued high rates of Indigenous imprisonment it seems clear that, as is the case for drug offenders, traditional criminal sanctions have had little impact on the offending of Indigenous people, and more therapeutic and culturally relevant approaches are needed. The diversion of Indigenous offenders is not straightforward. As noted earlier, drug and alcohol use have been found to be widespread among many Indigenous communities and have been connected with serious and high levels of offending. Anecdotal evidence gathered during the consultations indicated that illicit use of licit substances, such as glue, petrol and paint, and high levels of alcohol use are more prevalent and damaging than illicit drug use, with the exception of cannabis, among many Indigenous communities.

The Alcohol and Other Drugs Council of Australia stated that 'there is a need for an urgent review of the impact of diversion on Indigenous communities, with a view to modifying the

national diversion initiative to ensure that it maximises the health and wellbeing of Indigenous people' (ADCA 2000). Although most drug diversion programs focus on illicit drugs, many jurisdictions have recognised and taken into consideration the influence of alcohol and/or inhalant use, particularly where Indigenous adults and juveniles are involved. Programs targeting alcohol-related offending are increasingly being introduced. Recently, the Queensland Government announced a \$36m whole-of-government initiative being piloted in Cairns, Townsville and Rockhampton. The Queensland Indigenous Alcohol Diversion Program targets Indigenous defendants charged with offences where alcohol has been identified as an influencing factor, and Indigenous parents with an alcohol problem. The program commenced in July 2007.

A list of all initiatives designed specifically to divert Indigenous offenders from the criminal justice system, at both police and court level is provided in Table 4. Although there are few programs designed exclusively for Aboriginal and Torres Strait Islander people, efforts have been made in most jurisdictions for mainstream programs to be culturally appropriate and in many instances, measures such as employing Indigenous workers in key positions are initiated in an attempt to ensure this. Furthermore, some key participants noted that programs had been put in place in areas with a high Indigenous population in an attempt to make the them available to Indigenous offenders. Although such programs may not be designed specifically for Aboriginal and Torres Strait Islander people, they are targeted to maximise Indigenous participation. By virtue of their location these mainstream programs can deal almost exclusively with Indigenous clients.

Table 4: Indigenous-specific diversion programs in Australia

	Police	Court
New South Wales		Circle Sentencing Program Intensive Court Supervision Program
Victoria		Koori Court
Queensland	Queensland Indigenous Alcohol Diversion Program	Murri Court Diversion from Custody Program Cairns Alcohol Remand and Rehabilitation Program
Western Australia	Regional community conferencing	Indigenous Diversion Program Community courts Regional Supervised Bail Program
South Australia		Nunga Court
Northern Territory		Community courts Volatile Substance Abuse Program
Australian Capital Territory		Ngambra Circle Sentencing Court

Police diversion

There are few Indigenous-specific programs for police to divert Indigenous offenders away from the criminal justice system. Unsurprisingly, the two programs that have been established operate in Queensland and Western Australia, both jurisdictions with a large Indigenous population.

The Queensland Indigenous Alcohol Diversion Program commenced operating as a pilot program in July 2007 in Cairns, Townsville and Rockhampton. Among its goals is the reduction of Indigenous involvement in the criminal justice and child protection systems. For the criminal justice stream, the program is a bail-based diversion program for Aboriginal and Torres Strait Islander people who have committed relatively minor alcohol-related offences and are deemed to be alcohol dependent. Eligible offenders must be Indigenous adults, eligible for bail, willing to participate in the program and assessed as suitable. Offenders charged with sexual or violent offences are not eligible for the program. Participants are diverted from further contact with the criminal justice system into treatment and case management with the objective of reducing alcohol-related harm. A treatment plan is developed and the intervention plan can include withdrawal management, counselling, residential rehabilitation, and employment and accommodation support where required. The program lasts approximately five months and upon completion, progress is taken into consideration at sentencing.

There are no drug diversion initiatives designed specifically for Indigenous people at the police level in Western Australia, although there are provisions for accessing interpreters, which may be useful for Indigenous offenders, and alternative arrangements can be made for people in remote areas. In practice, police do refer some drug offenders to court diversion programs such as the Indigenous Diversion Program (IDP). One police diversion program that specifically targets Indigenous offenders committing general offences in Western Australia is the Regional Community Conferencing program. It was established to address the overrepresentation of Aboriginal people in the Western Australian justice system and as a response to the Gordon Inquiry (Gordon, Hallahan & Henry 2002). The program is based on the juvenile conferencing model (discussed later in this chapter) but varies in the requirement for police officers and representatives of the Department of Corrections to be present at the conference. The difficulty in having police and departmental representatives present at conferences in remote communities was addressed by legislative amendments to the *Young Offenders Act 1994*, which now allows approved elders, wardens or other respected community members to hold family group conferences.

The lack of Indigenous-specific programs was not considered to be a particularly problematic issue by many key participants. The general consensus was that the existing police diversion programs catered well for Indigenous offenders and that there were often provisions in place to facilitate the involvement of Indigenous and culturally diverse participants.

Court diversion

Indigenous courts

Indigenous courts have been established in New South Wales, Victoria, Queensland, Western Australia, South Australia, the Northern Territory and the Australian Capital Territory. The South Australian Nunga Court was the first to be established in 1999. These courts provide an alternative to the traditional court system that is considered to be more culturally responsive and appropriate. These are the only diversionary options at court level specifically race-based, although in some remote locations, where other programs are not available, non-Indigenous offenders who fit all other criteria are accepted. The goals of such courts are to provide more appropriate sentencing options for Indigenous offenders and in doing so, reduce both the overrepresentation of Indigenous offenders in Australian prisons and future offending.

The most significant modification is the involvement of Indigenous elders. In most of the court models, an elder or elders will sit beside the magistrate and advise them on cultural issues that are relevant to the offender. The physical layout of the court also varies significantly from traditional courts, with most involving the magistrate moving from the bench to sit at eye level with all the other key players, who often sit around a circular table, symbolising the equal importance of all involved. These courts are not generally involved in providing therapeutic interventions (Payne 2005), although when it became clear that most matters coming before the Koori Court, for example, involved drug and/or alcohol use, a Koori alcohol and drug diversion worker was attached to the court. The alcohol and drug diversion worker plays an important role in identifying and facilitating access to treatment services for offenders. There is also a drug intervention program planned for the Port Adelaide Indigenous Court in the near future. The program will be similar to the Drug Court program but targeted at addressing substance use among Indigenous offenders, with the goal of reducing drug-related offending. King and Auty (2005) provide a thorough discussion on the emergence of therapeutic jurisprudence in summary courts, particularly with regard to interventions for Indigenous people.

As these courts generally operate as sentencing courts, offenders are only eligible if they plead guilty to the offences with which they are charged, are willing to go before the Indigenous court and have shown a willingness to accept responsibility. During the consultations, there was the sense that this is not a soft option and that many offenders would rather go through the traditional court process because they do not need to be as actively involved as in the Indigenous courts.

Box 1: Comments from the consultations

Some offenders are reluctant to go to the Indigenous court because they've heard from others who've gone through that it's harder. There is certainly more intensive involvement required at the court than an offender would normally expect.

If they come to the court thinking it will be an easier option they soon realise that's not the case.

They are much more actively involved and some don't want that. They'd prefer to have the matter dealt with as quickly as possible so they can get out fast. But that doesn't happen in this court. There is a lot of discussion between the elders, magistrate and the offender.

The courts can hear the same matters as the Magistrates Court and have the same sentencing options available to them. Offenders who have committed offences involving sexual or physical violence are not eligible to have their matter heard before most Indigenous courts. A brief summary of the Indigenous courts currently operating in Australia follows.

New South Wales

The Circle Sentencing Program was established on a pilot basis in Nowra in 2002. The program has steadily expanded and now operates at nine courts across New South Wales. The program is underpinned by the Criminal Procedure Amendment (Circle Sentencing Program) Regulation 2005. Aboriginal community members and the magistrate determine the appropriate sentence in light of the offence and background issues. Victims can also be involved as well as respected members of the community and the offender's family. An early evaluation of the program found high levels of satisfaction among the offenders, victims, community representatives, support persons and legal practitioners who had participated. The program was considered successful and the evaluation recommended that it be expanded to other areas of the state. Another evaluation is currently underway.

Victoria

The Koori Court is underpinned by the *Magistrates' Court (Koori Court) Act 2002* and is a sentencing court for Koori defendants who have pled guilty. The establishment of the court was one of the major recommendations of the Victorian Aboriginal Justice Agreement and the court seeks to tailor court processes to the needs of Indigenous Victorians. The elder or respected person advises the magistrate on cultural issues to be taken into consideration when determining the sentence. All sentencing options that are normally available are available to the magistrate in the Koori Court, although the focus is on culturally appropriate

sentences which will facilitate a reduction in reoffending. A Koori Justice Panel oversees the offender's progress and reports both positive and negative progress to the court. The panel can breach or recommend an offender be breached if they fail to comply with any court orders, and issue warnings about the possibility of breaches where appropriate. A review of the pilot program from October 2002 to October 2004 found reduced rates of recidivism, reductions in breaches for corrections orders and a reduction in the failure to appear rate. The courts have since expanded to other locations.

The Children's Koori Court is based on the same principles as the adult Koori Court and involves the same processes. Offenders are eligible to have their case heard in the Children's Koori Court if they are an Aboriginal or Torres Strait Islander person, they want to have their case heard there and live within the jurisdiction of the court. Cases involving sexual offences are not heard in the court. Unlike the case for adults, there is no requirement for a young offender to have pled guilty to the charge or charges.

Queensland

The Murri Court commenced in Brisbane in 2002 and currently operates in the Brisbane, Caboolture, Rockhampton, Townsville and Mount Isa magistrates and children's courts. The Murri Court provides a forum in which cultural issues are considered and where Aboriginal and Torres Strait Islander people have an input into the sentencing process. A male and female Aboriginal elder or respected person sit with the magistrate and advise on cultural issues relevant to the offender and the matter at hand. The magistrate may request a case plan to be developed for which elders or respected persons, the offender's family and the local community are often consulted. Where underlying concerns, such as drug and/or alcohol use, psychological issues and violence are identified, appropriate service providers can also be consulted to incorporate these issues into the plan. The completed case plan is put before the court, at which point the magistrate can consult with the elders regarding the cultural relevance of the sentence. An evaluation of the Murri Court reported anecdotal evidence suggesting that many offenders who appeared before the court would otherwise have received a custodial sentence. The evaluation also reported that 39 percent of offenders sentenced in the Brisbane Murri Court received a term of imprisonment. In the Brisbane Youth Murri Court, no more than five of the 52 offenders who had appeared before the court received a detention order. The court is currently undergoing another more detailed process and outcome evaluation, which will consider its effectiveness in achieving its objectives, including a reduction in the rate of Indigenous incarceration and offending.

Western Australia

Although there have been community courts operating in various areas of Western Australia for some time the first formal Indigenous court began operating in late November 2006 as a two-year pilot program. The Kalgoorlie–Boulder Community Court aims to reduce the

overrepresentation of Indigenous people in the justice system by employing culturally relevant processes. The court sits within the Magistrates Court. Participants – the defendant, magistrate, lawyers and family members – sit at a table with elders and respected members of the Indigenous community who provide advice to the magistrate on cultural matters. To be eligible, defendants must plead guilty and accept responsibility for their actions. The court is able to sentence in the same way as the Magistrates Court and can hear the same matters, with the exception of sexual and family violence offences.

South Australia

The South Australian Nunga Court is a sentencing court for adult Indigenous offenders. It was the first of these courts to be established in Australia and has been operating since 1999. It sits within the Magistrates Court on a day set aside to sentence Indigenous offenders. Currently the court runs at Port Adelaide, and operates on an ad hoc basis at Port Augusta, Murray Bridge and Ceduna. The court was the initiative of a particular magistrate and after discussion between police prosecutors, lawyers, the state government and the Aboriginal community, it was deemed an appropriate way of making the court process more culturally responsive for Aboriginal people. The process is similar to the Magistrates Court but the magistrate sits at the same level as the offender, with an Aboriginal elder, respected person or Aboriginal Justice Officer beside them to advise on matters of cultural and community relevance. Preliminary statistics reported for the period from June 2003 to June 2004 indicated that attendance in the Nunga Court was considerably higher than in the mainstream courts. It was recommended that a formal evaluation was required to more thoroughly determine the effectiveness of the court.

Northern Territory

Community courts operate in several areas of the Northern Territory, including Darwin and the Tiwi Islands, and can deal with all offences which would normally appear before the Magistrates Court. A coordinator is responsible for identifying respected persons or elders to whom the offender can relate. These elders then sit with the magistrate and advise on the sentence with regard to issues of cultural importance. An evaluation of these courts is currently being completed.

Australian Capital Territory

The Ngambra Circle Sentencing Court commenced as a six-month trial in May 2004. The court aims to allow Aboriginal and Torres Strait Islander people greater involvement in the sentencing process, to reduce barriers between courts and Indigenous people and to increase the confidence of Indigenous people in the sentencing process. Offenders must

plead guilty to the offence(s) with which they are charged and must consent to participate in the court. Those charged with sexual offences and offenders who have unresolved illicit drug dependence, with the exception of cannabis, are ineligible for the court. A panel of elders advises on the suitability of offenders and on members to form the Community Panel. The court participants include the offender, magistrate, prosecutor, the four-member Community Panel and the court coordinator. The victim, the offender's legal representative and support people for both the victim and offender may attend if they wish. If an offender consents to the sentence recommended by the court, they are remanded for sentencing by the Magistrates Court, but if the sentencing circle is terminated, the matter is referred back to the Magistrates Court and will proceed according to traditional processes.

Court diversion programs

There are several other court programs that have been established with the purpose of providing more culturally responsive alternatives to Indigenous offenders who enter the criminal justice system. These programs are briefly described in the following section.

The New South Wales Intensive Court Supervision Program and the Western Australian Regional Supervised Bail Program both sought to provide supervision and support to young Indigenous offenders. In New South Wales, the Attorney-General's Department and Department of Juvenile Justice trialled the Intensive Court Supervision Program specifically for Aboriginal young people who were persistent offenders. It operated as a pre-sentence program (like the Youth Drug and Alcohol Court) and was designed to provide diversionary options in Bourke and Brewarrina. The program commenced operation in 2005 and aimed to identify and address participants' health or social problems, to provide mentoring and support, and to increase their involvement with cultural activities, education, training and sport. The program was not continued because of lack of funding.

The focus of the Western Australian Regional Supervised Bail Program is to support young people to remain in their communities with families or extended families by promoting family-focused supervised bail options. The program seeks to support juveniles to successfully complete their bail in familiar surroundings and to reduce the number of juveniles who are incarcerated. The program has largely been driven by the geographical and cultural demands of the state and has been able to offer a practical alternative to incarceration and to reduce the need for unnecessary travel causing family dislocation. The program has recently moved towards a model that considers the individual needs of the young person involved and the best family or extended family with which to place them while they complete their order.

Other programs, such as the Queensland Diversion from Custody Program, the Cairns Alcohol Remand and Rehabilitation Program, and the Western Australian Indigenous

Diversion Program, provide diversion at the court level for Indigenous offenders with substance use issues. The Diversion from Custody Program aims to reduce the rate of Indigenous incarceration and the number of deaths in custody by providing a diversionary option for intoxicated persons. The program seeks to ensure that intoxicated persons have access to a Diversion from Custody Centre, which is a non-custodial sobering-up facility. Centres are located at Townsville, Brisbane, Cairns, Mount Isa and Rockhampton.

The Cairns Alcohol Remand and Rehabilitation Program commenced in 2003 as a pilot and is now also running in Townsville. The program is designed to provide treatment for itinerant alcoholics charged with public drunkenness and disorderly behaviour offences. The majority of itinerant people in these areas are of Aboriginal or Torres Strait Islander descent. The program targets persistent offenders who are likely to be sentenced to serve a prison term, and provides them with an opportunity to treat their problematic alcohol consumption and reduce alcohol-related offending. Offenders who are assessed as eligible and consent to participate are remanded in custody for 24 hours so that an authorised provider can assess their suitability. Based on this assessment the offender is bailed with various conditions, including a requirement that they must be released to the care of the service provider and are to reside at a given rehabilitation facility for the term of the program. The program can not exceed one month and is offered as an alternative to a prison sentence. If an offender breaches the bail conditions, they will return to court for sentencing on the original charges. The breach offences will not necessarily influence the sentence. After the one-month program is complete, the service provider reports to the court and may recommend a further remand to the program for treatment and rehabilitation to continue. At this point the court may grant the further remand or choose to sentence based on the original charge but taking participation in the program into consideration.

The Indigenous Diversion Program (IDP) is another early diversion program funded via the Council of Australian Governments (COAG) illicit drug early intervention programs available to offenders under the Western Australian Diversion Program. The IDP is similar to the Pre-sentence Opportunity Program (POP) but is specifically aimed at Indigenous people who have committed relatively minor offences, pleaded guilty in court to the charges and been identified as having illicit drug use issues, which influenced their offending directly or indirectly. Offenders charged with, or who have a record involving, drug trafficking, sexual or violent offences and those facing a mandatory prison sentence are ineligible to participate in the IDP. The IDP operates in the Kimberly and Gascoyne regions of Western Australia and is being rolled out in other areas of the state, including the Pilbara, Murchison, Great Southern, Wheatbelt and Goldfields regions. The program aims to provide culturally relevant diversion services to Indigenous clients who are referred by the circuit magistrate and undergo assessment for suitability by the IDP project officer. Participation is voluntary and, once admitted to the program, the participant is placed on remand for six to eight weeks, during which they attend drug treatment at an appropriate agency. For those who complete the IDP, a report on their participation is given to the magistrate, who considers the offender's progress in the program when determining a sentence. Although the program is designed

for illicit drug users, anecdotal evidence indicates that offenders with alcohol abuse problems are admitted, and recently the program was expanded to include offenders with volatile substance abuse issues. An evaluation of the program is currently underway.

Although there are few Indigenous-specific diversion options available in Australia, many participants consulted during this project noted that mainstream diversion programs in remote areas with high Indigenous populations become Indigenous-specific by virtue of geography. An example is the Northern Territory's Alcohol Court which has dealt with 25 people since its inception in 2006. Of those, 23 were Indigenous people. Another initiative in the Northern Territory which has a considerable impact on Indigenous communities is the Volatile Substance Abuse Program. The program allows for the diversion of inhalant abusers into treatment. The main arm of the program mandates treatment, rather than diversion from the criminal justice system, although the Act allows for the diversion of offenders into treatment on bail under orders made by local courts. In this way, it operates under the same guidelines as Court Referral and Evaluation for Drug Intervention and Treatment (NT). The program was established by the *Volatile Substance Abuse Prevention Act 2005*. It developed in response to the report on petrol sniffing in remote Northern Territory communities (NT Legislative Assembly 2004) that highlighted high levels of harm due to volatile substance abuse and recommended a comprehensive approach by the Territory government to address the issues associated with volatile substance abuse. Among the goals of the program is the reduction of the potential for offending among volatile substance users. It began operation in June 2006 but no clients had been referred at the time of consultations.

Given the dearth of Indigenous-specific programs and the fact that Indigenous people are not excluded from participation in mainstream drug and other diversion programs, the review was extended to include mainstream diversion programs operating at the police and court level in all jurisdictions. To provide a complete picture of the options for diverting Indigenous offenders from further and more serious contact with criminal justice processes, it is necessary to summarise all mainstream programs, as the majority of Indigenous offenders will pass through these. The following sections on police and court diversion provide a brief outline of the relevant diversionary mechanisms and any statistics which were available on Indigenous participation in these programs.

Mainstream diversion programs

Police diversion: general and drug diversion programs

There is some form of diversion available at the police level in all Australian states and territories. Primary diversion options (warnings, cautions and conferences) are predominantly available only for use with juvenile offenders. Cautioning of adults is restricted to traffic offences in most jurisdictions, although adults in Victoria can be cautioned for shop stealing offences.

Many of the diversionary options discussed in this section are also available at the court level, although they are intended to divert offenders away from the criminal justice system as early as possible. This section summarises the use of warnings, cautions and conferencing, as well as police drug diversion programs in each state and territory. Table 5 lists the programs described in this section.

Table 5: Police diversion programs in Australia

	Drug	Mainstream
New South Wales	Cannabis Cautioning Scheme	Warnings, cautions and conferencing for juveniles are in place in all jurisdictions. Conferencing for young adults is available in NSW. Victorian police caution adult offenders for shop stealing offences.
Victoria	Cannabis Cautioning Program Drug Diversion Program	
Queensland	Queensland Indigenous Alcohol Diversion Program	
Western Australia	Cannabis infringement notice All Drug Diversion Young Person's Opportunity Program	
South Australia	Police Drug Diversion Program	
Northern Territory	Cannabis Expiation Notice Scheme Illicit Drug Pre-court Diversion Program	
Tasmania	Cannabis and Illicit Drug Diversion	
Australian Capital Territory	Police Early Intervention and Diversion Program Simple cannabis offence notice	

Warnings and cautions

Warnings or cautions are the least restrictive diversionary options and can be issued instead of a formal charge. These forms of diversion are most likely to be used for minor offences, primarily with juvenile offenders. They operate similarly in all jurisdictions. Warnings are the least intrusive sanctions and may not be given for indictable offences. The warning is intended to be informal and given 'on the street' with no requirement for the person to admit guilt. A person who has previously been warned or has previously offended may still receive another warning unless the police officer believes they should be dealt with by other means. A record of the warning given is recorded in some, but not in all, jurisdictions, with details including the name and gender of the young person, and the time, place and nature of the offence.

Where the offences or circumstances surrounding the offence are more serious, officers may choose to issue a caution. This is a more formal procedure that generally takes place once a person has admitted guilt. Cautions are generally issued for summary offences and those indictable offences that may be dealt with summarily. Cautions may not be given for more

serious indictable offences such as murder, manslaughter, sexual offences and drug trafficking offences. Police officers have a great deal of discretion when it comes to deciding whether to issue a caution. They must consider the seriousness of the offence, the level of violence involved, the harm caused to the victim, the nature and extent of offending by the person and the number of previous warnings or cautions issued. The caution is often delivered at a police station. A record of the caution including the person's name, address, date of birth, gender, cultural/ethnic background and the nature of the offence must be recorded. In some jurisdictions cautions can also be issued by magistrates. For young people, the caution is issued in the presence of an adult, usually the parents or guardian. Many jurisdictions have provisions that allow police to ensure that, where the offender is Indigenous, an elder or a respected member of the community is present when the caution is administered or to administer the caution themselves.

