EVALUATION OF THE QUEENSLAND ABORIGINAL AND TORRES STRAIT ISLANDER JUSTICE AGREEMENT

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Report Outline

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ACRONYMS

AMP	Alcohol Management Plan
ATSIAB	Aboriginal and Torres Strait Islander Advisory Board
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CJG	Community Justice Group
CMC	Crime and Misconduct Commission
DATSIP	Department of Aboriginal and Torres Strait Islander Policy
DOGIT	Deed of Grant in Trust
DV	Domestic Violence
DJAG	Department of Justice and Attorney-General
ISO	Intensive Supervision Order
ICO	Intensive Corrections Order
JJ NMDS	Juvenile Justice National Minimum Data Set
LAQ	Legal Aid Queensland
MCMC	Meeting Challenges Making Choices Strategy
MOU	Memorandum of Understanding
PLO	Police Liaison Officers
PQ	Partnerships