In all jurisdictions except the Australian Capital Territory and Victoria, police cautioning has a legislative basis. In the Australian Capital Territory, police use their common law power of discretion for formal and informal cautioning, and follow the ACT Policing practical guide in doing so. In Victoria, the police cautioning program incorporates the pre-existing adult and juvenile cautioning schemes. Juvenile cautioning has been formally recognised in Victoria since 1959 while the cautioning of adults (persons aged over 17) for shop stealing offences has taken place since 1985.

New South Wales

In New South Wales, police have the power to administer warnings and cautions under the *Young Offenders Act 1997*. The Act states that where appropriate, the least restrictive sanctions should be applied first and this sentiment applies in all jurisdictions. Under s 14, where an officer decides not to issue a warning they must either consider issuing a caution or refer the matter to a specialist youth officer who will then determine the appropriateness of a youth justice conference. The Act allows for the issuing of cautions by respected persons or elders where the offender is Indigenous and the officer believes it is appropriate to proceed in such a way. A record of warnings and cautions is placed on the police database, with additional information regarding the youth as specified in the regulations accompanying the Act.

Queensland

The Queensland Police Service can make use of formal and informal cautions and community conferences when dealing with young offenders aged between 10 and 16 years, under the *Juvenile Justice Act 1992*. For young Indigenous offenders, the Act allows for an elder or respected member of the Aboriginal or Torres Strait Islander community to issue the

caution. Under the Act, a court, if satisfied that the caution was appropriate, may dismiss a charge or charges against a young person if they admitted guilt. This provision is seen as an important check on the use of police discretion (HREOC 2001).

Western Australia

In 1991, a formal system of juvenile cautioning was introduced in Western Australia. Under the juvenile cautioning system (which is now covered by the *Young Offenders Act 1994*) police can divert young offenders, aged less than 18 years, from the criminal justice system by issuing verbal or written cautions for minor offences. A young person who has previously been dealt with under the Act or has previously offended may still receive a warning unless the police officer believes they should be dealt with by other means. Written cautions may be used alone or in conjunction with a referral to a Juvenile Justice Team (JJT). At present, no record of the verbal warning given is recorded on the Western Australia Police computer database, although written cautions are recorded. There are plans to introduce a field to record verbal cautions and certain identifying information in the new information management system due to come online in 2007.

South Australia

Under the *Young Offenders Act 1993*, the South Australia Police can make use of both formal and informal cautions when dealing with young offenders aged between 10 and 18 years. An informal caution is given by the police officer at the time of the offence and parents or guardians are notified in writing. There is no formal record of the offence. A formal caution can be applied where the offence is minor, the youth has admitted guilt, there may or may not be a specific victim, and the nature of the offence warrants the youth entering an undertaking. An undertaking may involve an apology to the victim, compensation payments, community service and other actions as deemed appropriate. The caution is delivered in the presence of an adult, usually the offender's parents or guardians. Although a formal caution will not result in a criminal record that can be used in an adult court, a formal record of the offence is kept on file for reference should the youth reoffend.

Northern Territory

In the Northern Territory, the Juvenile Pre-diversion Scheme was established by the NT Police, and the *Police Administration Act 1978* was amended to provide police with the power to divert juveniles using the levels of diversion created. The diversion of juveniles is now covered by the *Youth Justice Act 2006* which states that an officer must divert a youth instead of charging them wherever appropriate, thereby encouraging the use of least restrictive sanctions first and enshrining the use of detention as a last resort. To ensure that diversion occurs as

often as possible, it is mandatory for police officers to gain approval from a senior sergeant or officer in charge of a police station prior to issuing a summons or arresting a youth. The scheme allows for diversion through a continuum of options, beginning with verbal and written warnings, youth justice conferences, formal cautions and community-based programs, which cover areas of need such as life skills, and drug and/or alcohol treatment. Young people with a history of diversions and/or convictions may not be suitable for diversion, but an officer may choose to divert despite this, if appropriate. More serious offenders are prosecuted through the courts and may access programs at that point. Courts may also divert juveniles who appear before them directly to conferences.

An evaluation of the scheme found that diversion was offered to 61 percent of youths who were apprehended within the first three years of the Northern Territory agreement and that the recidivism rate of the juveniles who were diverted was lower than for juveniles who proceeded through the court system (Urbis Keys Young 2004). It was found that the scheme was less successful with Indigenous youths, who were less likely to be diverted. The number of Indigenous youths appearing before the court and the number being convicted decreased at a lower rate than non-Indigenous youths in the first year of the scheme. However, it has increased in the past two years of the scheme, and is now greater than the number before the introduction of the scheme.

Tasmania

Tasmania has a three-tiered Youth Diversion Program under the *Youth Justice Act 1997* that comprises informal and formal cautioning and community conferencing. A formal caution or community conference cannot be imposed without the agreement of the youth. In practice, a formal caution is often in the form of a community conference, which the youth is required to make an undertaking to attend, which can last for a maximum of three months, and may include other conditions. All formal cautions must be recorded and signed by the youth in the presence of a parent, guardian or other responsible adult. For Indigenous youths, the Act allows for cautions to be administered by an Aboriginal elder or representative of an Aboriginal organisation. Cautions administered in this manner must be made in the presence of a police officer.

Conferencing

Youth or family conferencing is provided as a diversionary option in all states and territories. Generally, referral to a conference is for more serious offenders or offences and those with a history of warnings, cautions or offending. Conferences present an opportunity for the young person to take responsibility for their actions and to see first hand how their behaviour has affected others. In determining whether the matter is suitable for a conference, the

seriousness of the offence, the level of violence involved, the harm caused to the victim, the nature and extent of offending by the young person and the number of times they have received warnings or cautions under the relevant Act and other matters deemed relevant must be taken into consideration. Offenders must plead guilty or have been found guilty and must agree to participate. If it is deemed inappropriate for a conference to be held, the matter is normally dealt with by the Children's Court.

If the offender is found to be suitable and eligible, and agrees to participate, a conference is organised with the relevant parties. This assessment of suitability is based on the offender's acceptance of responsibility, level of remorse, feelings towards the victim, their interpersonal skills and various safety issues including substance abuse and cultural values. This usually involves bringing the victim and offender together with facilitators, police and other support people to attempt to repair the harm caused by the offender's actions and to devise an intervention plan or agree on an undertaking for the offender. In some jurisdictions, conferences may go ahead without the victim being present. The plan may include making an apology or reparation to the victim, doing community service or an education program, donating to charity, counselling, or working for the victim or their parent. It can also include drug and alcohol treatment where this has been identified as an influence on their offending behaviour. Generally, the agreed outcomes must not be more onerous than a court would order. Offenders who do not comply with the outcomes of a conference will reappear in court and may return to the traditional criminal justice system.

New South Wales

In New South Wales, a young person can be offered a conference for the same offences that may be cautioned under the *Young Offenders Act 1997*, but often following previous warnings and cautions, as conferences were not designed for first time minor offenders. In practice, a youth may be diverted to a conference after receiving three cautions. Conferencing for young adult offenders is also available in New South Wales. This measure was trialed in 2005 for offenders aged between 18 and 24 years in Liverpool Local Court and the Tweed Heads Local Court Circuit. Potential participants are referred by the court after a plea or finding of guilt and prior to sentencing. Offenders who have committed serious violent crimes or have been charged with child prostitution, child pornography, stalking or intimidation offences involving the use of a firearm or domestic violence, are ineligible for the program. A draft intervention plan must be approved by the court, after which the offender undertakes the plan either prior to sentencing or as part of the sentence. Satisfactory completion of the plan is notified to the court, which can then consider the outcome during sentencing, or if the plan was part of the sentence the court can finalise the matter.

Victoria

The Juvenile Justice Group Conferencing program began as a pilot in Victoria in 1995 based on existing provisions in the *Children and Young Persons Act 1989*. It is now covered by the *Children, Youth and Families Act 2005*. Young people appearing before the Children's Criminal Court, who were aged from 10 to 18 years at the time of the offence, are eligible if they meet other criteria. Participants must have pleaded or been found guilty of offences not including homicide, manslaughter, sex offences or serious crimes of violence. The offence must be serious enough for the court to consider probation or a youth supervision order and the youth must be referred to the program within 12 months of the commission of the offence. If the young person is considered eligible, their sentence is deferred so that they can be assessed for suitability to participate in the program. Failure to attend the conference or lack of participation is reported to the court. At the time of sentencing, the court may also take the behaviour of the young person during the conference, the pre-sentence report and the group conference report into consideration. An evaluation of the program found it had positive benefits for young people by diverting them away from supervisory orders and future contact with the criminal justice system (Success Works 1999). A Young Adult Restorative Justice Conferencing program, which sought to target offenders aged between 18 and 25 years, was proposed in July 2006 but a decision is yet to be made.

Queensland

Youth justice conferencing commenced in 1997 as the Community Conferencing Pilot Project and operates as both a diversionary and a sentencing option in the Queensland Children's Court. Police can divert young offenders from the court system by referring them to conferencing, or the court may choose to divert or order a pre-sentence conference or indefinite referral as a method of dealing with a charge. Youth justice conferences can deal with a range of offences, such as shop stealing, break and enter, unlawful use of a motor vehicle, wilful damage, arson and assault. In fact, there is no limitation regarding the type of offences that may be referred to a conference.

Victim consent to proceed with a conference is no longer required due to legislative amendments made to the *Juvenile Justice Act 1992* in 2003. Where the offender is an Indigenous youth, the conference convenor must consider asking an elder or respected member of the Indigenous community to attend the conference. Some 32–36 percent of all referrals to conferences were for Aboriginal or Torres Strait Islander youths. Where the offence is drug and/or alcohol-related and all parties agree, the agreement may include assessment by a drug and alcohol counselling service.

Western Australia

In Western Australia, if an offence is deemed to warrant more than a written caution, the youth may be referred to a JJT. JJTs are based on the restorative justice model and operate state-wide to divert young offenders from the criminal justice system. JJTs are multi-agency and involve police officers and representatives from the Department of Corrective Services and the Department of Education and Training, and can also involve representatives of cultural or ethnic communities as appropriate. JJTs can choose to deal with each referral with a minor or major intervention. A minor intervention involves the JJT formally cautioning a young person in lieu of holding a family group conference or in conjunction with doing so. Similarly, a caution can be given with or without any other sanction. The family group conference, which involves a meeting of the young person, their parents, the victim, their support persons and family members, and other parties as relevant to either the victim or offender, is considered a major intervention. Participation on behalf of the victim is voluntary, whereas it is mandatory for the parents or guardian(s) of the youth to attend the meeting. A contract, known as an action plan, is negotiated between the young person, their parents and the victim, and outlines the penalty to be imposed on the young person.

There is no limit to the number of times a young person can be referred to a JJT, although teams have the right to recommend that a young person be sent to the Children's Court if they continue to reoffend. Youths can be referred to the JJTs by police officers of the Children's Court. For cases referred by the Children's Court, the matter must be dismissed upon successful completion of the action plan. Where the plan expires or is incomplete, the youth returns before the JJT and either another action plan is designed or a report is sent to the referring authority with suggestions for further action if the matter is unresolved. For referrals from the court or from police officers, successful completion of the action plan allows the youth to exit the criminal justice system without a criminal record, although a formal caution is issued and is recorded on the police database. In the metropolitan area, 22–23 percent of participants are Indigenous, rising to 40 percent in regional/remote areas.

Court conferencing is another diversionary option in Western Australia. This operates in a manner similar to that of the family group conference but was developed for more serious or persistent young offenders who would be excluded from the JJT process due to their pattern of offending behaviour. To be eligible, a matter before the Children's Court must have an identifiable victim, the offender must agree to the referral and the court must determine guilt. The process is similar to that for family group conferencing and results in an agreement or action plan. If an agreement expires or is incomplete, another meeting may be arranged to discuss the youth's failure to undertake the negotiated terms. If the matter remains unresolved it is referred back to the Children's Court. If an agreement is successfully completed, there must be no further sanction imposed upon the young offender by the court. Approximately 20–22 percent of participants are Aboriginal.

South Australia

In South Australia, the *Young Offenders Act 1993* provides for young offenders between the ages of 10 and 18 years to be dealt with by a family conference. Where the youth has admitted to an offence which does not warrant prosecution and for which there is a victim, and the offence warrants the youth entering an undertaking, a family conference can be conducted by a Youth Justice Coordinator. It is an opportunity for the young person to take responsibility for their actions and to see first hand how their behaviour has affected others. As part of the process, youths must make undertakings which may include drug and alcohol treatment where necessary.

Northern Territory

In the Northern Territory, a formal caution or youth justice conference is considered appropriate under the *Youth Justice Act 2005*, where the circumstances are more serious and may be offered pre-arrest or pre-trial. It is an informal process which is flexible with regard to different cultural practices, such as Indigenous participants who may wish to vary the time and place of the conference. The flexibility of the process allows outcomes to be culturally relevant. The conference is carried out by an authority figure who is considered to have the most influence over the juvenile's behaviour. This can be a police officer, an Aboriginal elder or other respected community member, or another suitable person. Efforts are made to ensure that where the youth is of Aboriginal, Torres Strait Islander or other ethnic descent, the conference is conducted in a culturally relevant and appropriate manner. As a condition of the conference, youths may also be referred to a Community Youth Development Program, which can offer a range of interventions such as life skills and substance abuse counselling, education and employment.

Australian Capital Territory

In the Australian Capital Territory, the Australian Federal Police are able to refer offenders to a restorative justice conference under the *Crimes (Restorative Justice) Act 2004* which allows the restorative justice conference program to be used as an alternative to the traditional court process. The program focuses on the reparation of harm caused by offending. Offenders who have been involved in a restorative justice conference for a past offence are not precluded from referral for subsequent offences, although a new conference may be delayed pending the completion of agreed outcomes for a previous conference. An Indigenous officer is attached to the Restorative Justice Unit to assist in matters relating to Indigenous clients. Conferences are available at every point of the traditional criminal justice system and can also run alongside traditional processes. Participation in the program may be taken into consideration at the sentencing phase if the case has gone to court following the conference, but participation in restorative justice will not automatically result in a

reduction of the sentence that would otherwise have been handed down. If the offender chooses not to participate or withdraws once the process has commenced, the court must not take that into consideration at the point of sentencing. The program is currently in its first phase and deals only with juveniles and less serious offences. It will expand in 2007 to include adults and serious offences, including domestic violence and sexual offences. The restorative justice process is considered to be well suited to Indigenous offenders. Ten percent of youths referred for offences are Indigenous.

Tasmania

A conference is the last option available in the three-tiered Tasmanian Youth Diversion Program under the *Youth Justice Act 1997*. Conferences involving Indigenous youths must invite an Aboriginal elder or representative from an Aboriginal organisation. A youth cannot be prosecuted for the offence for which a conference was convened or issued with a caution if they fulfil all obligations agreed to in the undertaking made. Magistrates can also refer youths to a conference. A Community Service Order (CSO) can be an outcome of a conference and courts can also make a legal order and sentence young people to a CSO to ensure they participate in restoration and restitution of harms done in the community. By definition, court-ordered CSOs are not the same as pre-court informal cautioning, formal cautioning and conferencing although they have a role in ensuring that young people take responsibility, make restoration and reparation, and are deterred from further offending. Approximately 18 percent of conferences involve Indigenous offenders, although this was thought to be an underestimate due to the issues surrounding identification of Indigenous status in Tasmania.

Drug diversion programs

In light of the growing body of research pointing to a connection between drug use and offending, government policy has acknowledged the need to respond with non-traditional options. In 1999, the COAG agreed on a nation-wide diversionary scheme aimed at diverting offenders into drug education, assessment and treatment (ADCA 2003). The majority of programs discussed in this section fall under the auspices of the Illicit Drug Diversion Initiative (IDDI), one aspect of the National Illicit Drug Strategy (NIDS) agreed upon by COAG in 1999. The IDDI has been implemented in all states and territories, with some variation among jurisdictions. All measures funded under the IDDI involve the following:

- offenders are diverted by police into assessment for education or treatment, or directly into drug education program
- if an offender completes drug education or treatment, the offence is expiated, but if they do not participate or fail to complete the program, they are referred back to the criminal justice system (ADCA 2003: 5).

The Police Drug Diversion Initiative (PDDI) seeks to divert drug offenders from the criminal justice system as early as possible. There are significant differences in the way the police drug diversion programs operate in terms of the age of eligible offenders, quantity of drug, admission of guilt, referral to treatment, and concurrent and prior offences, among others. Generally, programs under PDDI involve cautioning and/or referral to an education session or treatment program for offenders caught with small amounts of specified illicit drugs. A brief description of the programs available in each state follows.

New South Wales

Juveniles and adults can be cautioned for drug offences. Diversion of youths occurs under the *Young Offenders Act 1997*, while the diversion of adult offenders occurs under the Cannabis Cautioning Scheme, which is discretionary. Police are able to formally caution adults detected with small (less than 15 g) amounts of cannabis and/or equipment for its use, who admit the offence under the scheme. The scheme is not available to adults with a history of violence, sex or drug convictions. Persons cautioned under the scheme are provided with health and legal information and given the number of the Alcohol and Drug Information Service, which can provide information on treatment, counselling and support services. A limit of two cautions per person applies and, on receiving a second caution, a mandatory counselling and education session must be undertaken. Between 18,000 and 19,000 individuals have been cautioned under the scheme since April 2000, and 500 to 600 of these received a second caution. A review of the program in 2004 (Baker & Goh 2004) found that almost three percent of all persons cautioned were Indigenous and that this figure remained relatively constant over the three years of the scheme. Indigenous persons were overrepresented in charges and were much less likely than non-Indigenous people to be diverted under the scheme.

Victoria

Two drug diversion programs operate in Victoria. The first, the Cannabis Cautioning Program, was implemented state-wide in 1998 and extended the Victoria Police Cautioning Program to deal specifically with cannabis use. The program aims to minimise the further progress of persons who have committed minor drug offences in the Victorian justice system. For a person to be eligible to receive a cannabis caution, they must be at least 17 years old and have been arrested for the use and/or possession of a non-trafficable quantity of cannabis (that is, 50 g or less). They must admit to the offence and consent to receiving a caution and must not have received more than one other drug diversion or have been involved in another offence at the time of arrest. Once arrested, found to be eligible and given a cannabis caution, the offender is given an educational brochure. Attendance at the education session is voluntary. A Koori-specific cannabis education program is also available.

The second program, the Drug Diversion Program, was implemented state-wide in late 2000 and extended the Victoria Police Cautioning Program to deal with the use of other illicit drugs. The program is designed to capture low level or first time users, who must be over 10 years of age and have been arrested for a non-trafficable quantity of illicit drugs other than cannabis. They must admit to the offence and must not have received more than one other drug diversion or have been involved in another offence at the time of arrest. It is important to note that a person is not excluded for a prior conviction for any offence. The Drug Diversion Program differs from the Cannabis Cautioning Program in that the offender is referred for drug assessment and one treatment session at which attendance is mandatory. This program was evaluated and found to be successful in targeting low level or first time users. Half the participants were 21 years or younger and 41 percent had been using drugs for under one year (McLeod Nelson & Associates 1999).

Queensland

People who are apprehended for a minor drugs offence may be diverted via the Queensland Police Diversion Program. Police are able to offer eligible adults an opportunity to attend a Drug Diversion Assessment Program under the *Police Powers and Responsibilities Act 2000* and juveniles under the *Juvenile Justice Act 1992*. A person may be referred to the program if they are arrested or questioned regarding a minor drugs offence (that is, possession of not more than 50 g of cannabis or possession of implements for smoking cannabis) and if they admit to the offence. Persons who have committed offences involving production, supply or trafficking cannot be referred to the diversion program. Similarly, the commission of a concurrent indictable offence committed in circumstances related to the minor drugs offence will also exclude the person from the diversion, as will a previous conviction for a violent offence. Offenders will also be excluded if they have previously been offered a diversion. Aboriginal and Torres Strait Islander people are offered an Indigenous service provider. A person who completes the program successfully will not be charged with the offence nor will they have a criminal record for it. It is an offence under the *Police Powers and Responsibilities Act 2000* if a person fails to attend the session as arranged. Under these circumstances they may be charged and required to attend court. Since the program began, approximately 38,000 people have been diverted and 80 percent of participants complied with the program's conditions. The compliance rate for Aboriginal and Torres Strait Islander participants was significantly lower at eight percent.

Western Australia

The Western Australian Comprehensive Diversion Program aims to divert drug dependent offenders aged 18 years and over from more serious contact with the criminal justice system through programs ranging from early intervention drug education sessions, such as the Cannabis Infringement Notice (CIN) scheme, to more intensive supervised drug treatment

programs. The CIN scheme is backed by legislation (*Cannabis Control Act 2003*) and gives police the option to issue an infringement notice to people over 18 years of age who are detected using, or being in possession of, small amounts of cannabis or related paraphernalia. An offender charged with concurrent offences may be issued a CIN for the cannabis-related offences but, in practice, this is contingent on the seriousness of the concurrent offence and whether it is appropriate to issue a CIN. The infringement notice can be expiated by paying a fine or attending a cannabis education session within 28 days.

An Aboriginal cannabis education session is available to ensure the session is culturally relevant and appropriate. There is no limit to the number of times a CIN may be issued to a person, although after the third caution within three years, the option to pay a fine is removed and the offender must attend the education session. Up to three CINs may be expiated at the one education session. If the offender does not attend the education session or pay the fine within 28 days, the matter goes to the Fines Enforcement Registry which offers options for paying the fines. Failure to pay the fine at this point can lead to loss of driver's licence. Anecdotal evidence suggests that Indigenous people prefer to use the alternative payment arrangements and the Centrepay option which deducts the fine amount from any Centrelink payments. Forty-six percent of people who receive an infringement notice expiate the notice within 28 days and a further 20 percent pay the fine when it reaches the registry.

Illicit drug offences are diverted through the All Drug Diversion (ADD) program. The ADD is based on police policy rather than legislation, and targets drugs other than cannabis although hashish may also fall under this scheme. Offenders aged 18 years and over, who are detected with small quantities of illicit drugs and who meet other criteria, may be diverted into three mandatory treatment sessions to be completed within 30 days. To be eligible, offenders must not have any prior convictions for more serious drug offences such as trafficking. Although offenders charged with concurrent offences may be admitted to ADD for the drug-related offences, serious concurrent offences may exclude them from the program. Offenders may only be offered one diversion to ADD. They are assessed for their particular needs in terms of drug and alcohol use. Indigenous offenders are given the option of the services of an Indigenous treatment provider. Police are notified of offenders who do not comply, which may result in prosecution for simple drug offences. Discussions with program staff revealed that the uptake by Indigenous people was very low. It was suggested that this could be due in large part to the fact that some programs and services are not available in remote areas, although it is possible to conduct the counselling via telephone.

A third program, the Young Person's Opportunity Program, allows police (or courts) to divert youths aged between 10 and 18 years who have been identified as having illicit drug use issues. If suitable for the program, the youth is case managed by a JJT who monitors their progress and treatment. Participation is voluntary. The program is running in several areas across the state and although it is not specifically aimed at Indigenous youth, it runs as an

Indigenous program in some locations by virtue of the high Indigenous population in the region. The program is designed to be culturally relevant for Indigenous and other ethnic participants and is said to be flexible enough to accommodate their needs.

South Australia

The Police Drug Diversion Program (PDDP) operates state-wide and provides for the mandatory diversion of adults (through the *Controlled Substances Act 1984*) and youths (through the *Young Offenders Act 1993*) who are detected for a simple possession (personal drug use) offence. Youths aged between 10 and 17 years who are caught with a small amount of cannabis are cautioned, given some information about PDDP and referred to the Drug Diversion Line for treatment and assessment. Consent is not required from parents or guardians and admission is not necessary provided there is sufficient evidence. Youths must also be diverted for other illicit drugs, illicit use of prescription drugs and petrol inhalation. The last applies only in the Anangu Pitjantjatjara Lands where petrol inhalation is prevalent in the Indigenous community.

Adults cannot be diverted for prescription drug use and those caught with cannabis are issued a cannabis expiation notice and some educational material and information about treatment. There is no requirement for the police officer to contact the Drug Diversion Line. For adults who are in possession of small quantities of illicit drugs, the apprehending officer contacts the Drug Diversion Line to organise an assessment. Once an appointment has been made, the officer issues a drug diversion referral notice and some information regarding the diversion program. Diversion is into a health-based assessment and treatment program. The police officer is notified when a person completes or fails to complete the diversion.

For youths, there is no limit to the number of times they may be diverted, while adult diversion is limited to twice for each offender. Anecdotal evidence indicates that there is a lack of Indigenous-specific programs although the program is considered to be as culturally relevant as possible. By September 2006, 5,814 participants had been accepted on the program since its inception. Of these, approximately seven percent were Indigenous.

Northern Territory

Youths in the Northern Territory can be cautioned for minor cannabis offences under the *Youth Justice Act 2005* and adults who are caught with small quantities of cannabis can be dealt with under the Cannabis Expiation Notice Scheme (CEN). Adults who commit simple cannabis offences are issued with an expiation notice and can avoid more serious consequences, such as prosecution, by paying the fine. Offenders who do not pay the fine are dealt with under the fine default system, rather than being charged with the underlying cannabis offence.

Juveniles and adults who are apprehended for the use and possession of non-trafficable quantities of illicit drugs as defined in the *Misuse of Drugs Act 1990* may be diverted under the Illicit Drug Pre-court Diversion Program. The program is designed for the diversion of first-time illicit drug offenders from the court system into drug education, counselling and treatment services. To be eligible, the offender must admit to the offence, and give informed and written consent. They must not have a history of drug or violent offences, and those with concurrent property or violent offences are not normally eligible. The decision to divert is discretionary and police officers must consider whether diversion is appropriate in each circumstance. Approximately half the offenders diverted for cannabis offences were Indigenous. A previous evaluation of the program found that almost 33 percent of participants were Indigenous (AGD 2002). An evaluation is planned for 2006–07.

Australian Capital Territory

The Police Early Intervention and Diversion Program is available to those apprehended for possession of a small amount of illicit drugs or illicit possession of licit drugs and is subject to police discretion. Offenders may be referred to drug education, counselling and treatment services as an alternative to arrest. Offenders must consent to the diversion, must not have committed violent offences or be charged with cultivation, and must not have had more than two diversions to the program. Those with a history of drug use are not automatically excluded, as police have discretion as to whether diversion is appropriate. Eligible offenders are issued with a drug diversion caution notice and police notify the Alcohol and Drug Program Diversion Service (ADPDS) of the referral. This service will assess the participant and refer them to an approved agency for treatment. The drug diversion caution notice is expiated once the assessment and first treatment sessions are attended. Compliance and non-compliance are reported to ACT Policing. Compliance results in no recording of a criminal conviction. Action taken for non-compliance is determined by the ACT police on a case-by-case basis.

Offenders referred to the program are predominately diverted for cannabis offences. Those who decline to attend the program are issued with a simple cannabis offence notice. Under the *Drugs of Dependence Act 1989* offenders apprehended with a small amount of cannabis for personal use (not more than 25 g or two plants) can be issued with a notice, which involves a fine of \$100 per charge. Offenders can be charged with both possession and cultivation of the cannabis. If the fine is not paid within 60 days of issue, they can be summonsed to appear in court. If the fine is paid then no further action is taken and no criminal conviction is recorded. Referrals to the program have increased over the years with referrals in 2004–05 exceeding the referrals for 2001–02 and 2002–03. In 2002, an Indigenous medical service was added to the list of treatment providers, to provide specialist services for Aboriginal and Torres Strait Islander participants.

Tasmania

The diversion of adults and juveniles for minor illicit drug offences is at the discretion of police officers. When the offence involves cannabis and is a first offence, the offender receives a caution. On the second offence the offender must attend a brief intervention session. Those who commit a third cannabis offence or an offence involving other illicit drugs must attend a brief intervention session, and are referred to counselling and treatment. Police are alerted to an offender who does not comply by the Alcohol and Drug Service and may issue a summons to appear in court. The scheme was originally intended for young offenders but the average age of participants has been about 25 years.

Court diversion

The nature of Australia's criminal courts has altered significantly in recent years in response to changes in the social, economic and political landscape (Jeffries 2003). Dissatisfaction with government responses to crime and their impact on offending rates, along with the need for a more cost-effective service that is more responsive to the needs of court clients, have influenced the shift towards therapeutic jurisprudence as an innovative 'new way of doing justice' (Jeffries 2003: 14). The paradigm highlights the need to consider the psychological wellbeing of those involved in the justice process. It has been described as:

...a mental health approach to law that uses the tools of the behavioural sciences to assess the law's therapeutic impact, and when consistent with other important values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional wellbeing of those affected (Winick 2000: 35).

The therapeutic jurisprudence paradigm has moved courts away from their traditionally adversarial role towards a problem-solving orientation that is evident in various initiatives, including the establishment of specialist, or problem-solving, courts (Jeffries 2003). Payne (2005) distinguishes specialist courts from specialist jurisdiction courts (such as children's and industrial courts), with the former involving the implementation of innovative court practices designed to achieve therapeutic outcomes for special offenders or special offences. Many of these specialist courts aim to reduce reoffending and subsequently reduce imprisonment. Both drug and Indigenous courts seek to address fundamental problems among their target groups to reduce future recidivism and imprisonment. Drug courts seek to treat offenders who have been identified as drug dependent and whose drug dependency has been linked to their offending. By treating the drug dependence problem, these courts aim to reduce related offending and subsequent imprisonment. The Indigenous courts seek, among other things, to provide a culturally legitimate process in which Indigenous offenders and their communities can participate. By increasing the cultural relevance of the court process for Indigenous offenders, these courts seek to dispense

sentences that are more appropriate and more likely to have an impact on reoffending, thereby leading to a reduction in the rate of Indigenous imprisonment.

This section summarises court diversion programs and drug and mental health specialist courts. Indigenous courts are discussed in the following section which addresses all Indigenous-specific diversion programs and courts together. Table 6 lists the programs described in this section.

Table 6: Specialty courts and court-based diversion programs in Australia

State	Mainstream	Mental health	Drug courts/ drug diversion
New South Wales		Statewide Community and Court Liaison Service	Drug Court Youth Drug and Alcohol Court MERIT Wellington Options Program Rural Alcohol Diversion
Victoria	Criminal Justice Diversion Program Early School Leavers Pilot Program	Mental Health Court Liaison Service	Drug Court, Children's Drug Court Clinic Program CREDIT Rural Outreach Diversion Worker Service Deferred Sentencing Program
Queensland	Conditional Bail Program Homeless Persons Court Diversion Pilot Program Special Circumstances List		Drug Court QMERIT Illicit Drugs Court Diversion Program
Western Australia	Intensive Supervision Program	Intellectual Disability Diversion Program	Perth Drug Court Geraldton Alternative Sentencing Regime Pre-sentence Opportunity Program Supervised Treatment Intervention Regime
South Australia	Breaking the Cycle Program	Magistrates Court Diversion Program	Adelaide Drug Court CARDS
Northern Territory			NT Court Referral and Evaluation for Drug Intervention and Treatment
Tasmania	FVOIP		Court Mandated Diversion Program
Australian Capital Territory			CADAS Treatment Referral Program

Mental health courts

Most jurisdictions have provisions at the court level for diverting mentally or intellectually impaired defendants from the traditional court system wherever appropriate. In New South Wales, Victoria, Western Australia and South Australia, programs divert those eligible from the justice system into mental health treatment. In New South Wales, this is the Statewide Community and Court Liaison Service. Established in 2002, the service diverts offenders at any point of the court process into mental health treatment. The Victorian Mental Health Court Liaison Service was implemented in 1994 as a pilot program and has since been expanded across the state. The program aims to reduce recidivism in mentally ill offenders by diverting them into mental health treatment services. The service identifies and assesses people before the Magistrates Court who may suffer from mental illness, and facilitates access to appropriate treatment services. The service also operates in five rural Magistrates Courts.

The Western Australian Intellectual Disability Diversion Program represents a therapeutic approach to the sentencing of participants with diagnosed intellectual disabilities. The program is designed to divert people with intellectual disabilities from the court into appropriate support services. To be eligible, participants must be adults with a diagnosed intellectual disability, who have been charged with minor non-violent offences and are taken before the Central Law Courts. Participants may be referred by police officers, prosecutors, members of the judiciary, family members, mental health nurses, Community Corrections officers and others. There is no limit to the number of times a person can be admitted to the program. Adults who do not agree with the referral and for whom a disability is not detected, continue with the traditional court process. For those deemed eligible, the magistrate adjourns the matter for a plan to be developed. An individualised plan is designed to provide support, and drug and alcohol counselling and treatment are among the conditions which may be imposed for participants with an identified substance use issue. Progress reports are provided to the court. If a person does not comply with the plan, they continue through the traditional court process.

Where an intervention plan is successfully completed, the matter is finalised, with participants receiving a reduced sentence and a certificate of participation. Conviction will result in a criminal record, but a spent conviction is normally imposed and for most purposes will not be disclosed in matters where the offences were minor or involved first-time offenders. As of September 2006 there were 161 participants since the program's inception and, of these, approximately 19 percent were Indigenous.

The South Australian Magistrates Court Diversion Program was implemented in 1999 to offer an alternative process to pleading the mental impairment defence under s 269 of the *Criminal Law Consolidation Act 1935*. It began as a pilot program in the Adelaide Magistrates Court and now operates in all four suburban courts and several regional

Magistrates Courts. The program aims to reduce recidivism in mentally impaired offenders. To be eligible, persons must have impaired mental functioning due to a mental illness, an intellectual disability, a personality disorder, an acquired brain injury or a neurological disorder (including dementia). The program is open only to those who show signs of mental impairment, who have been charged with summary or certain minor indictable offences. There is no requirement to plead guilty, but the matter must not be contested and consent must be given by the defendant or their guardian for the assessment to take place and for release of information. Those who are referred undergo a preliminary assessment for eligibility, after which a report is submitted to the magistrate containing a recommendation about suitability.

Those who are not accepted into the program return to the normal court process or may elect to formally plead mental impairment under s 269 of the Act. An intervention plan is developed for each individual and can include treatment and counselling for substance abuse if drug and/or alcohol dependency have been identified. Reports on the participant's progress are made back to the court, and the magistrate will take this into consideration at the time of sentencing, with withdrawal of charges a possibility upon successful completion of the program. As of September 2006, 1,351 participants had been accepted onto the program since its inception. Of these, almost seven percent were Indigenous.

Mainstream court diversion programs

Other diversionary programs operate at the court level, many of which represent interagency collaboration, as offenders are usually managed by corrective services personnel. Many of these programs are targeted at breaking the cycle of offending for youths or first time offenders and other vulnerable groups, such as the homeless.

Victoria

CRIMINAL JUSTICE DIVERSION PROGRAM

The Victorian Criminal Justice Diversion Program was piloted in 1997 and is covered by s 128A of the *Magistrates' Court Act 1989*. The program provides an opportunity for first time or low level offenders to avoid a criminal record by agreeing to a range of conditions that may include an apology and/or compensation to the victim, attendance at counselling or treatment, assisting community projects with work or donations, and/or attending driver/road awareness courses. To be eligible for the diversion program, they must admit the facts of the case, the offence must be able to be dealt with summarily, there must be sufficient evidence to gain a conviction, and the diversion must be deemed appropriate in the circumstances. Prior convictions do not exclude a defendant from the program but are taken into consideration when determining appropriateness. If the person is deemed eligible, signifying the acceptance of the prosecutor and the court, a diversion notice is filed. The matter will be referred back to the court if the offender is not suitable for diversion. If the

offender is found to be suitable for diversion, the charges are adjourned for the diversion plan to be undertaken. If the offender fulfils the conditions of the diversion plan, the charges are discharged and the outcome is recorded in the same way a caution would be. If the plan is not completed successfully the matter returns to court as though it were a first listing. No information regarding the failed diversion is available to the court.

EARLY SCHOOL LEAVERS PILOT PROGRAM

The Early School Leavers Pilot Program began as part of the Young Offender Pilot Program in 1989 and although Australian Government funding ceased in 2002, the Early School Leavers Pilot Program continued, with funding from Crime Prevention Victoria. The program aims to reduce the offending and violent behaviour of young people by addressing underlying social and educational issues. The program targets people aged 12–15 years who are subject to non-custodial juvenile justice orders, and who are not attending school due to exclusion or otherwise. It provides a tailored support program which aims to reduce risk factors that contribute to leaving school early and to increase protective factors. To be referred to the program, the young person must be of school age, disconnected or poorly connected to school and willing to participate in the program.

Strategies for support and behaviour intervention, as well as education and training, are implemented as part of the support program. If a young person presents with a drug use problem this is addressed as part of the program. Approximately 12–15 percent of the caseload consisted of Koori youths and anecdotal evidence suggests that Indigenous status is not a barrier to involvement, as they are integrated well into the program. A Koori-specific program was implemented in the fourth pilot in 2006.

Queensland

CONDITIONAL BAIL PROGRAM

The Conditional Bail Program commenced in 1994 to combat the increase in number of young people remanded in custody in Queensland. The program targets young people aged between 10 and 17 years who have been identified by the courts as unlikely to comply with bail conditions, and is designed to help them meet the conditions specified. The program is concerned with assisting young people to comply with bail and reduce the likelihood of further offending through educational, vocational and social activities.

A young person may be referred because they:

- have a history of failure to appear or of breaching the conditions of bail
- may be facing a charge for an indictable offence and are remanded in custody
- have breached a community-based order

-
- are at risk of being placed in custody pending a pre-sentence report
 - require intensive support including the need for the Bail Support Service
 - are a recidivist offender.

Generally, when bail is opposed by the police prosecutor, the youth's legal representative can request the preparation of a Conditional Bail Program which can be provided to the court at the bail application hearing. Participation in the program is often a condition of bail and the youth undertakes various activities which are deemed appropriate as part of the program. Youths who have committed drug offences are assisted to address these issues insofar as their immediate needs are concerned. Non-compliance with the conditions results in a case review and is reported to the police prosecutor or the Department of Public Prosecutions.

The Conditional Bail Program does not provide accommodation, which has been identified as an area of need for some youths. The establishment of the Bail Support Service in 2001 supports the Conditional Bail Program by providing much needed supervised accommodation for young people without a stable address. The program is also in a position to find culturally appropriate placements for Indigenous youths facing remand.

HOMELESS PERSONS COURT DIVERSION PILOT PROGRAM AND SPECIAL CIRCUMSTANCES LIST

Both the Homeless Persons Court Diversion Pilot Program and the Special Circumstances List commenced at the Brisbane Magistrates Court in May 2006. Eligible defendants must be homeless and facing public nuisance or public order offences. It is based on a pilot program run by Legal Aid Queensland in early 2005, which was concerned with the homeless and their position when appearing before the courts. They were often charged with street or public order offences and were largely unrepresented. Among the aims of the Homeless Persons Court Diversion Pilot Program is the diversion of homeless people to relevant support services to break the cycle of offending in which many become entrenched (Taylor M 2006). The Department of Justice and the Attorney-General has funded the program for two years and a Court Liaison Officer has been appointed to assist the court with referrals, assessment and accessing public and private resources to administer therapeutic jurisprudence for participants.

The Special Circumstances List is based on a similar mandate. It seeks to divert offenders who are unable to make fully informed decisions due to intellectual disability, mental illness or neurological disorders into programs and services, through which their offending and underlying issues, such as accommodation and health, may be addressed. Offenders are eligible if they are adult, homeless, suffering from impaired decision-making capacity, do not contest the charge(s) and consent to participate. Once an offender appears before the court

and is deemed suitable to participate, the matter is adjourned to the Special Circumstances Court. If the offender is placed on the program, the matter is adjourned to allow time to participate in the program and they return to court for sentencing following completion of the program.

Western Australia

INTENSIVE SUPERVISION PROGRAM

The Intensive Supervision Program (ISP), based on, and licensed by, the US Multi-systemic Therapy (MST) program, was introduced in February 2005 as one of four key initiatives designed to address juvenile offending in Western Australia. MST has been specifically developed and researched to treat severe antisocial and serious delinquent behaviour. The ISP is a home and community-based program available all hours that intervenes with the multiple systems that impact on delinquent behaviour – the family in particular, as well as peers, school, community and service providers. The program is targeted at youths aged between 10 and 17 years on court orders, at risk of going to or leaving custody, exhibiting physical and/or verbal aggression, associating with antisocial peers, with behavioural problems which result in school failure or whose offending is escalating in frequency or severity. The ISP seeks to develop voluntary engagement with families of juvenile offenders by visiting at times that suit them, helping them deal with practical problems such as housing and budgeting, and identifying and using the strengths in the family, individual, school and peer system to reduce the rate and/or seriousness of juvenile offending. The ISP/MST is underpinned by the philosophy that enhancing family relationships; developing supervision, monitoring and authoritative parenting skills; and encouraging supportive associations is the most effective way to reduce juvenile offending and antisocial behaviour.

Each of the three ISP teams consists of a supervisor, three clinicians and an Aboriginal advisor. In the case of Aboriginal clients, the Aboriginal advisor will meet with the youth and their family to establish voluntary participation and explain what the program entails, prior to introducing an ISP clinician. The average length of treatment is between four and six months and is very intensive, often involving contact with the youth, their family and other participants on a daily basis, including early morning, evening and weekend visits. Many of the families involved in the ISP are Indigenous (56%), and early evaluations indicate that the program is successful with Indigenous people. Trend data from those out of the program for six months and more show a reduction in the rate and seriousness of offending, as well as days and times in custody. As the program is voluntary and most of the work is done by the carers, it cannot be court mandated. However, when a young person is on an order, ISP staff work with the referrers such as the Juvenile Justice Officer and family to ensure compliance and, if requested, will provide a progress report to the court via the Juvenile Justice Officer.

South Australia

BREAKING THE CYCLE PROGRAM

The Breaking the Cycle Program for young offenders began in August 2006 as a pilot program funded for three years. The program accepts referrals of young offenders aged between 16 and 20 years, with Indigenous youths as a priority, from the Adelaide Youth Court and the Port Adelaide Magistrates Court, and is aimed at involving young people under the guardianship of the Minister for Families and Communities in the first instance. The program focuses on addressing the needs of repeat young offenders who are at a significant risk of further offending through the provision of an intensive case management, multi-systemic therapy model. The goal is to address the factors underlying the young person's offending to improve life outcomes including reducing offending. As the program operates as a post-sentencing option, youths must have pleaded guilty and are usually placed on court orders with participation in the program an obligation under the order.

The team is mobile and visits young people in their homes, in public settings and at other agencies, as convenient. The program can last between six and 12 months, and involves three contact days a week. The plan will include a range of treatment programs, counselling or education sessions as suitable for the individual, including drug and alcohol treatment, education, training and employment support and accommodation assistance. Progress is reviewed on a monthly basis and there is scope to vary the goals if required. An option to return to court to close the order upon successful completion of the program may occur in cases where the order was made for more than one year and the program has been completed in less time.

There is no separate program or process for Indigenous youths but the program will differ in the language used and the staff who will be involved with the youths. As the program is in its infancy, advice is being sought to develop culturally appropriate practices, and an Indigenous staff member is being recruited to work full time with the program. There are strong links with Indigenous staff within the Department for Families and Communities and in other agencies, and cultural input from these people is welcomed.

Tasmania

FAMILY VIOLENCE OFFENDER INTERVENTION PROGRAM

The Family Violence Offender Intervention Program (FVOIP) is an integral component of the Safe at Home Initiative. Under the *Family Violence Act 2004*, sentencing options can require eligible offenders to attend the FVOIP. Offenders under the *Youth Justice Act 1997* may also be sentenced to the program. The program aims to reduce family violence by making offenders aware of the cycle of their behaviour. It is delivered in four sessions per week and runs for 10 weeks. The program is highly intensive and aimed at high-risk offenders.

Offenders may be ineligible for participation in the program if they have significant special needs relating to intellectual disability or mental illness, although the decision regarding eligibility is made after the Department of Health and Human Services provides a detailed assessment. Offenders must be able to read and write at a basic level and those with identified drug and/or alcohol use issues have the opportunity to attend treatment while on the program. Attendance and participation in the program are mandated by the court and may be made with or without recording a conviction, in conjunction with a term of imprisonment, as part of a community service or probation order, or in conjunction with a fine. Participants can be breached for non-attendance or poor participation in the program.

Drug courts

The establishment of drug courts is one of the innovations resulting from the rise of the therapeutic jurisprudence paradigm. There are drug courts currently operating in New South Wales, Victoria, Queensland, Western Australia and South Australia. The establishment of these courts in Australia signals an acceptance of the changing role of the traditional court system and the need to address underlying social problems that influence offending. Makkai (1998) highlighted the tension between treatment agencies and traditional court processes, with the former concerned with reducing drug dependence alone, and the latter concerned with reducing reoffending. Drug courts represent the nexus between these views. Generally speaking, these courts seek to divert eligible offenders away from the formal court process and incarceration and into treatment programs to address drug dependence issues. The courts differ in procedure, practice and parameters, but are generally targeted at more serious offenders whose offending has been linked with drug use, or at offenders with more significant drug dependence issues. For all the Australian drug courts currently operating, offenders must fulfil these eligibility criteria:

- have a drug and/or alcohol problem
- plead guilty to the charges for which they are referred
- live within specified areas, generally within the jurisdiction of the court
- agree to participate and be willing to address their dependence
- be considered suitable for treatment.

There are also exclusionary criteria which apply and for most of the courts these include some or all of the following:

- previous (longer than 12 months) or current terms of imprisonment
- sexual and/or physical violence
- drug trafficking and other serious drug offences
- history of serious offending
- outstanding charges for offences involving sexual or other physical violence.

There are no drug courts in the remaining states and territories, although the Northern Territory has an Alcohol Court, described in this section, and a Court Mandated Diversion program was established in Tasmania in 2007. This will not operate as a drug court but as a post-plea drug sentencing option for eligible offenders.

New South Wales

There are adult and youth drug courts in New South Wales. The adult court deals only with illicit drug offences, while the youth court extends to alcohol dependence. The Youth Drug and Alcohol Court began operating in western Sydney in July 2000 and has expanded to eastern and central Sydney. The court deals with young serious offenders, between 14 and 18 years, entrenched in the criminal justice system who have drug and alcohol problems. Progress and participation in the program are considered at sentencing and the program plan can be stopped and the youth returned to court to face the initial charges if they continue to use drugs and alcohol or commit further offences.

The adult Drug Court began in 1999 as a pilot and aims to reduce the drug dependence and criminal offending of drug-dependent offenders. A program is developed for each individual according to their needs and involves regular treatment, rehabilitation and counselling sessions, education and job training, supervision, drug screening and reporting back to the court. Once the program is completed the Drug Court determines a final sentence taking into consideration the offender's progress. Of the Drug Court participants between January 2001 and June 2002 who remained on the program for at least three months, nine percent identified as Aboriginal or Torres Strait Islander people.

Victoria

The Victorian Drug Court commenced in 2002. Offenders who are eligible for the Drug Court program are sentenced to a two-year drug treatment order, which consists of a custodial component and a treatment and supervision component. The court must also be satisfied that the offender is dependent on drugs or alcohol and that this contributed to the commission of the offence. Offenders with previous convictions for offences which were influenced by drug or alcohol dependency are not excluded from the program. Similarly, offenders with previous terms of imprisonment are not excluded on that basis alone. As part of the treatment component the offender may be required to submit to drug or alcohol testing; detoxification; vocational, educational or employment programs; and medical, psychological or psychiatric assessment. Conditions may also limit the offender's association with specified people. The order may be varied at review hearings. If offenders breach the treatment order, it may be cancelled with the offender to serve the unexpired portion of their original sentence.

There are also provisions such as the Children's Drug Court Clinic Program operating in Victoria. This was established in 2001 and is a deferred sentencing option open to magistrates for young persons aged between 10 and 17 years. Sentencing may be deferred for up to four months while the young person participates in treatment. At the time of sentencing, the progress and compliance are taken into account. Offenders who committed drug and alcohol-related offences outside Dandenong (presently the only location in which the Drug Court operates) can be placed on the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) program (described in the following section) or a combined custody and treatment order. The latter can only be imposed for up to 12 months, in cases where the court is satisfied that drug or alcohol dependency contributed to the offence or offences. The order involves both custody and treatment conditions. No less than six months of the order must be served in custody, and the offender is required to participate in mandatory drug and alcohol treatment and testing. The remainder of the time on the order is served in the community with conditions attached.

Queensland

The Drug Court was established as a pilot in June 2000 at Beenleigh, Southport and Ipswich courts, and at Townsville and Cairns from November 2002. It was made permanent in mid-2006. The Drug Court is a sentencing court for defendants who have pleaded guilty to certain drug-related offences, and offers an opportunity to undertake drug treatment as an alternative to imprisonment. Eligible participants must be able to prove that their drug dependency influenced the commission of offences with which they are charged.

The Drug Court can order participants to attend programs including anger management, relapse prevention and life skills, or it may place an offender in a rehabilitation centre as an inpatient. The program provides intensive rehabilitation and treatment for 12–18 months and frequent drug testing. Those who have successfully completed the program may be given a lesser sentence than that which was originally imposed; usually it will not involve a prison term. Those who do not complete the program return for their final sentence, at which time participation in the program and any rewards and sanctions received while on the program will be taken into consideration.

While the Drug Court targets people in the court system generally, there is also a specific focus on encouraging Indigenous people to enter into the program. Eight percent of participants in the North Queensland Drug Court were Indigenous (Payne 2005).

Western Australia

The Perth Drug Court began operating as a pilot program in 2000. It operates out of the Perth Magistrates Court and was designed to support a range of offenders, from those with

minor offences and offending histories to those with more serious offences and more extensive criminal histories. There are two programs to deal with the offenders who come before the Court: the Drug Court Regime (DCR) and the Pre-sentence Order (PSO). The DCR was originally an intervention offering supervised treatment for drug-dependent offenders with a more serious level of offending or drug dependence, but has been adapted for offenders with less serious offending who are facing short prison terms or other non-custodial sanctions. The PSO was developed for offenders with a more extensive and entrenched history of offending and illicit drug use. A supervised treatment program is developed according to individual needs that includes regular urinalysis, treatment, rehabilitation and counselling sessions, education and job training, drug screening and regular reporting back to the court. Participants who fail to comply return to court to face traditional sentencing options.

Successful completion of the program may result in a less serious sentence than that which would ordinarily have been handed down. As of November 2002, eight percent of Perth Drug Court participants were Indigenous (Crime Research Centre 2003). The evaluation found that the program engaged few Indigenous participants and that this was probably due to the onerous conditions of the program.

Drug-dependent juvenile offenders appearing before the Children's Court can also be referred to the Drug Court if they are charged with serious offences for which they face sentencing by the President of the Children's Court. Young offenders can be referred by the judge, defence or prosecution lawyer and the process is generally the same as for adults.

An evaluation by the Crime Research Centre (2003) listed several factors believed to account in part for the under-representation of Indigenous offenders in the Drug Court. These included a lack of Indigenous-specific treatment and detoxification facilities, the longer criminal records acquired by Indigenous defendants which deemed them to be more serious offenders, and less engagement of Aboriginal Legal Services with the Drug Court, compared with Legal Aid. Those interviewed for the Crime Research Centre (CRC) evaluation were concerned by the absence of Indigenous offenders with significant substance use issues from the Drug Court program.

Another initiative, in regional Western Australia, is the Geraldton Alternative Sentencing Regime (GASR), which was modelled on the Perth Drug Court. The GASR is a pre-sentencing diversionary option which commenced in 2001 and was originally intended to address offenders with illicit drug use issues, but has expanded to include alcohol and solvent abuse issues. The GASR offers two alternative sentencing options within the Geraldton Children's Court and the Geraldton Court of Petty Sessions. These are the Brief Intervention Regime (BIR), a pre-sentence option consisting of drug education and treatment sessions for cannabis users originally developed under the Perth Drug Court Pilot Project, and the Court Supervision Regime (CSR). BIR participants are bailed for not more than three months and CSR participants for not more than six months, with conditions requiring them

to undergo relevant rehabilitation programs during that time. Family and community safety is a prime consideration when establishing offender eligibility and serious offences, for which a non-custodial sentence would be inappropriate, cannot be dealt with under CSR.

Under both the BIR and the CSR, participants sign a contract that outlines the requirements that must be completed while in the program. Successful completion will result in lesser penalties than what originally have been imposed. Offenders who do not complete the program will have their case re-listed and return to the court for sentencing. As at March 2004, 40 percent of participants on the CSR and 50 percent of participants on the BIR were Indigenous. An evaluation of the program found no issues in relation to equity of access to it. The program was extended to cover other areas as needed, and the use of alternative arrangements, such as telephone link-ups for participants who could not attend court, increased access to the program. The attitude of the magistrate and their 'willingness to work with Aboriginal cultural methods, supporting an initiative for an Indigenous drug offender being given the opportunity to participate in an alternative drug treatment strategy that required support and guidance of an Aboriginal elder' (Cant, Downie & Henry 2004: 35) played an important role in ensuring equity of access. More than half (51%) of those who completed the CSR and 35 percent of those who completed the BIR had not reoffended up to July 2004, but the evaluation recommended a more comprehensive integrated data collection system to facilitate more useful analysis. It has been reported elsewhere that Indigenous offenders have both a high participation rate and a high success rate in the GASR (King & Auty 2005).

South Australia

The Adelaide Drug Court program operates from the Adelaide Magistrates Court and is available to adult offenders who live within the boundaries of the Adelaide metropolitan area. Participants must have committed the offence for which they are charged as an adult and must be facing a term of imprisonment for at least 12 months. In the first three months of the program, defendants are placed on monitored home detention and on night curfew for the latter part of the program.

One of five case managers is designated to supervise Indigenous Drug Court participants as a means to better facilitate linking of Indigenous clients with culturally relevant services. A nongovernment Aboriginal agency and a mainstream agency are funded by the Drug Court program to provide supported accommodation in low cost, public rental housing and assistance with independent living skills and social integration. Aboriginal participants can choose to access the mainstream service or the Aboriginal service. The program regime includes attending regular drug counselling, submitting to regular urine testing and returning to court for regular progress reviews by the magistrate. Other treatment options are available depending on need, such as anger management, pharmacological therapy, relapse prevention and inpatient detoxification. A suspended sentence may be handed down on

successful completion of the program. Those who do not complete the program are sentenced according to normal procedures and are not disadvantaged.

As of September 2006, 771 participants had been accepted to the program since its inception. Of these, almost 10 percent were Indigenous. It was indicated that this was much lower than expected, due in part to inadequate consultation with Indigenous communities who, in turn, had a poor understanding of what the Drug Court does. Combined with the negative experiences of some early clients, it led to much less than the 25 percent that had been expected. An earlier review of the court found that 80 percent of those who completed had lower offending levels following program participation compared with their offending prior to the program (Corlett, Skrzypiec & Hunter 2005). Detailed analysis based on Indigenous status was not possible, as only one of the 43 offenders who completed the program was Indigenous.

Northern Territory

The Northern Territory's Alcohol Court is based on CREDIT NT and drug courts in operation throughout Australia. Under the *Alcohol Court Act 2006* the court can make an Alcohol Intervention Order, which usually takes the form of a fully or partly suspended sentence while the defendant undergoes a treatment and rehabilitation program. Program participation may be taken into account during sentencing, with lesser sentences possible for successful completion of treatment and rehabilitation. Conversely, participants who do not comply with the treatment conditions may have their treatment and supervision component revoked and will have to serve some or all of the suspended term of imprisonment. The court operates in Darwin and Alice Springs, and defendants must be prepared to undertake treatment in these locations. The court can deal with defendants from other parts of the Northern Territory if they are prepared to do this.

Tasmania

The Court Mandated Diversion (CMD) program was established as a pilot program in 2007 and is funded under IDDI until June 2008. Adult and juvenile offenders must consent to undergoing an assessment for eligibility and are deemed eligible if they plead guilty to, or are found guilty of, non-violent crimes and have a history of substance abuse. They may be diverted into treatment through conditions attached to a bail order, a community-based order or through a Drug Treatment Order. The three options cater for varying levels of seriousness in offending and substance use with a Drug Treatment Order for the most serious substance using offenders. Offenders can be referred to the CMD by magistrates, youth workers and probation officers. Other court personnel or the offender may also suggest diversion into the program to the magistrate. The program is due to be evaluated at the end of its pilot year.

Other court drug diversion programs

Other drug diversion programs are available in the jurisdictions at the court level. The programs differ in terms of procedure, practice and parameters but are generally designed for less serious offenders whose offences are linked with substance abuse and those whose substance use problem involves drugs that are not covered by drug courts, such as inhalants or alcohol. For many of these programs offenders must:

- have a drug and/or alcohol problem
- agree to participate and be willing to address their dependence
- be considered suitable for treatment.

The exclusionary criteria vary across the programs with some, such as the Australian Capital Territory Court Alcohol and Drug Assessment Service (CADAS), having much fewer exclusionary criteria than others. Generally the exclusionary criteria include some or all of the following:

- sexual and/or physical violence
- drug trafficking and other serious drug offences
- the defendant being under another court order with a drug treatment component.

As most of these programs occur prior to the sentencing phase, offenders are not required to enter a plea of guilty. Offenders may be terminated from the programs for reasons including failure to attend appointments, commission of further offences and failure to comply with bail or other conditions. Some programs limit the number of times an offender may be referred, while others have no such conditions. In practice, offenders with several unsuccessful referrals are less likely to continue being referred. A brief outline of the programs follows.

New South Wales

There are three programs in New South Wales that provide avenues for diversion of drug dependent offenders at the court level: the MERIT program, the Rural Alcohol Diversion program and the Wellington Options Program.

The MERIT program is another mechanism through which drug treatment can be provided to bailed adult defendants with a demonstrable illicit drug problem. MERIT was established as a pilot in 2000 and has expanded to 60 local courts across New South Wales. If eligible, the offender may be bailed for three months to undergo drug treatment. Participation in, and completion of, the program may be taken into consideration at sentencing and the program may be stopped for any participant who fails to attend two consecutive appointments, commits further offences or does not comply with bail conditions. Failure to participate in the treatment program does not lead to further punitive measures. If convicted, sentencing will

relate only to the original offence with which the offender was charged. An evaluation of the program found that half those who were accepted onto the program successfully completed its requirements. The program was intended as an early intervention program but only 11 percent of referrals came from police and 64 percent came from the courts. Indigenous offenders were less likely to complete the program and this was an area highlighted as needing improvement through the implementation of strategies that would better meet their needs.

The Rural Alcohol Diversion (RAD) pilot program commenced operation in Bathurst and Orange local courts in 2005–06, based on the MERIT model. It offers adult defendants an opportunity to overcome their alcohol problems prior to sentencing. Like MERIT, RAD does not require participants to enter a plea. It was indicated during the interviews that approximately 40 percent of participants are Indigenous.

The Wellington Options Program is also a local court drug crime diversion initiative that provides interventions, including drug treatment, for both adult and juvenile defendants who reside in the Wellington community as a whole and more specifically within the local Aboriginal community and who have drug and/or alcohol problems. The program has been funded by the Australian Government since 2001 to reduce drug and alcohol-related crime. It includes assessment and a tailored case management service to offenders and their families for up to 12 months. Services include counselling, rehabilitation and referral to detoxification, among other interventions.

Other diversionary initiatives are under development, including a correctional centre specifically for drug dependent offenders (see Box 2).

Box 2: Compulsory Drug Treatment Correctional Centre (NSW)

Commencing operation in August 2006, the Compulsory Drug Treatment Correctional Centre (CDTCC) is the first drug treatment correctional centre in Australia. It focuses on breaking the link between drug use and criminal behaviour for recidivist offenders who have failed to enter or complete other voluntary or court-based treatment programs. This correctional facility provides compulsory abstinence-based treatment, rehabilitation and education programs. The program targets a hardcore group of offenders with long-term drug dependence that has been linked with their persistent criminal behaviour and previous periods of imprisonment. All eligible offenders entering custody will be intensively case managed by correctional authorities working in close partnership with health and other service providers. Upon completion of the program, offenders are gradually reintegrated into the community and receive long-term support beyond the conclusion of their supervised parole period.

Victoria

Court drug diversion in Victoria occurs through the CREDIT program, the Rural Outreach Diversion Worker Service or the Deferred Sentencing Program. CREDIT was established as a pilot program in 1998 and will extend to 12 courts across Victoria. In 2004 it was combined with the Bail Support Program which aimed to increase the likelihood of defendants being granted bail. The complete program, which is voluntary, directs people on bail with drug use issues into assessment and treatment services. The program is available for adults and juveniles with varying levels of drug use and includes both first time and more serious, long-term offenders. The offender is not required to make an admission or plea of guilty and there is no limit on the number of times they may be referred. Program participation may be taken into account during sentencing, with the possibility of lesser sentences for successful participation.

Another program, the Rural Outreach Diversion Worker Service, was established in 2002 to fill a gap in rural services. The program runs in areas where offenders do not have access to the CREDIT program and aims to provide assessment, treatment and other support options to offenders who have been referred. A person can be referred by police, lawyers or magistrates once they have been arrested and charged. The program is open to adults and juveniles but is targeted at young offenders (25 years and younger) who have been arrested for a non drug-related offence and been deemed ineligible to participate in the Victoria Police Drug Diversion Program. Alternatively, a person considered to be at a high risk of offending linked with drug use can be referred more informally by police, teachers, juvenile justice workers or family members.

The option of deferred sentencing for drug-related offenders was introduced in 2000 under s 83A of the *Sentencing Act 1991*. Under the Act, magistrates may choose to defer the sentence of eligible offenders for up to six months, conditional on their attendance in drug treatment. Lawyers and magistrates may refer a person to the Deferred sentencing program. To be eligible a person must be aged between 17 and 25 years, have a drug problem and have been found guilty of an offence, although some offences may be considered inappropriate for the deferred sentencing option to apply. Progress during drug treatment may be taken into consideration in sentencing.

Queensland

The two court diversion programs operating in Queensland are the Queensland Magistrates Early Referral into Treatment Program (QMERIT) and the Illicit Drugs Court Diversion Program (IDCDP). The QMERIT is based on the New South Wales MERIT program and was piloted at the Redcliffe and Maroochydore Magistrates Courts in 2006. Offenders may be referred for assessment by either the police or the magistrate at the initial court appearance. A proposed treatment plan is put before the magistrate and admitted into the program, the

offender is released under the condition that they must comply with all requirements of the program for a specified time. Upon completion, a final report is presented to the court. If found guilty, participation in the program may be taken into consideration in sentencing. While the QMERIT targets people in the court system more generally, there is also a specific focus on encouraging Indigenous people to enter into the program.

The IDCDP is in place for offenders who are not eligible for the police drug diversion program. The program was piloted in the Brisbane Magistrates Court and the Brisbane Childrens Court until June 2005. It offers magistrates another sentencing option for eligible offenders charged with possession of a small quantity of an illicit drug for personal use. It is available to Indigenous people. Offenders can only be offered a maximum of two drug diversions under the program.

When a juvenile offender comes before the court the proceedings may be adjourned for the youth to attend a drug assessment and education session. If the session is completed successfully, a finding of guilt is made against the youth but no conviction is recorded. Failure to participate in the program will result in the youth being sentenced for the original offence. For adults, the diversion is available as a sentencing option and they may be sentenced to a bond with the condition that they attend a drug assessment and education session. Completion of the session will result in no recording of a conviction, but failure to attend will result in the issuing of a warrant, whereby the offender is returned to court and dealt with for the original offence. Offenders who have been identified as having a drug dependence issue are offered a referral to an authorised treatment provider. The program was evaluated between March 2003 and March 2004, and it was found that compliance was higher among participants with no prior offending history (97%) than among those with prior offences (89%). No findings relating to Indigenous status were reported.

Western Australia

There are several programs operating at the court level in Western Australia and two, the Pre-sentence Opportunity Program (POP) and the Supervised Treatment Intervention Regime, are described below. The POP is an early intervention drug treatment program for adult offenders who have not committed serious offences, have minor criminal histories and less extensive drug use, and who would normally receive a fine or a community-based order. Participants are referred by the magistrate and undergo assessment for suitability by the POP project officer. Participation is voluntary and, once admitted to the program, the participant is placed on remand for one to two months while they attend drug treatment.

The Supervised Treatment Intervention Regime (STIR) is the most intensive of the programs offered under the Western Australian diversion program. It is a drug intervention program aimed at treating drug use problems among moderate level offenders who would normally be sentenced to a community-based order or intensive supervision order. Eligible

participants who agree to be involved and are assessed as suitable are remanded for three to four months to attend treatment. A Community Corrections Officer will case-manage participants, who must undergo urinalysis and attend court regularly, among other requirements of the program. Reports on performance are regularly given to the magistrate, who may terminate the program for an offender at any time. A final report is given to the court upon completion of the program and the participant returns for final sentencing. Some 17–18 percent of participants in these programs are Indigenous, although there are fewer Indigenous participants in the metropolitan region.

South Australia

The Court Assessment and Referral Drug Scheme (CARDS) was funded as a pilot until June 2007. The Australian Government has announced that funding will be extended to June 2008. The scheme operates at the Magistrates Courts in Adelaide, Elizabeth, Port Adelaide and Christies Beach. In regional areas it operates in Murray Bridge and will soon be located at Mount Gambier. The CARDS is also available to young people through the Youth Court and as an undertaking in a family conference. The program provides an opportunity for offenders with drug use issues to access appropriate treatment, and aims to reduce drug use and related offending. Entry into the program may be part of bail or bond undertakings but must be voluntary in the first instance. The treatment is a brief intervention over a three-month period. For participants who are assessed as needing ongoing treatment, it can be made available after this initial three-month period.

The CARDS was evaluated between June 2004 and June 2005, and it was reported that Indigenous persons made up 17.5 percent of referrals and 13.8 percent of offenders accepted. The rate of referral among Indigenous participants was low in comparison with the non-Indigenous referrals, but compared well with Indigenous participation in other South Australian drug diversion programs. The failure rate was found to be higher among Indigenous than non-Indigenous participants. As of September 2006, of the 320 participants accepted on the program since its inception, 12 percent were Indigenous.

Northern Territory

The Northern Territory's Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT NT) program is based on the Victorian model and has been operating since 2003. The program is available in Darwin and Alice Springs, and is open to adults and juveniles who have not had more than two previous admissions to CREDIT NT in the previous 12 months. Admission of defendants with a criminal history involving violence, or charged with a violent offence, is at the discretion of the magistrate. Suitable defendants may be referred to treatment programs including counselling, residential or home-based withdrawal and

counselling, pharmacotherapy and counselling, and residential treatment. Program participation may be taken into account during sentencing with possible lesser sentences for successful participation.

As of September 2006, of the 260 participants who had been accepted on the program since its inception, almost 31 percent were Indigenous. The program is not currently available in rural or remote areas, although there are plans to make treatment options available in such areas in the future. Similarly, there are plans to extend the program to include alcohol and petrol sniffing. CREDIT NT staff take into consideration the difficulties faced by most Indigenous participants, and attempts are made to help Indigenous clients meet their obligations under the program and to make the program culturally relevant. Participants in CREDIT NT are predominantly adults.

Australian Capital Territory

Court drug diversion in the Australian Capital Territory comes via two programs; the Court Alcohol and Drug Assessment Service (CADAS), which is offered pre-sentence; and the Treatment Referral Program, which is offered post-sentence. The CADAS is a pre-sentencing treatment option available to defendants charged with alcohol and other drug offences. The service aims to reduce reoffending during the bail period and provide the participant with relevant treatment. The program is available to anyone before the Magistrates, Supreme and Children's courts where the magistrate agrees that alcohol and other drug issues were a contributing factor in the commission of the offence. The process can only proceed with the consent of the defendant and the court. Although the CADAS does not breach participants, non-compliance is reported immediately to the magistrate's associate, rather than waiting for the next court appearance. Compliance or non-compliance is taken into account at sentencing, although it may not actually influence the sentence.

The Treatment Referral Program is available post-sentencing for offenders whose offences have involved drugs in Schedule 4 of the *Drugs of Dependence Act 1989*. Alcohol is not listed in the schedule. The offender must have been convicted of a crime to obtain drugs or money to buy drugs, or while under the influence of drugs. If the offender consents, an assessment order is made by the magistrate or judge and the offender is referred to the Treatment Referral Program, which, in consultation with the offender, determines a treatment plan and length of order, which can range between six months and two years. If the court chooses to sentence in compliance with the plan, a treatment order is issued that requires the participant to attend treatment and report to the panel on a fortnightly basis. The offender is referred to an approved treatment service who will address the drug dependency issue. Progress is monitored by the panel. Progress, plan variations, completion and non-compliance are reported to the court.

Summary

There are numerous diversionary programs in place in Australia. Mechanisms for diverting adults and juveniles operate at various points of the criminal justice system and, more often than not, are targeted towards drug offenders. All the courts and programs reviewed in this report operate under similar basic eligibility criteria. Some are more inclusive than others, and there are variations in the processes and outcomes for each program.

Juveniles are warned, cautioned or referred to conferences in all jurisdictions, whereas the cautioning of adults for non drug-related offences is rare, other than cautioning for minor traffic offences. Cautioning and diversion to education, assessment and/or treatment is an option in the majority of jurisdictions and extends to adults and juveniles. Primarily these options are pre-arrest and pre-trial, but there are drug courts operating in most of the larger jurisdictions (NSW, Vic, Qld, WA and SA) and a recently established Alcohol Court in the Northern Territory. As well as these specialty courts, there are court diversion programs, such as CREDIT and MERIT, which allow for the diversion of substance-using offenders into treatment. Offenders who may not access the aforementioned programs but for whom substance use has been identified as a significant issue, may be referred to treatment through the mental health services and courts, and also through offence-specific programs such as the Tasmanian Family Violence Offender Intervention Program (FVOIP).

There are few Indigenous-specific diversionary programs available at the court level and even fewer at the police level. Although most of the jurisdictions have Indigenous courts, it should be noted that these are primarily sentencing courts, which seek to provide more culturally appropriate sentences. Their primary function is not to divert offenders from further contact with the justice system, although reducing Indigenous overrepresentation in the criminal justice system is an overarching goal. The Indigenous-specific diversion programs operating are almost exclusively targeted towards offenders who have committed drug offences, or those whose offending has been clearly linked with their substance use behaviour. This was not considered an issue of concern among many participants who highlighted that most programs adopted a holistic approach and it was possible to refer offenders to different types of treatment than simply those for drug and alcohol use. Mainstream programs were also considered to cater well for Indigenous people in many areas, and were said to be flexible in relation to cultural issues. Efforts had been made to ensure that they were culturally relevant and appropriate.

Indigenous participation

Several issues around Indigenous participation and access to diversion programs emerged during the consultation phase. Although the summary of programs in the section ‘Current diversion practice and programs in Australia’ revealed that there are many mainstream programs in place that specifically divert drug and drug-related offenders, for the majority of programs for which evaluations are available, Indigenous people were found to be less likely to be referred to the programs and were often less likely to complete them. The issues of referral, acceptance and completion were raised as important areas of concern in the diversion of Indigenous offenders, and are discussed in this chapter.

Program accessibility for Indigenous offenders was highlighted as the primary concern, as was the fact that many programs under IDDI had criteria that excluded people with a history of violent or drug offences and those with alcohol dependence issues – all offenders could benefit greatly from the programs. Given existing research on violent offending by Indigenous people and the well-documented issue of excessive alcohol consumption and alcohol-related offending among Indigenous populations, such findings raise issues regarding access to diversion programs for Indigenous offenders and the factors that influence the likelihood of completing such programs. Some of the issues that were reported in program evaluations and raised during the consultation phase as potential barriers to Indigenous involvement in diversion are discussed later in this chapter.

Other recurring comments from the consultations that warrant reporting here questioned the need for Indigenous-specific diversion programs. During the consultation phase, some of the people interviewed raised the issue of whether Indigenous-specific programs are necessary. The sentiments expressed were that Indigenous-specific programs might actually be stigmatising, as they can be seen to label Indigenous people as particularly problematic and in need of specific interventions. The cost-ineffectiveness of running mainstream and Indigenous programs side by side was also raised as an issue, and this would be a concern in smaller jurisdictions. Some suggested that a better option, which would address concerns about negative labelling and program costs, would be to ensure that mainstream programs are flexible enough to be culturally responsive and relevant.

Box 3: Comments from the consultations

I do think that having separate programs for Indigenous people seems to send out the message that they are serious offenders and need their own programs because we can't deal with them any other way.

I'm concerned that such programs are unnecessary because, in reality, most Indigenous offenders can be dealt with through existing programs. Most of the mainstream programs are also culturally appropriate.

I don't know that it's necessary to double-up on so many programs.

It would save a great deal of money in terms of setting up these programs and the basic day-to-day running of them, and would enable the money saved to be channelled into engaging Indigenous specific treatment providers. There is certainly a lack of those in the drug and alcohol treatment area.

It would be preferable to ensure we have culturally relevant mainstream programs to build long-term capacity but we do recognise the need for specific programs in the short term.

Due to time restrictions, the issue was not pursued further, but it raises interesting questions about the cultural appropriateness of mainstream programs. Many of these programs highlight their flexibility to accommodate Indigenous offenders and the culturally relevant initiatives in place to facilitate Indigenous participation. It is important to determine what culturally relevant actually means in practice, and to examine the impact this may have on referral and completion rates.

Indigenous participation in diversion

Findings from the AIC's DUMA program reveal that 11 percent of police detainees were in drug and/or alcohol treatment at the time of being interviewed. The majority (54%) of these had been diverted into the program by a drug court, police diversion scheme or other legal order. Of those, 15 percent were Indigenous.

Many of the key participants from the specific programs reviewed in this report were unable to provide figures on the current numbers of Indigenous participants. This was largely due to:

- inaccurate data collection of Indigenous status (see Appendix A for a brief discussion of this issue) leading to a high number of unknowns for Indigenous status

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- the lengthy and time-consuming process of gaining approval to provide such information for publication in the report, with several participants still awaiting approval at the time of finalising this report
 - current internal program evaluations which prevented the release of any statistics prior to publication of the agencies' evaluations.

A qualitative study by Urbis Keys Young sought to assess the impact of IDDI programs on Indigenous people and identified that 'there are marked variations in the nature, quality and systems of data classification used across states and territories for the NDMS' (Urbis Keys Young 2003: 15). It was found difficult to draw reliable conclusions regarding the level of Indigenous overrepresentation or underrepresentation in IDDI programs, partly due to concerns about the reliability of the IDDI data. Table 7 lists the mainstream police and court diversion programs with the proportion of Indigenous participants where it was available, either as stated by key participants or in program evaluations. There were several evaluations and statistical reports that did not report on Indigenous status. Where statistics were made available, many indicated that the proportion of Indigenous offenders was relatively in line with expectations, although many stated that they hoped improvements were to be made and they were working towards increasing Indigenous participation.

Although statistics could not be obtained on actual Indigenous participation in all the police and court programs listed in Table 7, valuable anecdotal information was gained from the consultations. Participants indicated that the numbers of Indigenous offenders accessing the available mainstream programs were much lower than originally anticipated. This was of greatest concern in metropolitan areas where most programs are available but where the numbers of Indigenous participants were well below what was expected. The majority of those who raised the issue had no conclusive evidence for the reasons, but raised several possibilities which anecdotal evidence suggested had a strong impact on Indigenous participation. These included the eligibility criteria inadvertently excluding Indigenous people due to the nature of offending among this population. For example, many programs exclude on the basis of prior criminal history and it is known from the research in this area that Indigenous offenders tend to begin offending at a younger age than non-Indigenous offenders so that by the time they reach adulthood they are more likely to have a history of arrests, convictions and imprisonment episodes. A more detailed discussion of this issue and others identified as barriers to Indigenous participation in diversion follows later in this section.

Table 7: Indigenous participation in police and court diversion programs (percentage)

	Police	Indigenous participants	Court	Indigenous participants
New South Wales	Youth cautioning and conferencing	20	Drug Court	9
	Conferencing for young adult offenders	n.a.	Youth Drug and Alcohol Court	n.a.
	Cannabis Cautioning Scheme	3	MERIT	14
			Wellington Options Program	n.a.
			Rural Alcohol Diversion	40
			Statewide Community and Court Liaison Service	n.a.
Victoria	Juvenile cautioning and adult shop stealing cautioning	n.a.	Drug Court, Children's Drug Court Clinic Program	2
	Juvenile justice group conferencing	n.a.	Court Referral and Evaluation for Drug Intervention and Treatment	3
	Cannabis Cautioning Program	1	Rural Outreach Diversion Worker Service	2
	Drug Diversion Program	1	Deferred sentencing program	0
			Criminal Justice Diversion Program	n.a.
			Early School Leavers Pilot Program	12–15
			Mental Health Court Liaison Service	n.a.
Queensland	Youth cautioning and conferencing	32–36 (conferencing)	Conditional Bail Program	n.a.
	Queensland Police Diversion Program	n.a.	Homeless Persons Court Diversion Pilot Program/ Special Circumstances List	n.a.
			Drug Court	8
			Queensland Magistrates Early Referral into Treatment Pilot Program	Began in 2006
			Illicit Drugs Court Diversion Program	n.a.

Table 7: continued

	Police	Indigenous participants	Court	Indigenous participants
Western Australia	Juvenile cautioning and conferencing – Juvenile Justice Teams	22–23 metro; 40 remote	Intellectual Disability Diversion Program	19
	Court conferencing	20–22	Intensive Supervision Program	56
	Cannabis infringement notice	11	Perth Drug Court	8
	All Drug Diversion	6	Geraldton Alternative Sentencing Regime	40
	Young Person's Opportunity Program	19	Pre-sentence Opportunity Program	11
		n.a.	Supervised Treatment Intervention Regime	18
South Australia	Cautioning and family conferences	n.a.	Breaking the Cycle Program	Began in 2006
	Police Drug Diversion Program	7	Magistrates Court Diversion Program	7
			Adelaide Drug Court	11
			Court Assessment and Referral Drug Scheme	12
Northern Territory	Juvenile Pre-diversion Scheme	63	NT Court Referral and Evaluation for Drug Intervention and Treatment	31
	Cannabis Expiation Notice Scheme	approx. 50	Alcohol Court	92
	Illicit Drug Pre-court Diversion Program	33		
Tasmania	Youth Diversion Program	18	Court Managed Drug Diversion Program	Currently in development
	Cannabis caution	n.a.	FVOIP	12
	Drug Diversion	n.a.		
Australian Capital Territory	Police Early Intervention and Diversion Program	5	CADAS	17
	Simple cannabis offence notice	n.a.	Treatment Referral Program	13
	Restorative justice conference	10		

n.a.: Not available

Indigenous access to diversion

Numerous issues influencing Indigenous access to diversion programs have been identified in research and evaluations of some of the diversion programs outlined in the previous section. These issues were also identified in the Indigenous Sentinel Study for the COAG IDDI (Urbis Keys Young 2003). Among the issues commonly raised are that Indigenous offenders are:

- less likely to make an admission of guilt to police
- more likely to have multiple charges
- more likely to have previous criminal convictions (particularly for violent offences)
- more likely to have drug misuse problems that are not covered by the drug diversion programs (such as alcohol and inhalants)
- more likely to have a co-existing mental illness.

These are all factors that commonly exclude an offender from most diversion programs. All of these issues arose during consultations with the key participants in each state and territory and although they varied in perceived importance and impact from one jurisdiction to another, they were the most commonly cited of the possible barriers to Indigenous people accessing diversion programs.

Admission of guilt to police

Although the issue of Aboriginal Legal Services instructing clients not to plead guilty was raised on several occasions during the consultation phase, it was not considered an equally problematic barrier across all jurisdictions. It was mentioned by one key participant that it is standard legal practice to instruct clients not to plead guilty when the lawyer has yet to thoroughly review the case. Although Indigenous offenders were unlikely to plead guilty at first, the participant indicated that they inevitably admitted guilt, so the initial advice against doing so had little impact on their ability to access programs.

A report on Koori young people and police cautioning by the Victorian Aboriginal Legal Service (VALS) suggested that an Indigenous youth who is eligible for a caution but will not admit to the offence should be given an opportunity to speak with a VALS solicitor or client service officer, who could advise them to admit to the offence, if assured that a caution would then be issued. The limited information available to Indigenous people about diversion programs was also mentioned as having a considerable impact on participation in programs.

Box 4: Comments from the consultations

Access to the programs here is certainly an issue for Indigenous youths. Aboriginal Legal Services often tell them not to say anything and that automatically excludes them.

Juveniles are missing out because they are often told not to say anything to police. It makes it harder for them to get diverted.

I think educating all involved – police, the offender and the legal services – would help to overcome this problem.

The number of Indigenous offenders was certainly much lower than expected and in this case I believe it was due to inadequate consultation with the Aboriginal community. In turn, the community had a poor understanding of what was involved of what the court does and how they could benefit.

A further complication is the distrust of police and other authority figures displayed by many Indigenous youths. After years of mistrust it is understandably difficult for Indigenous youths and adults to believe that the police have their best interests in mind. In the wider Australian population, a shift has occurred in the way the role of police is viewed, leading to them being seen as more of a service than purely law enforcement, but anecdotal evidence suggests the views among the Indigenous population are yet to change. This may be due to a combination of factors including past discriminatory police practices and the limited ability police have to provide the same level of service offered in metropolitan areas in remote areas, where many Indigenous communities are located. Due to difficulties faced in accessing some of the more remote communities and the pressure on time and resources, the role of police may be restricted to one that more or less strictly focuses on law enforcement in these areas.

Other participants cited the biggest barrier to police diversion in their jurisdiction as being police officers simply forgetting that diversion is available as an option in certain circumstances. They highlighted the importance of continuing police training in the availability and use of cautions and other diversions.

Box 5: Comments from the consultations

The main problem, I think, is the historical tension that exists. That feeds into mistrust of authority figures and I'm not sure to what extent this affects the numbers of Indigenous people going through the system, but it would certainly play a part.

There's room to improve training for our officers so that they are aware of the diversions available. They also need to be able to see the benefit of using diversion. There was some resistance at first but adequate training addresses those concerns.

Multiple charges

The increased likelihood of Indigenous offenders being charged with multiple offences was commonly cited as an issue precluding participation in diversion programs. Concurrent offences, especially those involving violence, are exclusionary criteria for many diversion programs and anecdotal evidence from program personnel indicated that this would often preclude Indigenous people, given the nature of Indigenous offending and contact with police.

Published reports differ in their findings on this. The South Australian Office of Crime Statistics and Research found that the number of offences listed in a single apprehension report were similar for Indigenous and non-Indigenous juveniles (Doherty 2002), although Indigenous juveniles were marginally (63.9%) less likely to have only one charge listed than non-Indigenous juveniles (64.3%).

Statistics from the AIC's DUMA program indicate a larger discrepancy between the two groups. In 2005, Indigenous detainees were more likely to have two or more charges than non-Indigenous detainees. Almost half (48.3%) of the non-Indigenous detainees reported having one charge only, while 37.7 percent of Indigenous detainees indicated the same. Recent research on Indigenous offender characteristics among a New South Wales sample reveals a similar pattern (Snowball & Weatherburn 2006). Indigenous offenders were one-and-a-half times more likely than non-Indigenous offenders to have at least one concurrent conviction. Indigenous offenders were also found to be overrepresented in convictions for concurrent breach offences (that is, failing to comply with a previous court order, justice order, or bail and parole order). Indigenous offenders were twice as likely to be convicted of a concurrent breach offence as non-Indigenous offenders. The higher likelihood of Indigenous offenders having multiple charges needs to be given further consideration.

Box 6: Comments from the consultations

From my own experience, a lot of Aboriginal offenders, mostly male, will come in with several charges and the program doesn't allow diversion when there are concurrent offences. This isn't always the end though. I know in practice when there is a real need to get someone on the program, the officer will sometimes drop other charges depending on what they are, so that the person can receive treatment.

Previous criminal convictions and prior periods of imprisonment

Many diversion programs exclude offenders with previous criminal convictions and prior periods of incarceration, particularly where the offences involved violence. Research has shown that this is more likely to apply to Indigenous than non-Indigenous offenders. As serious offences are likely to result in incarceration, the higher involvement of Indigenous people in the commission of such offences is one explanation for their overrepresentation in the criminal justice system. More than half of the Indigenous prisoners (52%) at 30 June 2006 were incarcerated for violent offences compared with 37 percent of non-Indigenous prisoners (ABS 2006c). Other studies have reported higher rates of arrest for violent and serious theft offences among Indigenous than non-Indigenous people (Weatherburn, Fitzgerald & Hua 2003; Harding et al. 1995).

A higher rate of court appearances and sentencing to imprisonment for Indigenous offenders than non-Indigenous offenders has been identified (Baker 2001). Recent research has found that Indigenous offenders were more likely than non-Indigenous offenders to appear in court for violent offences such as sexual assault (11 times greater), aggravated assault (19 times greater) and robbery (17 times greater) (Snowball & Weatherburn 2006). Some have argued that, to more effectively reduce Indigenous imprisonment, Indigenous court appearances need to be reduced through appropriate diversionary options (Baker 2001). However, it should be noted that many participants indicated that diversion was not only not possible in many instances involving violence, due to program restrictions, but that it was also inappropriate for serious violent offenders. The need for serious offenders to be punished for their crimes was considered of great importance and the availability of diversion programs in prisons was highlighted. Some suggested that, although it would be inappropriate to divert serious and violent offenders with drug use issues, many would be able to receive appropriate treatment programs once incarcerated.

Box 7: Comments from the consultations

In this program, the fact that no one with a prior history of violent offences can be accepted does mean that many Indigenous offenders are excluded. We are trying to have this requirement changed.

Drug misuse problems outside scope of drug diversion programs

The focus of drug diversion programs funded under the IDDI on providing avenues of diversion and treatment for illicit drug-related offenders excluded (at least initially) many Indigenous offenders whose substance misuse primarily involved inhalants and alcohol. As mentioned previously, the consultations revealed that the prevalence of volatile substance and alcohol use among Indigenous communities has led several programs once focused on illicit drugs to admit participants with these substance use issues. Although such offenders would be excluded based on the program criteria relating to illicit substances in theory, in practice the situation is quite different. Anecdotal evidence suggests that program personnel are cognisant of the need to address substance misuse issues that fall outside the program parameters, and will assess many cases on their individual merits, with the desire to change in the offenders themselves often being the overriding concern. Some IDDI programs have since expanded to allow offenders with licit substance misuse issues to participate; the Western Australian IDP is one example of this having occurred in recent times. The program now covers alcohol and volatile substance use.

Box 8: Comments from the consultations

The police do try and divert where they can and I know that when they see someone with substances that aren't covered by our program, they often ask whether they've ever used cannabis as a way to try and get them in.

Co-existing cognitive disabilities/mental illness

People with cognitive disabilities are overrepresented in the criminal justice system and a large proportion have co-existing psychiatric and/or substance abuse problems (Hayes 2005). The compounding effect of being Indigenous and having a cognitive disability was highlighted in a paper by Simpson and Sotiri (2004). Despite a lack of reliable statistical information on the prevalence of cognitive disability among Indigenous communities, anecdotal evidence gathered during their research suggested 'that disability in Indigenous communities is at least twice as high as in non-Indigenous communities' (Simpson & Sotiri 2004: 6). Indigenous people were considered to be at higher risk of cognitive disability due to 'the impact of extreme poverty and the flow on effects of the related health disadvantages' (Simpson & Sotiri 2004: 6).

When the issue of cognitive disability in Indigenous youths in the juvenile justice system was examined, it was found that ‘not much is known about the extent of Indigenous young people with cognitive disabilities and/or mental health problems in the juvenile justice system. Less is known about the young people who offend but do not receive a custodial order’ (HREOC 2005: 35). Anecdotal evidence from the consultation process suggested that those with intellectual disabilities or mental health issues would benefit from diversion into appropriate programs where their needs would be addressed, rather than receiving custodial sentences. Among the recommendations was for the National Crime Prevention and National Community Crime Prevention programs to be expanded to allow for the funding of projects addressing the needs of Indigenous youths with cognitive disabilities who are at risk of entering the juvenile justice system.

Another issue of importance is the difficulty in identifying cognitive disability in offenders upon contact with the criminal justice system. This has been summarised as follows:

The problem of disability being masked by other factors of disadvantage is perhaps most evident when it comes to contact with the criminal justice system. If a brain injury is acquired early in life, and is never properly assessed, there is the potential that behaviours that are a consequence of that brain injury will never be properly attributed. During contact with police, behaviour is much more likely to be connected with the immediate influence of drugs and alcohol, or perhaps implicitly linked to the fact of Aboriginality rather than a brain injury. A lack of response to questions may be viewed as being the consequence of language and cultural barriers, rather than reflecting a lack of understanding (Simpson & Sotiri 2004: 11).

The importance of adequate police training about intellectual disability, to improve the ability of officers to identify people with such issues was highlighted in a review of non-custodial interventions for offenders with intellectual disabilities (Hayes 2005).

Other potential barriers

One other issue raised, especially in relation to Indigenous youths, is the requirement of many cautioning programs for a parent, guardian or responsible adult to be present when the caution is issued. For Indigenous youths to meet this requirement, VALS makes two recommendations. First, that police contact VALS client service officers to help locate parents or a guardian and to negotiate an alternative time for the caution to be issued. Second, that nominated community members including the VALS client service officers be allowed to stand in for the youth’s parent or guardian. Another issue was that Indigenous populations are much more mobile than the general population and magistrates can be reluctant to refer an offender to a program, when they may be difficult to find again.

Perhaps the most common issue raised and one of the most significant barriers to Indigenous access to programs was the remoteness of many Indigenous communities. A large proportion of Indigenous people live in remote areas across Australia. Due to the remoteness of location, people in these communities are often restricted in their ability to access services. Among the priority areas of concern identified in government reports are improvements in service delivery in health, education, employment, and crime and justice in rural and remote areas. The geographical location of many Indigenous communities presents the greatest service delivery challenge for criminal justice agencies. It is simply not economically feasible for some programs to be run in remote areas. The issue of 'justice by geography' has been raised in recent times (Clancey & Howard 2006) and was raised frequently across all jurisdictions. While the situation is better in some jurisdictions than others, it remained an issue of concern for most and is an area that needs further attention.

Box 9: Comments from the consultations

Access to diversion programs and other services is an issue which impacts greatly on the numbers of Indigenous people in rural areas who get diverted. There are access issues for those in the metro area, but these differ from issues in rural areas. Often there are few programs available out there and when there are, it is often difficult to find appropriate treatment providers.

There are issues with the areas where programs are located but it simply isn't possible to include all programs in all courts. An attempt has been made to ensure most programs are covered in areas where there is a large Indigenous population, but it is economically unfeasible to provide all programs in all areas of the state.

Because there are fewer programs in the remoter areas and resources are often scarce out there, it is less likely that people will be diverted by police from those areas.

Program completion in diverted Indigenous offender groups

Aside from the issues surrounding referral and acceptance onto a program, completion by Indigenous participants compared with non-Indigenous participants was also highlighted during the consultations. The evidence from participants as to the likelihood of completion among Indigenous participants, compared with their non-Indigenous counterparts, was somewhat mixed. Some suggested that, once referred to a program, Indigenous participants were no more or less likely to complete than non-Indigenous participants. Among the programs for which statistics were available, the Western Australian IDP found

that, once Indigenous people entered the program, they were highly likely to complete (80%). A statistical assessment of the South Australian CARDS between June 2004 and June 2005 revealed that almost one-third of non-Indigenous participants (32%) failed to complete the treatment component, compared with more than three-quarters of the Indigenous participants. The Western Australian IDP is Indigenous-specific and the number of Indigenous participants in the CARDS for the specified time period was very small (nine) making it difficult to compare the outcomes and draw meaningful conclusions. It remains to be seen whether Indigenous participants in mainstream programs have similarly high rates of completion as those reported by the IDP. A recent evaluation of MERIT (NSW AGD 2006) found that Aboriginal participants were less likely to complete (50%) than their non-Indigenous counterparts (60%), but that the reasons for non-completion were largely the same for both groups.

Another participant involved with a mainstream program also noted that the reasons for non-completion among Indigenous participants were the same as for non-Indigenous participants. The participant emphasised that, once accepted onto the program, participants all faced the same basic difficulties and that issues associated with race did not seem to be particularly problematic.

In summary, this group of participants believed that the largest problem was simply getting Indigenous people onto the programs. Their ability to participate in the programs was not seen as significantly different from non-Indigenous people, but the referral and acceptance rates were cited as having a significant impact on access. An unpublished review of the IDDI initiatives, conducted for the Department of Health and Ageing (Borzycki & Willis 2005) also found that referral rates were much lower than expected and that Indigenous people were much less likely than non-Indigenous people to be referred to IDDI programs. It was recommended that offenders be provided with a range of interventions, matching program participants, particularly Indigenous offenders, with appropriate treatment programs.

Others reported that rates of successful completion were much lower among Indigenous offenders than among non-Indigenous offenders. Few were able to produce current statistics in time for writing this report, but where they were available, the completion rate for Indigenous offenders was generally lower than for non-Indigenous participants. During the consultations, some participants attributed non-completion by Indigenous participants to a lack of appropriate treatment services available for this group. The dearth of these treatment services was considered to have an impact on both the rate of completion and referral of Indigenous people to diversionary programs. Future research should focus on identifying completion rates and the factors that may contribute to non-completion in more detail.

Box 10: Comments from the consultations

Indigenous participation is problematic in the sense of getting them to just walk through the door... once they're in, they tend to complete.

The program is only as effective as the treatment services that are provided by agencies. In more remote areas there isn't as much choice in providers and this can be a problem for Indigenous clients.

Diversion is only as good as the treatment programs that participants can be referred to and I think in some cases, if there were better services available for Aboriginal offenders, there would be more referrals.

Indigenous offenders are less likely to access mainstream treatment providers so this is a problem where there are no Aboriginal treatment services available.

The Australian Institute of Health and Welfare (AIHW) is undertaking research for the Department of Health and Ageing that seeks to evaluate the effectiveness of the IDDI in rural and remote areas. The study will examine the effectiveness of programs in terms of their impact on providing early incentives for offenders to address their drug use; the number of illicit drug users who are diverted into education, assessment and treatment; and the number of people incarcerated for use or possession of small quantities of illicit drugs. This work will provide valuable information about the impact of drug diversion on Indigenous populations and offending rates.

Impact of diversion among Indigenous offender groups

A further finding in relation to Indigenous offenders who participate in diversion is that they are more likely to reoffend following a diversion episode than are non-Indigenous offenders who have been diverted. A recent study of reoffending among youths who participated in youth justice conferences in New South Wales found that 58 percent reoffended within five years of the conference. A larger proportion of Indigenous than non-Indigenous participants reappeared before the court within five years of completing the conference (81% vs 56%). They were also found to have a higher number of proven court appearances within the five-year period, with an average of 5.5 appearances compared with an average of two for non-Indigenous youths. Indigenous offenders were also more likely to have received a custodial sentence within five years of the conference (30% vs 9%; Vignaendra & Fitzgerald 2006). An earlier study of young offenders in New South Wales who completed conferences also found that Indigenous youths were more likely than non-Indigenous youths to have

offended within one year (31% vs 26%) and within two years (52% vs 38%). The difference was statistically significant at the two-year mark (Luke & Lind 2002). The study also reported that Indigenous youths who were diverted were at a lower risk of reoffending than Indigenous youths who appeared before the Children's Court.

A study of South Australian youths who completed conferences found that the Indigenous group was more likely than the non-Indigenous group to reoffend following the conferences (Hayes & Daly 2003). Sixty-four percent of the Indigenous youths reoffended compared with 37 percent of non-Indigenous youths. Similarly, Indigenous status was also significantly related to the likelihood of reoffending among a Western Australian sample (Broadhurst & Loh 1995). Although a study concerned with the experience of cautioning among a sample of Queensland youths could not determine the impact of Indigenous status based on police data, it was found that Indigenous males who had both contact with the Department of Families and received a police caution were more likely (82%) to reoffend than were non-Indigenous males (66%) under the same circumstances (Dennison, Stewart & Hurren 2006). Significantly more youths whose first contact led to a finalised court appearance reoffended than youths whose first contact was a caution. However, both Indigenous males and females who went to court were more likely to have recontact with the criminal justice system than their non-Indigenous counterparts (64% and 53% compared with 39% and 28%, respectively).

Another study of reoffending among Queensland youths who completed conferences found that 56 percent reoffended between three and five years after the conference, but data on Indigenous status were unavailable for a large number of the sample and thus could not be analysed (Hayes & Daly 2004). This is unfortunate, as the study found that youths who had come to a conference with prior offending (not including the offence for which they were conferenced) were more likely (72%) to reoffend following the conference than those who were sent to a conference for their first offence (40%). Prior research on Indigenous offending suggests that it would be likely that a larger proportion of Indigenous than non-Indigenous youths would continue to offend. Similarly, the study found that youths were also more likely to persist in offending following a conference if they began offending at a younger age. Prior research has shown that Indigenous offenders begin their offending careers at younger average ages than their non-Indigenous counterparts.

Diversory options such as drug courts and cautioning programs are assessed as successful or unsuccessful based largely on their impact on reoffending rates. The research is not positive in relation to Indigenous reoffending rates. Although research indicates some decline, reoffending among Indigenous participants generally remains higher than that of non-Indigenous offenders. Despite this, the Indigenous Sentinel Study reported that there seemed to be positive impacts in reducing drug use and offending among Indigenous participants of select IDDI programs, although this was based on 'the very limited information available' (Urbis Keys Young 2003: 51). The AIC is currently undertaking research

on behalf of the Department of Health and Ageing to assess recidivism among participants in the Police Drug Diversion Initiative (PDDI) programs. Comprehensive analysis of these diversionary options has not been undertaken previously and the research will better inform discussions of the effectiveness of diversion programs in reducing reoffending among Indigenous participants.

Summary

There was a general consensus across most programs and jurisdictions that the numbers of Indigenous offenders accessing the available mainstream programs were much lower than had been envisaged at the outset of these programs. Most identified the same issues, which they believe inadvertently acted as barriers to Indigenous offenders accessing these programs. These issues all pose significant problems for Indigenous access to diversionary programs, given that they are the eligibility criteria that must be met for the majority of programs. Not all can be addressed by the programs themselves, as there are underlying issues associated with the type and level of offending by Indigenous people which can render them ineligible to participate in such programs. Such issues need to be addressed, but an important step to take in any future work in diversion would involve assessing the actual impact of these barriers on various programs. There is evidence to suggest that claims about these barriers are valid, but it is far from conclusive and future research should consult with Indigenous people about the issues they feel are most influential in limiting their access to diversionary programs, as well as seeking relevant data on why offenders are not referred or accepted onto various programs.

It is also important to emphasise that the programs vary in many ways and especially in terms of exclusion and/or inclusion criteria, so while offenders charged with multiple offences may be excluded from participating in one program, they are not necessarily excluded from another. The issue becomes more about whether the continuum of diversion programs offered within jurisdictions is comprehensive enough in terms of whom they target. That is, are there appropriate mechanisms in place at various points of the criminal justice system to enable the diversion of a range of offenders, from minor and first time offenders to those with entrenched criminal histories and drug use problems? That is not to say that programs should be open to all – there is a need to target interventions at certain groups – but barriers to entry may not be as great a concern in jurisdictions where there is scope for an offender to be diverted by other means into needed treatment.

Although program completion was not the focus of the consultations, due to the general consensus that the most prominent disparity between Indigenous and non-Indigenous offenders lay in accessing programs, the view that emerged from the consultations was that Indigenous participants generally performed similarly to non-Indigenous participants once

they were accepted onto the program. Those who held a different view identified a lack of culturally appropriate treatment services as contributing to low completion rates among Indigenous participants. The issue then becomes one of appropriate strategies to ensure a continuum of diversionary mechanisms is in place to divert Indigenous people and appropriate services are available to treat them.

Similarly, while the impact of diversion on reoffending outcomes fell outside the scope of this initial study, it warrants mention that research in the area has generally not been positive on outcomes for Indigenous offenders. The limited decline has not been as great as for non-Indigenous offenders.

Conclusions and future research directions

The major component of Stage 1 of the project was to identify the initiatives through which the criminal justice system currently responds to Aboriginal and Torres Strait Islander people where offending is linked with substance abuse. A range of mechanisms through which offenders are either diverted from the criminal justice system entirely, or by which it is possible to minimise their progress through it, were identified. In the first instance, consultations with the relevant justice agency stakeholders were conducted and detailed information regarding the aims, components and exclusion criteria of the numerous programs was obtained. There are currently few Indigenous-specific diversion programs operating in Australia, so the decision was made to include all mainstream programs as none specifically exclude Indigenous people.

The current report considered the diversion of Indigenous offenders from the criminal justice system and the nature of Indigenous contact with it, highlighting the effect the impact of contact with the criminal justice system has on future offending. Research is required to determine the extent of this contact and diversion from it, and the outcomes of that diversion, in greater detail.

Future comparisons of Indigenous and non-Indigenous program participants should also consider the type of drug(s) identified as problematic and examine the completion rates for each group, as these are both issues of concern. Anecdotal evidence from the stakeholder interviews and some program evaluations suggest that Indigenous participants are less likely to complete programs than non-Indigenous participants and that the type of drug(s) considered problematic differs greatly between these groups. These issues raise questions concerning the accessibility and appropriateness of some drug diversion programs.

In addition to the information on program processes and eligibility, stakeholder interviews provided valuable anecdotal information on the perceived barriers to Indigenous access to the various mainstream diversion programs currently available. Some issues were also raised about the cultural relevance of Western cognitive-based learning programs acting as a possible barrier to Indigenous people completing programs. This is an issue which should be explored further; however, the most prominent concerns centred on the criteria used to determine eligibility for programs. Among the commonly cited possible barriers are that drug diversion programs often:

- require an admission of guilt
- exclude those who have multiple charges
- exclude those with previous criminal convictions (particularly for violent offences)
- do not cover alcohol or inhalant misuse
- exclude those with mental illness.

These are all factors that commonly exclude an offender from diversion programs and impact negatively on Indigenous offenders who are known to be less likely to admit guilt, more likely to have multiple charges, more likely to have previous criminal convictions involving violent offences, more likely to have problems associated with the use of alcohol and inhalants which are not covered by most drug diversion programs; and more likely to have a co-existing mental illness. All were mentioned during consultations with the key participants in each state and territory. Although they varied in perceived importance and impact among jurisdictions, they were the most commonly cited of the possible barriers to Indigenous people accessing diversion programs.

There is evidence to suggest that perceived barriers are valid, but it is far from conclusive. Future research should involve consultation with Indigenous people about the issues they feel limit their access to diversionary programs, and seek relevant data to assess the actual impact of these barriers.

It is important that greater consideration to be given to the gaps in diversion programs and the impact these may have on Indigenous adults and juveniles coming into contact with the criminal justice system. For example, many states do not have a formal cautioning process for adults for non drug-related offences, although all have them for juveniles. Although it would be inappropriate to divert adult offenders for many offence types, Victoria has been diverting adults for shop stealing offences since 1985 and cautioning for minor traffic offences is relatively commonplace.

As noted earlier there are few Indigenous-specific diversionary programs available at the court level and even fewer at the police level. During the consultation phase, some of the participants questioned the necessity of Indigenous-specific programs, citing concerns about stigmatisation and the cost-ineffectiveness of running mainstream and Indigenous programs side by side. Among this group, the consensus was that the majority of mainstream programs are flexible enough to adequately cater for Indigenous people and the associated cultural issues. Documentation for mainstream programs often notes that the program is culturally relevant for Indigenous people, but does not explain what this entails. Given the dearth of Indigenous-specific programs and the consequent diversion of many Indigenous offenders to mainstream programs, it is important to determine the appropriateness of these programs. To achieve this, a thorough investigation is needed of what is meant by 'culturally relevant'.

Furthermore, specific strategies may be employed under this broad term to address the underlying issues that impact on Indigenous offending and overrepresentation. That is, the notion of cultural relevance may be a de facto indicator of socioeconomic disadvantage, and it would be important to determine how this may impact on practice and content in the delivery of diversionary programs. Socioeconomic factors contributing to disadvantage and the overrepresentation of Indigenous people in the criminal justice system are discussed in detail in Appendix A.

Policy implications

Notwithstanding more quantitative evidence to be gathered in Stage 2 of this project, interim conclusions regarding improved access to the drug diversion initiatives for Indigenous offenders can be drawn from the anecdotal evidence presented in this report. Eligibility criteria was the primary issue identified.

There is a very real need to consider the drug use problems of Indigenous offenders and the expansion of programs to cover substances such as alcohol and inhalants that generally fall outside the scope of drug diversion initiatives. Research has shown that the substance misuse issues of Indigenous offenders primarily involve alcohol and inhalants, rather than the illicit drugs covered by IDDI. Although anecdotal evidence indicates that some programs admit these offenders, they are not funded to do so and would be better able to address these particular issues if the programs were expanded to officially cover such substances. This is particularly important in rural and remote locations and would also ensure consistency in applying the eligibility criteria.

Wider dissemination of information regarding diversion programs among Indigenous communities would improve access. The principle of diversion and the aims of drug diversion programs need to be articulated more clearly to Indigenous participants, who may be doubtful about participation in such programs due to negative past experiences with the criminal justice system and language barriers. Explaining that these programs are intended to help, rather than cause further harm, would increase willingness to plead guilty and agreement to participate. This could also be enhanced by ensuring a thorough understanding of the available programs among Aboriginal Legal Services solicitors and client service officers who, with more detailed knowledge of the programs, would be better placed to explain the programs to their clients prior decisions about the admission of guilt.

Other improvements that should be considered centre on previous offending histories and the commission of violent offences. While there are valid reasons to exclude such offenders, these are offenders who are likely to benefit from drug and alcohol treatment services to which they may not otherwise have access, or the incentive to access outside diversion programs. Providing an opportunity to access treatment via a diversion program may also help develop a commitment on the part of the offender to engaging in treatment outside of the program. Perhaps offenders with criminal histories and/or those with violent offences could be individually assessed for suitability, rather than automatically excluded. The assessment process would need to be defined clearly to ensure consistent application of the criteria. Alternatively, programs designed exclusively for these more entrenched offenders who often fall in the gaps between the various levels of diversion programs could be introduced.

The need for appropriate treatment services for Indigenous drug users is also important, as anecdotal evidence from the consultations indicated the lack of such services often resulted in lower referral rates. Once again this was particularly important in rural and remote areas where there are fewer specialist providers. The need for choice in treatment providers is highlighted by the fact that some offenders are diverted several times before they complete a program successfully and, in many instances, treatment providers are reluctant to accept these participants back due to their earlier behaviour in treatment.

Although only limited conclusions can be drawn from the anecdotal evidence gathered from the consultations, this should not undermine the message they hold for improving access to diversion for Indigenous offenders. The participants consulted during this phase of the project were largely in agreement on the negative, if unintended, impact that the basic eligibility criteria for most drug diversion programs have on Indigenous participation. It is important for the negative impact to be understood in terms of its effect on special needs groups, particularly Indigenous people. Where feasible, it may be advantageous to review and amend these criteria.

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Appendixes

Appendix A: Indigenous overrepresentation, socioeconomic disadvantage, and state and territory government responses

Indigenous overrepresentation in the criminal justice system

The Indigenous population is a predominately youthful one which is increasing in number (ABS 2004a). The majority (73%) of the Indigenous population was aged less than 35 years at the 2001 Census (ABS 2002) and estimates indicate that this profile is likely to remain relatively stable into the near future, with more than 70 percent expected to be aged less than 35 years by 2009 (Table A1) in every state and territory. Comparatively, less than half of the non-Indigenous population across Australia is aged less than 35 years. The Indigenous population in most states and territories is increasing at a faster rate than the non-Indigenous population. By virtue of this high birthrate, the overrepresentation of Indigenous people can be expected to continue, as large numbers of youths would continue to come into contact with the justice system.

Table A1: Indigenous population by jurisdiction

	Indigenous population as % of total population	Non-Indigenous population as % of total population	Indigenous population aged less than 35 years (%)	Non-Indigenous population aged less than 35 years (%)	Total population (n)
New South Wales	2.4	97.6	71.0	46.3	6,827,694
Victoria	0.7	99.3	70.6	46.7	5,091,666
Queensland	3.7	96.3	72.5	47.3	4,053,444
Western Australia	3.8	96.2	71.3	47.0	2,050,884
South Australia	1.9	98.1	71.0	43.8	1,554,656
Tasmania	3.9	96.1	71.6	43.5	488,948
Northern Territory	29.9	70.1	71.4	50.8	206,688
Australian Capital Territory	1.6	98.4	72.3	50.1	328,817
Australia	2.6	97.4	71.5	46.5	20,605,488

Sources: ABS (2006b; 2004a)

Indigenous overrepresentation in the criminal justice system is relatively consistent across Australia. Table A2 shows the proportion of the population, police custody incidents, and the juvenile detention and prison populations in all Australian jurisdictions. The Indigenous population is consistently overrepresented in juvenile and adult detention and in police custody incidents across all the states and territories.

Indigenous people make up two percent of the total Australian population but account for 24 percent of the total prison population (ABS 2006c) and more than half (54%) of the total population in juvenile detention in Australia (Taylor N 2006). Similarly, Indigenous people continue to be overrepresented in police custody incidents. Indigenous people are 17 times more likely than non-Indigenous people to be arrested and detained by police and account for 26 percent of all custody incidents in Australia (Taylor & Bareja 2005). The most recent prison census showed that the rate of imprisonment of Indigenous persons was 13 times higher than the non-Indigenous imprisonment rate (ABS 2006c).

Table A2: Indigenous overrepresentation in the criminal justice system

	% Indigenous of total population ^a	% Indigenous of total police custody incidents ^b	% Indigenous of total juvenile detention population ^c	% Indigenous of total prison population ^d
New South Wales	2.4	16.3	55.6	19.9
Victoria	0.7	8.2	19.4	5.5
Queensland	3.7	24.4	60.4	27.1
Western Australia	3.8	45.9	77.1	39.7
South Australia	1.9	27.6	41.2	19.1
Tasmania	3.9	11.6	22.2	10.4
Northern Territory	29.9	81.6	80.0	82.4
Australian Capital Territory	1.6	19.3	31.3	11.9
Australia	2.6	26.3	54.3	23.6

Sources: (a) ABS (2004a); (b) AIC (2005); (c) AIC (2006); (d) ABS (2006c)

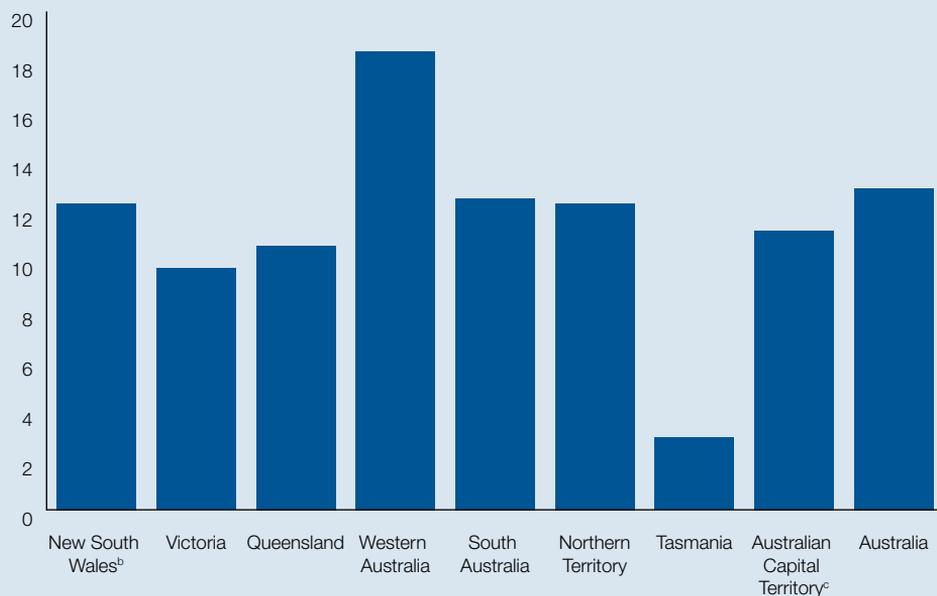
Statistics from the AIC's Juveniles in Detention Program (Taylor N 2006) showed that Indigenous juveniles were 23 times more likely to be detained than non-Indigenous juveniles. The rates of detention for both Indigenous and non-Indigenous juveniles have decreased since 1994, although the decrease for non-Indigenous juveniles is almost double that for Indigenous juveniles (44% vs 25%). Aboriginal and Torres Strait Islander offenders are also younger on average and younger when they first come under the supervision of the juvenile justice system than non-Indigenous youths (AIHW 2006). They are also more likely than non-Indigenous youths to complete two or more periods of supervision (25% vs 15%), more likely to experience periods of detention and less likely to be placed on community-based supervision (AIHW 2006).

Data from the National Police Custody Survey show that Indigenous people aged less than 17 years were 15 times more likely to be detained than non-Indigenous youths in the same age group (Taylor & Bareja 2005). Those aged less than 35 years were 32 times more likely to be detained than non-Indigenous people in the same age group. ABS data also show that 83 percent of Indigenous prisoners were aged under 40 at 30 June 2006, compared

with 70 percent of non-Indigenous prisoners (ABS 2006c). The age-standardised rate of Indigenous imprisonment (1,668 per 100,000) was 13 times greater than the non-Indigenous rate (130 per 100,000; see Figure A1).

The Indigenous rate of imprisonment was higher than the non-Indigenous rate in all states and territories. Western Australia had the highest age-standardised ratio, with Indigenous imprisonment 18 times greater than non-Indigenous imprisonment. This was followed by South Australia (12.5), New South Wales and the Northern Territory (12.3), the Australian Capital Territory (11.2), Queensland (10.6) and Victoria (9.7). The ratio was lowest in Tasmania, with an Indigenous imprisonment rate three times greater than the non-Indigenous rate. If all other influences remain as at present, the rate of overrepresentation of Indigenous people would not be expected to decrease, given the largely youthful population, which research has shown to be at high risk of criminal offending.

Figure A1: Ratio of Indigenous to non-Indigenous age-standardised rates of imprisonment^a



a: Rate per 100,000 adult population

b: Data for NSW exclude ACT prisoners held in NSW prisons

c: Data for ACT include ACT prisoners held in NSW as well as ACT prisoners held in ACT

Source: ABS (2006c)

A New South Wales study found that Indigenous people had very high rates of contact with the court and prison systems (Weatherburn, Lind & Hua 2003). Almost 29 percent of the Indigenous population aged more than 10 years appeared in court and almost seven

percent received a custodial sentence between 1997 and 2001. Indigenous persons were also found to be more likely to have frequent contact with the courts prior to appearing in 2001; 27 percent of males and 17 percent of females had appeared in court more than five times in the five years prior to their 2001 appearance. The rate of contact with the court system was almost four-and-a-half times higher for Indigenous people than for the entire New South Wales population and they were 16 times more likely to be imprisoned in 2001 than the general population.

Some researchers argue that Indigenous overrepresentation in the criminal justice system is due more to institutional or systemic bias (Blagg 2005; Cunneen 2001; Gale, Baily-Harris & Wundersitz et al. 1990). That is, over-policing, discrimination and racism towards Indigenous people by police, magistrates and others within the system create a situation in which they are more likely to be arrested, sentenced and imprisoned. However, it is difficult to find studies that show evidence of systemic bias, once factors such as prior criminal history, prior imprisonment and offence type have been taken into consideration. Snowball and Weatherburn (2006) examined whether Indigenous adult offenders were more likely than non-Indigenous adult offenders to be sentenced to a term of imprisonment, taking various legal factors into consideration. They found no evidence of judicial bias against Indigenous offenders, but found that Indigenous offenders were more likely to have longer criminal records, be convicted of serious violent offences, be convicted of multiple offences, have breached a previous court order, and to have reoffended following a suspended sentence or periodic detention. In effect, there was little option but to incarcerate and no room for systemic bias to come into play.

Issues influencing Indigenous offending and contact with the criminal justice system

There is no denying that the past events have significantly affected the Indigenous people of Australia. Dispossession of land, loss of cultural heritage and unequal treatment into the 1990s have contributed to a situation where many Indigenous communities are faced with serious issues, including substance use and crime, and are comparatively disadvantaged in social and economic terms compared with the wider Australian population. The RCIADIC discussed the issue of Indigenous overrepresentation in relation to the issues underlying Indigenous disadvantage. It concluded that socioeconomic disadvantage, substance abuse, family conflict and dysfunction, and loss of both land and cultural heritage all had a significant negative impact. No review of Indigenous contact with the criminal justice system would be complete without discussing these underlying causes of Indigenous offending, which both influence participation in the justice system and are exacerbated by it in turn.

Research has indicated that Indigenous arrestees can be distinguished from Indigenous people who have not been arrested by the following factors: being young and male, having

substance use issues, having been a victim of violence or threats, being unemployed, leaving school at a young age and having been removed from the natural family (Hunter 2001).

Socioeconomic disadvantage

Health, employment, income and education are areas in which the socioeconomic disadvantage of Indigenous people is greater than that of the non-Indigenous population. A brief examination of these factors with findings from the NATSISS (ABS 2002) and other relevant surveys follows.

HEALTH

The comparative and continued poor health of Indigenous Australians has been well documented (SCRGSP 2005a). For example:

- a life expectancy at birth that is 17 years less than that for the general Australian population
- more long-term health conditions, for example, Indigenous people are one-and-a-half times more likely than non-Indigenous people to report suffering from asthma, more than three times as likely to report a form of diabetes and 10 times as likely to report kidney failure
- multiple health issues: of the 10,439 Indigenous Australians in remote and non-remote areas who participated in the most recent national Aboriginal and Torres Strait Islander health survey, a significant minority had one or more health problems – eyesight problems (30%), asthma (15%), back and disc disorders (13%), heart/circulatory diseases (12%), ear/hearing problems (12%), diabetes (6%) and kidney disease (2%; ABS 2006b).

Indigenous prisoners also have poorer health than their non-Indigenous counterparts. A recent survey of New South Wales prisoners found that Indigenous prisoners were six times more likely than non-Indigenous prisoners to have diabetes (D'Souza, Butler & Petrovsky 2005). A recent study of health issues among released Western Australian prisoners reported higher relative risk of hospitalisation for a range of health issues (including cardiovascular, respiratory and skin disease) among Indigenous prisoners following their first release from prison (Hobbs et al. 2006). Risk of hospitalisation was highest for injury, poisoning and mental disorders, with almost one-third of released Indigenous female prisoners and 18 percent of released Indigenous male prisoners having had at least one hospital admission or contact with a mental health service in the five years following their first release. Findings from the National Deaths in Custody Monitoring Program indicate that deaths in custody of Indigenous prisoners are most often due to natural causes and hanging, suggesting both poor physical and mental health among Indigenous prisoners (Joudo 2006).

EDUCATION

Education is another key factor that affects the health and wellbeing of the population. Lower levels of education are prevalent among the Indigenous population compared with the non-Indigenous population. The 2002 NATSISS showed that over one-quarter (27%) of Indigenous respondents reported Year 10 or 11 as the highest year of school completed compared to 19 percent of non-Indigenous people. Fifteen percent of non-Indigenous people reported completing Year 12 compared with 10 percent of Indigenous respondents. Furthermore, the proportion of Indigenous people who completed schooling to years 9 and 12 was lower for those in remote areas than for those in non-remote areas.

This poses significant issues for the employment prospects of Indigenous Australians, as studies have found that those who complete their twelfth year of schooling are more likely to go on to further education and training and have improved employment prospects (SCRGSP 2005a). Non-Indigenous people were almost twice as likely than Indigenous people to be attending university or another tertiary institution (6.3% vs 3.5%) and were four-and-a-half times more likely than their Indigenous counterparts to have obtained a Bachelor degree (16.9% vs 3.7%).

EMPLOYMENT AND INCOME

Employment and income are key factors affecting health and wellbeing. Evidence suggests that unemployment and subsequent low income lead to poor health as the unemployed are less able to secure satisfactory housing and maintain healthy diets, and are more likely to report anxiety and depression (SCRGSP 2005a). Despite generally low levels of employment, the situation has improved for Indigenous Australians with unemployment falling from 24 percent in 1994 to 13 percent in 2002, and employment increasing by seven percent (Trewin & Madden 2005). Due largely to the high rate of unemployment, Indigenous people have lower average incomes than non-Indigenous Australians and are more reliant on welfare support. Fifty percent of Indigenous people surveyed for the 2002 NATSISS reported government pensions and allowances as their primary source of income.

Apart from the impact that economic stress has on criminal behaviour (Belknap 1989), research has found that these effects are mediated by other factors such as parenting and delinquent peers (Weatherburn & Lind 1998). Economic stress was found to have a disrupting effect on parenting, leading to poor supervision of young people. Weatherburn and Lind (1998) found parental neglect to be the greatest causal influence on juvenile offending.

OTHER SOCIOECONOMIC INDICATORS

Other findings from the 2002 NATSISS that highlight the difficulties and/or disadvantages experienced by Indigenous people include inequalities in housing, access to transport and financial stress:

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- Non-Indigenous people were almost four times more likely than Indigenous people to be a homeowner without a mortgage (38.5% vs 10.0%) and twice as likely to be an owner with a mortgage (34.6% vs 16.5%). Conversely, Indigenous people were almost three times more likely to be renting and five-and-a-half times more likely to be renting from a state or territory housing authority.
 - Indigenous people were less likely to have access to a motor vehicle (59.7%) than non-Indigenous people (85.2%), with those in remote areas less likely to report access to a vehicle than Indigenous people residing in non-remote areas. Similarly, Indigenous people were three times more likely to report having difficulty getting to places as required (11.6% vs 3.6%).
 - Indigenous people were four times more likely than non-Indigenous people to report being unable to raise \$2,000 within a week (54.3% vs 13.6%).

The impact of this pervasive socioeconomic disadvantage on crime and offending behaviour is of paramount concern. Although addressed further in this report, it is important to understand as it provides a context within which substance use and offending among Indigenous people can be interpreted. Many diversion programs are said to take a holistic approach and will deal with needs such as housing and employment where these are identified as an area of concern for participants.

Government responses to overrepresentation

Since the RCIADIC highlighted Indigenous overrepresentation across the criminal justice system, it has been recognised as an issue to be addressed across all Australian governments – federal, state and territory. A National Ministerial Summit on Indigenous Deaths in Custody was held in July 1997 to discuss the issue, specifically in prisons, and the high rate of deaths in custody since the handing down of the RCIADIC's final report. Ministers representing justice, police, corrections and Indigenous affairs departments from all state and territory governments attended, as did members of the National Aboriginal Justice Advisory Committee. An agreement was entered into to address the overrepresentation of Indigenous people in the criminal justice system, and the development of strategic plans for the delivery of Indigenous programs and services was agreed to be the best starting point for the process. The plans were expected to address underlying social, economic and cultural issues as well as justice issues and to outline mechanisms by which the goal of reducing Indigenous overrepresentation would be achieved. As a result of this summit, most jurisdictions now have Indigenous justice agreements in place, outlining the state/territory government's approach to reducing Indigenous contact with the criminal justice system.

Many of the justice agreements complement other initiatives aimed at improving health, education and employment outcomes and have been created within a holistic framework, as crime in Indigenous communities cannot be reduced without addressing the underlying

conditions that create an environment in which crime becomes prevalent. In addition to these justice agreements, the *National Drug Strategy: Aboriginal and Torres Strait Islander peoples complementary action plan 2003–2009* considers the specific needs of Indigenous Australians in relation to the national strategy. Access to diversion is among the key action areas, as ‘providing and improving access for Aboriginal and Torres Strait Islander peoples to police diversion, pre-sentencing programs and legal aid’ (Ministerial Council on Drug Strategy 2006: 4) is highlighted as one example of enhancing the capacity of Indigenous communities to address alcohol and drug use and promote health and wellbeing as a result. The responses of all state and territory governments to the issue of Indigenous overrepresentation are summarised below.

New South Wales

The New South Wales Aboriginal Affairs Plan, *Two ways together* (NSW Department of Aboriginal Affairs 2003), outlined a coordinated approach by which the government would work with Indigenous communities to address and reduce social disadvantage and close the gap between Indigenous people and other citizens. Justice was highlighted as one of the priority areas and the Aboriginal Justice Agreement formally recognised the Attorney-General’s Department’s and the Aboriginal Justice Advisory Committee’s commitment to reducing the involvement of Indigenous people in the criminal justice system; improving Indigenous access to justice; improving the quality and relevance of justice that Indigenous people receive; and allowing Indigenous people to take a lead role in addressing their justice concerns.

The Aboriginal Affairs Plan details these and other goals and principles, which underpin the implementation of the 10-year plan. The seven strategic directions outlined in the plan – Aboriginal children, Aboriginal young people, community wellbeing, sustainable economic base, criminal justice system, systemic reform, and leadership and change – indicate its wide scope and the attention paid to addressing underlying causes of crime and incarceration, rather than focusing solely on offending itself. One strategic action highlights the need to work with Aboriginal communities to reduce drug and alcohol misuse, possibly by directly controlling the supply of alcohol and other substances entering the community, and building the capacity of Aboriginal communities to provide local solutions for drug and alcohol misuse.

Another strategic action addresses the diversion of Indigenous offenders and states the goal to ‘ensure that criminal justice processes act to reduce offending behaviours to reduce the number of Aboriginal defendants proceeding through the criminal justice system’ (NSW Department of Aboriginal Affairs 2003: 21). This is to be achieved by the development of diversion and intervention strategies that target specific offences and offending behaviours and span the entire criminal justice system, covering all intervention points, including:

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- investigate sentencing options
 - ‘develop and utilise a full range of Aboriginal community-based alternatives to avoid Aboriginal prosecution for minor summary offences’
 - ‘gradually develop options for state-wide Aboriginal community controlled alternatives to prison and juvenile detention’
 - trial and evaluate intensive court supervision programs for young Aboriginal offenders
 - ‘explore options for community-based sentences for Aboriginal women, such as home detention, as alternatives to prison to cater for family and other needs of Aboriginal women’.

Victoria

The Victorian Aboriginal Justice Agreement was the first agreement and action plan implemented in Australia and sought to create a partnership between the state government and the Koori community. Initiatives introduced in Phase 1 of the agreement included community grants, Koori courts for adults and children, Aboriginal liaison positions to support Koories who had contact with police or courts, and community justice panels.

Phase 2 of the agreement is a four-year action plan developed through 2005. Among its goals, it aims to ‘continue to develop stronger and more sustainable approaches to tackling the many issues associated with overrepresentation of Koories in the Victorian justice system’ (Victoria Department of Justice 2006: 6). Diversion from the criminal justice system and strengthening alternatives to imprisonment is listed as the second of the six objectives of the agreement. The goal is to ‘increase the rate at which justice agencies divert Koories from more serious contact with the criminal justice system and strengthen community-based alternatives to imprisonment’. Activities to be pursued to achieve this goal include increasing the proportion of Koori adults and youths who receive bail or cautions from police and are diverted by the courts from imprisonment, and addressing the problem posed by fine defaulters. The focus is on providing more opportunities for Koori people to be diverted from the Victorian justice system or diverted from further and more serious contact. The initiatives span the police, court and correctional levels of the Victorian justice system and build on those already in place across the state.

Queensland

The Queensland Aboriginal and Torres Strait Islander Justice Agreement was signed in December 2000 and represents an understanding between the Queensland Government and Indigenous Queenslanders that Indigenous involvement in the development and implementation of justice programs and services is required to sustain a reduction in

Indigenous contact with the criminal justice system (Queensland Government 2001). The agreement advocates a holistic approach to tackling the problem of Indigenous overrepresentation and identifies underlying issues, lack of support, cultural differences and community capacity as four main reasons for this overrepresentation.

The aim of the agreement is to halve the number of Indigenous adults and juveniles incarcerated in Queensland by 2011, which will bring the Indigenous figures in line with those of the non-Indigenous Queensland population. Further measures of the agreement's success include increasing the number of Aboriginal and Torres Strait Islander people being formally cautioned and the proportion receiving community corrections orders, as well as reducing the number being arrested, coming before the courts and receiving custodial sentences.

In 2002, the Queensland Government endorsed the *Meeting challenges, making choices* (Queensland Government 2002) initiative as its response to the Cape York Justice Study (Fitzgerald 2001), which examined alcohol use and criminal justice issues in Cape York communities. The Cape York investigation was conducted by Justice Tony Fitzgerald on behalf of the Queensland Government and was tasked with identifying the

causes, nature and extent of breaches of the law, and alcohol and substance abuse in Cape York Indigenous communities, the relationship between them, and the identification of strategies to reduce breaches of the law, alcohol and substance abuse, to protect citizens against violence, to prevent young people becoming involved in substance abuse and violence, and to rehabilitate offenders (Fitzgerald 2001: 9).

The impact of alcohol and substance use on individuals, families and communities was found to be substantial and extremely damaging. Many of the recommendations were adopted by the Queensland Government and reform will occur in alcohol intervention; children, youth and families; crime and justice; governance; economic development; health; education and training; and land and resource management.

Meeting challenges, making choices listed areas for reform that support the goals of the agreement. Among the crime and justice reforms, diversion played a key part with additional support for the role of community justice groups in diversionary initiatives, and innovative alternatives to sentencing listed as strategies to achieve improved crime and justice outcomes for Indigenous Queenslanders.

Western Australia

In 2001, the Statement of Commitment to a New and Just Relationship (ATSIC & WA Government 2001) was signed by the Western Australian Government and the Aboriginal

and Torres Strait Islander Commission on behalf of all Aboriginal Western Australians. Under the agreement, the government and the Aboriginal community are committed to work together in improving health, education, wealth and living standards among Aboriginal communities through regional agreements. The Western Australian Aboriginal Justice Agreement (Western Australia Government 2004), signed in 2004, was developed under the Statement of Commitment and represented a partnership between justice-related agencies across Western Australia and the Aboriginal and Torres Strait Islander Commission to give Aboriginal people a larger role in determining their own justice outcomes. The agreement also aimed to develop safe and sustainable communities, to reduce the number of Aboriginal victims of crime, and to reduce the overrepresentation of Aboriginal people in the criminal justice system. Elements involved in achieving the latter outcome were listed, including:

- developing early intervention, prevention and diversionary programs
- increasing the use of alternative dispute resolution methods
- recognising and treating imprisonment as ‘the sanction of last resort’
- enhancing opportunities for Aboriginal leadership in the criminal justice system and Aboriginal input into sentencing options. (Western Australia Government 2004: 9)

The agreement also ‘recognises that there are a number of areas outside the criminal justice system that have direct and indirect influence on the contact of Aboriginal people with the criminal justice system’ (Western Australia Government 2004: 5). The five strategic focus areas – community safety, security and wellbeing; individual and family wellbeing; criminal justice system; programs and service delivery; and public sector reform and resource flexibility – reflect this approach. There is a clear commitment to addressing the underlying conditions that may lead to crime and criminal behaviour, and recognition that without doing so any criminal justice response would be significantly less likely to succeed.

In 2002, *Putting the picture together* (Gordon, Hallahan & Henry 2002), the government’s inquiry into the responses of government agencies to complaints of family violence and child abuse in Aboriginal communities (the Gordon Inquiry), was released. The report highlighted an urgent need to improve the government response to violence in Indigenous communities and the need to address the underlying causes of abuse and violence in order to develop sustainable communities. Alcohol and substance abuse was one of the key issues identified in the report.

South Australia

The South Australian strategic justice plan *Taking action* (South Australia Department of Justice 2003b) sets out the ways in which the various justice agencies will contribute to the government’s strategic action plan (Government of South Australia 2004) which is aimed at

improving prosperity and wellbeing, ensuring environmental sustainability and building strong communities for all South Australians. *Taking action* seeks to ensure that all South Australians have access to fair and just services, that crime is dealt with effectively, that public safety improves, and that justice agencies become more responsive and dynamic so that service delivery and efficiency improve.

'Ensuring Aboriginal people receive fair and just outcomes' was highlighted as a focus area for the justice portfolio. The Aboriginal Justice Strategic Directions (AJSD; South Australia. Department of Justice 2003a) represents an undertaking by South Australian justice agencies to ensure that this goal is met and that Aboriginal people benefit from the policy. The need for justice and other government agencies to work with Aboriginal communities to combat the overrepresentation of Aboriginal adults and juveniles in the South Australian criminal justice system is the impetus behind the AJSD. The AJSD was endorsed by Aboriginal community representatives and chief executives of justice agencies at a meeting of the Aboriginal Justice Consultative Committee. An Aboriginal Justice Strategy and Community Development Unit now operates within the Attorney-General's Department and will play an important role in supporting the goals of the AJSD. The AJSD specifically aims to build community wellbeing, develop a culturally relevant and responsive justice system, and to prevent and minimise contact with the criminal justice system for Aboriginal South Australians. Embedded within the third strategic direction – preventing entry and re-entry into the criminal justice system – is a commitment to increasing Aboriginal access to diversion programs 'both within and beyond the criminal justice system' where appropriate, to achieve the goals of reducing Aboriginal contact with it.

Tasmania

Tasmania together outlines strategies for achieving the overarching goal of a 'community where people feel safe and are safe in all aspects of their life' (Tasmania Together Progress Board 2006) and includes a goal to 'acknowledge and respect the contribution that the Aboriginal community and its culture have made and continue to make to Tasmania and its identity'. This is one of the key principles guiding a 2001 communiqué between the state government and the Aboriginal and Torres Strait Islander Commission (ATSIC), which outlined their commitment to work collaboratively towards reconciliation and addressing disadvantage among Aboriginal Tasmanians. Many of the priority areas for which specific initiatives were to be developed included areas considered to influence Indigenous offending, such as health, education and employment. The principles and priority areas in the communiqué continue to provide the basis for collaboration between government and Indigenous communities, although ATSIC no longer exists.

The Tasmania Police Service reaffirmed its commitment to the *Tasmania together* goals in relation to the Indigenous Tasmanian community in its Aboriginal Strategic Plan. The plan introduces strategies designed to improve justice outcomes for Aboriginal Tasmanians. The

first of the key result areas is 'improving safety in custody' and the objective is 'to reduce the number of Aboriginal people who are detained in custody and provide a safe environment for those for whom a viable alternative is not readily available' (Tasmania Police n.d.: 9). The strategies outlined indicate that maximum use of cautions, summonses and youth justice or drug diversionary processes are preferred alternatives to charging Aboriginal offenders. Similarly, granting bail where possible is preferred over incarceration in police cells in an attempt to reduce incarceration of Indigenous people.

The plan also outlines the need to improve cultural awareness education and training for officers, increase recruitment of Aboriginal officers, and improve communication between the Tasmania Police and the Aboriginal community via the appointment of a state Aboriginal liaison coordinator and four district Aboriginal liaison officers. All the strategies are aimed at achieving the overarching goal of reducing the number of Aboriginal people coming into contact with the Tasmanian criminal justice system wherever possible.

Northern Territory

In April 2000, the Northern Territory and Australian governments signed an agreement to address issues of Indigenous overrepresentation in the Northern Territory justice system. The agreement explicitly directed Northern Territory police officers to divert young people from the mainstream justice system through the use of cautions and conferencing. The goal was to prevent youths moving further into the justice system. The Australian Government provided funding to the Northern Territory for a four-year period during which time a juvenile pre-court diversion scheme was created and implemented. The Northern Territory Police Service established Juvenile Diversion Units in Darwin and Alice Springs to coordinate the scheme.

The agreement also sought to 'alleviate the language barriers faced by Aboriginal persons' (AGD 2002: 5). Among the programs funded was an Aboriginal interpreter service to facilitate the provision of services. A review conducted by the AGD in December 2002 found that the 'juvenile diversion scheme has had an immediate and positive impact in its first 12 months of operation' (AGD 2002: 16) and made recommendations to improve the process and outcomes of diversion and to ensure the continuation of the positive impact of the agreement.

Although the money under this agreement was expended in mid-2006 the *Overarching agreement on Indigenous affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005–2010* (Commonwealth & Northern Territory 2000) identified priority areas for strategic change, including the need to address issues of authority, law and order. Substance abuse (including volatile substances) and family violence were identified as priority areas for bilateral action. Increased access to mainstream services and programs was among the agreed principles for service delivery to Indigenous people endorsed by the Council of Australian Governments (COAG), which underpin the overarching agreement between the Northern Territory and Australian governments.

Australian Capital Territory

In place of the Aboriginal justice agreements which operate in most states, the Australian Capital Territory funds an Aboriginal Justice Centre (AJC), under a service delivery contract with the Aboriginal and Torres Strait Islander community. The role and function of the AJC are similar to those of the Aboriginal justice agreements in most other states. It is established and operates under the guidance of the Aboriginal Justice Advisory Committee. It was incorporated in 2005 and has its own Board, comprised of members of the Committee, and constitution, and is an elected body under the supervision of the ACT Electoral Commission.

Since July 2006, the ACT Government has provided funding to the AJC in order for it to be able to provide programs and support to the ACT Indigenous community, with the goal of reducing Indigenous contact with the ACT criminal justice system. The objectives of the AJC constitution include providing services that target and address the causes of Indigenous disadvantage and providing culturally appropriate services to Aboriginal and Torres Strait Islander people that are aimed at reducing offending, incarceration and overall contact with the criminal justice system.

Summary

The overrepresentation of Indigenous people within the Australian criminal justice system is a widely acknowledged problem. Issues underlying substance abuse and offending among the Indigenous population were identified as contributing significantly to Indigenous overrepresentation in the criminal justice system by the RCIADIC. Recent research has indicated that Indigenous arrestees can be distinguished from Indigenous people who have not been arrested by the prevalence of them being young and male, having substance use issues, having been a victim of violence or threats, being unemployed, leaving school at a young age and having been removed from one's natural family. Furthermore, socioeconomic factors such as health, employment, income and education are areas in which Indigenous people are highly disadvantaged in comparison with the non-Indigenous population.

The approaches endorsed by the state and territory governments to tackle Indigenous overrepresentation are holistic, taking into consideration the underlying issues of Indigenous socioeconomic disadvantage and the impact this has on substance use and offending. Aboriginal justice agreements or similar initiatives have been signed (or established, in the case of the ACT's AJC) in all jurisdictions. These agreements indicate the need to target interventions towards Indigenous people with the objective of reducing their contact with and progression through the adult and juvenile justice systems. The agreements and similar initiatives are the foundation on which the diversion of Indigenous offenders from the criminal justice system is based.

Appendix B: Audit of data for contact of Aboriginal Torres Strait Islander people with the criminal justice system

The purpose of the data audit was to identify the data sources that can help build a picture of the extent of Indigenous contact with the Australian criminal justice system. This section provides a brief description and overview of the data sources. Administrative data and surveys are the two main sources of crime and justice data. The datasets below include those which provide information on Indigenous drug use, including illicit drugs and alcohol.

Administrative data sources

Administrative data are collected by the police, court and correctional services in every state and territory in Australia. Most of these data are then collated by the ABS and form the basis of the national data collections, which are then publicly disseminated. More detailed data collections are held by the states and territories themselves; these collections are also described in this section.

National data collections

The ABS publishes several reports based national data collections that provide information on the extent of contact Indigenous Australians have with the criminal justice system. It is important to note that the ABS identified the need to improve statistical collections of information regarding this group and considered it a priority area.

NATIONAL PRISONER CENSUS

The ABS National Prisoner Census is a collection of data on prisoners in custody on 30 June each year from state and territory corrective service agencies. The report includes demographic information including Indigenous status, legal status of prisoners, details of their sentences and most serious offences committed. The National Prisoner Census reports on prisoners in adult institutions only and does not include those in police or psychiatric custody.

NATIONAL CORRECTIVE SERVICES COLLECTION

The ABS also collects and publishes information on persons in custody and community-based corrections on a quarterly basis. Administrative data from the corrective services agencies in each jurisdiction and from the AGD (for details on federal prisoners) are collected. Information on the number of people in custody, imprisonment rates by type of custody, legal status and Indigenous status is published for each state and territory. Due to

its quarterly status, the collection represents the flow of prisoners entering and leaving prisons during the year and, as a result, can provide more general information on prisoners serving short sentences for less serious offences, although information on the type of offence committed is not gathered.

NATIONAL CRIMINAL COURTS COLLECTION

The ABS National Criminal Courts Collection is an administrative data collection of information from the higher (Supreme and Intermediate) and Magistrates Courts in each jurisdiction, and the Children's Courts for all jurisdictions except New South Wales and the Australian Capital Territory. The collection gathers information on the characteristics of the defendants, the offences committed and sentences imposed for those offences. No information is collected on Indigenous status.

JUVENILES IN DETENTION MONITORING PROGRAM

The AIC's Juveniles in Detention Monitoring Program contains census data on the numbers of young people placed into detention from 1981 to 2005. The administrative data on which the report is based are provided by juvenile justice authorities in all states and territories on a quarterly basis. The project involves monitoring and reporting annually on long-term trends and changes in the number and rate of young people in juvenile detention in Australia. The report contains information on juveniles in detention by age, sex, Indigenous status and the overrepresentation of Indigenous juveniles.

JUVENILE JUSTICE NATIONAL MINIMUM DATA SET

The Juvenile Justice National Minimum Data Set is a collaboration between AIHW and the Australasian Juvenile Justice Administrators. The dataset involves the annual collection of information on the juvenile justice system in Australia and includes information on juveniles in detention and those under community-based supervision. Information includes the number of juvenile justice clients across Australia and some demographic characteristics, the types of sentences being served, the numbers of episodes and supervision periods, and characteristics of juvenile justice detention centres. Indigenous status is among the demographic variables collected.

NATIONAL DEATHS IN CUSTODY PROGRAM

The National Deaths in Custody Program (NDICP) was established at the AIC in 1992 in response to a recommendation made by the RCIADIC the previous year. The NDICP collects information on deaths in prison and juvenile detention facilities, including transfers and medical facilities. It also collects information on deaths occurring in police custody or custody-related operations. The NDICP draws upon data sources from all state and territory

police services and correctional agencies and utilises state coronial records to verify the information gathered. Approximately 60 variables on the circumstances and characteristics of each death are entered into the database, including basic demographic details, most serious offence and the circumstances surrounding the deaths.

NATIONAL HOMICIDE MONITORING PROGRAM

The AIC's National Homicide Monitoring Program (NHMP) has been operating since 1989 as recommended by the National Committee on Violence. The purpose of the NHMP is to identify as precisely as possible the characteristics that place individuals at risk of homicide victimisation and of offending, and the circumstances that contribute to the likelihood of a homicide occurring. The program uses two main data sources: police records, supplemented by information from individual investigating officers; and coronial files, including toxicology reports. The annual report contains detailed information on victim, offender and incident characteristics. Information on Indigenous status is also collected and reported.

ALCOHOL AND OTHER DRUG TREATMENT SERVICES: NATIONAL MINIMUM DATA SET

The AIHW was responsible for coordinating the establishment of the Alcohol and Other Drug Treatment Services National Minimum Data Set that aims to provide ongoing information on drug users diverted to drug and alcohol diversion programs rather than being incarcerated under the National Drug Strategy. The dataset gathers information on all clients of drug and alcohol services across Australia. Demographic information about clients is collected as well as information on the treatments they receive. The National Minimum Data Set seeks to link law enforcement and health data for the effectiveness of such initiatives to be examined. Indigenous status is among the demographic variables collected.

State and territory data collections

The New South Wales Bureau of Crime Statistics and Research, the Western Australian Crime Research Centre and the South Australian Office of Crime Statistics and Research are research institutions which collate various criminal justice administrative datasets for their state. These bodies are able to disseminate more detailed data than that provided to the ABS and AIC for the national collections. In the remaining states and territories, administrative data are collected by all police, court and correctional services, some of which are analysed and published by university departments, such as the Crime Research Centre at the University of Western Australia, and in government reports such as *Overcoming Indigenous disadvantage* (SCRGSP 2007). There is, however, no research body which disseminates crime and justice statistical information in these states and territories in

as consistent a manner as that which occurs in New South Wales, Western Australia and South Australia. As a result, detailed information on Indigenous contact with the criminal justice system is not as readily available in these jurisdictions.

Survey data sources

An advantage of survey data over administrative data is that they are specifically designed to answer research questions of interest. Among the many survey data collections available in Australia, those below may be of use in identifying the extent of Indigenous contact with the criminal justice system and the levels and type of Indigenous drug use associated with offending.

National Police Custody Survey

The National Police Custody Survey has been administered by the AIC since the second survey and reflects an ongoing commitment by all police services in Australia to the recommendations made by the RCIADIC. The survey has been conducted four times, in 1988, 1992, 1995 and 2002 and aims to provide information on the extent and nature of police custody in Australia. It reports on the number of people in police cells over the course of one month, why they were placed in police custody, the types of associated offences, the length of time detainees are held, the proportions of incidents in which Indigenous people are involved, rates of Indigenous and non-Indigenous custody, and whether these patterns change over time.

Drug Use Monitoring in Australia

The AIC's DUMA program measures drug use among police detainees. The DUMA program is a partnership between the AIC, state/territory police agencies and local researchers. Data from DUMA are used to examine issues such as the relationship between drugs and property and violent crime, monitor patterns of drug use across time, and help assess the need for drug treatment in the offender population. DUMA collects detailed drug use information and basic demographic information from all respondents, including Indigenous status.

Drug Use Careers of Offenders

The AIC was funded by the AGD to administer the Drug Use Careers of Offenders (DUCO) project. DUCO sought to measure drug use, including illicit drug use, among incarcerated offenders. Data from DUCO can be used to assess the role of treatment

within and outside the correctional system, examine the intersection of drug use patterns and criminal careers, and explore issues concerning links between drug use and crime. Three populations – adult male, adult female and juveniles – were surveyed as part of the project. The information collected includes basic demographic information from all respondents, including Indigenous status.

National Drug Strategy Household Survey

The National Drug Strategy Household Survey questions people across Australia about their use of drugs. The survey has been repeated every two to three years since 1985. Respondents are asked about the circumstances of their drug use, including age at first use, place of use, where the drug was obtained, drug use among peers, time away from work or education due to drug use, and any associated health problems. Demographic data are also collected, including age, sex, marital status, household composition, industry and occupation of employment, ethnicity, education and income.

Data quality issues in recording Indigenous status

It is important to note that the recording of information on Indigenous status is problematic and any interpretation should be conducted with these difficulties in mind. Indigenous status information is not always collected and, where collected, is not always done so in a consistent manner. Accuracy is a further issue. Identifying Indigenous status is the most significant problem underlying all data collected. Anecdotal evidence gathered during the consultations indicated that the recording of Indigenous status in police datasets is often based on a subjective judgement of physical appearance alone. Information in many other datasets and surveys may also rely heavily on self-reporting of some information, including Indigenous status. This is not necessarily straightforward. Complications and confusion surrounding self-identification are largely attributable to the troubled history of Indigenous Australians. Loss of culture, dispossession of traditional lands, and removal of children from their families and communities undoubtedly affected perceptions of Indigenous identity. Obviously where there is confusion about identity, self-report data are not necessarily accurate and can lead to under or over-reporting. This is a well-known limitation of self-report data.

Defining Aboriginality has been an issue since colonisation (Gardiner-Garden 2000). The Australian Government definition of an Indigenous person is one who is a descendant of an Indigenous inhabitant of Australia, who identifies as an Aboriginal, and who is recognised as Aboriginal by members of the community in which they live (Gardiner-Garden 2000). The three elements of descent, self-identification and community recognition that constitute this definition provide a more meaningful and inclusive explanation than the 'blood-quantum'

definitions used prior to policy changes in the late 1960s and 1970s (Gardiner-Garden 2000). There is currently no agreement regarding the definition of Torres Strait Islander people. To gather consistent and accurate information, the ABS has adopted a standard Indigenous question to be incorporated into censuses, surveys and administrative data collections. The standard Indigenous question asked by the ABS is based on this Australian Government definition. The term Indigenous refers to Aboriginal and Torres Strait Islander peoples and the question asks if the person is of Aboriginal or Torres Strait Islander descent, with the option of marking 'Yes' to both if the respondent is of both Aboriginal and Torres Strait Islander descent. The ABS is actively encouraging people to answer this question through 'an extensive public education program' to highlight the importance of doing so and the impact it has on the provision of services.

Appendix C: Information collected for various diversion programs

Table C1: Variables available for analysis^a

Variables	New South Wales					Victoria										
	Youth Drug and Alcohol Court	Drug Court of NSW	MERIT	Rural Alcohol Diversion Program	Wellington Options Program	Cannabis Cautioning Program	Drug Diversion Program	CREDIT	RODW	Children's Court Drug Clinic	Deferred sentencing program	Criminal Justice Diversion Program	Koori Court	Children's Koori Court	Drug Treatment Order	
Socio-demographic information																
Age	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Sex	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Indigenous status	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Educational level attained	no	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Employment	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Marital status	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Most recent residence	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Offending																
Most serious offence prior to diversion	no	no	yes	yes	yes	yes	yes	no	no	no	no	no	no	no	no	no
Criminal history	no	no	yes	yes	yes	yes	yes	no	no	no	no	no	no	no	no	no
Criminogenic needs	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Diversion																
Source of referral	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Eligibility for diversion	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Reasons why ineligible	yes	yes	yes	yes	yes	no	no	no	no	no	no	no	no	no	no	no
Date of admission to program	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Program completion	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Reasons for not completing program	yes	yes	yes	yes	yes	no	no	no	no	no	no	no	no	no	no	no
Reoffending	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Most serious offence post-diversion	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no

Table C1: continued

Variables	Western Australia							South Australia				Northern Territory		
	Juvenile Justice Teams	Intellectual Disability Diversion Program	YPOP	POP	STIR	IDP	Drug Court	Children's Court	ISP	Drug Court	CARDS	Magistrates Court Diversion Program	Alcohol Court	CREDIT NT
Socio-demographic information														
Age	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Sex	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Indigenous status	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Educational level attained	no	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Employment	no	no	yes	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	yes
Marital status	no	no	yes	yes	yes	yes	yes	yes	yes	yes	no	no	no	no
Most recent residence	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	no	no
Offending														
Most serious offence prior to diversion	no	no	no	no	no	no	no	no	yes	no	no	no	yes	yes
Criminal history	yes	no	no	no	no	no	no	no	yes	no	yes	yes	yes	yes
Criminogenic needs	no	no	no	no	no	no	no	no	yes	no	no	no	no	no
Diversion														
Source of referral	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Eligibility for diversion	yes	yes	no	no	no	no	no	no	yes	yes	yes	yes	yes	yes
Reasons why ineligible	yes	yes	no	no	no	no	no	no	yes	yes	yes	yes	yes	yes
Date of admission to program	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Program completion	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Reasons for not completing program	yes	yes	no	no	no	no	no	no	yes	yes	yes	yes	yes	yes
Reoffending	yes	yes	no	no	no	no	no	no	yes	yes	no	no	yes	yes
Most serious offence post-diversion	no	no	no	no	no	no	no	no	yes	no	no	no	no	no

Appendix D: Agencies consulted and contacted for information

Jurisdiction	Organisation
New South Wales	NSW Police – Indigenous Unit; Commissioner’s Inspectorate; Drug and Alcohol Coordination Attorney-General’s Department – Criminal Justice Interventions Unit
Victoria	Corrections Victoria – Diversion and Transitional Services Group Victoria Police Department of Justice – Crime and Violence Prevention; Magistrates Court Support and Diversion Services; Koori Court Unit Department of Human Services – Illicit Drug Diversion Initiative; Juvenile Justice
Queensland	Queensland Police Queensland Corrective Services Queensland Health Department of Communities – Office for Youth Department of Justice and Attorney-General – Magistrates Courts
Western Australia	Department of Health – Alcohol and Drug Office Western Australia Police – Alcohol and Drug Coordination Unit; Juvenile Justice Unit Department of Corrective Services – Juvenile Justice Teams; Intellectual Disability Diversion Program; Intensive Supervision Program; Planning, Policy and Review
South Australia	SA Police – Community Programs Support Branch; Drug and Alcohol Policy Section Drug and Alcohol Services, SA Department for Correctional Services – Aboriginal Services; Alcohol and Other Drug Service; Offender Development Department of Justice – Justice Strategy Division Courts Administration Authority Aboriginal Legal Rights Movement Inc. Department for Families and Communities – Breaking the Cycle Program Salvation Army Community Services
Tasmania	Tasmania Police Department of Justice – Family Violence Offender Intervention Program Department of Health and Human Services – Youth Justice Services Magistrates Court of Tasmania
Northern Territory	Department of Justice – Magistrates Court Support Services; Office of Crime Prevention NT Police – Juvenile Diversion Division Department of the Chief Minister Department of Health and Community Services Department of the Attorney-General – Aboriginal Policy and Services; Magistrates Courts and Tribunals
Australian Capital Territory	Australian Federal Police Restorative Justice Unit ACT Health

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The overrepresentation of Indigenous offenders in the criminal justice system has resulted in the implementation of state and territory strategies focusing on Indigenous programs and services. Together with the *National Drug Strategy: Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2009*, diversionary programs are highlighted that increase the capacity of Indigenous communities to address drug and alcohol problems through diversionary programs. The correlation between substance abuse and offending is addressed through a range of programs and initiatives and this research examines current responses and stakeholder perceptions of their access and efficacy.

This report outlines the diversion programs currently operating, including those for Indigenous offenders. Issues concerning access to diversion programs, and barriers to participation and completion, determine the effectiveness of programs. Of interest to policymakers are issues raised in relation to the expansion of programs for participants and support services to cover drugs outside the scope of current diversion programs, wider and clearer dissemination of information to improve access, improving opportunities to access treatment, the need for appropriate treatment services and review of eligibility criteria for drug diversion programs.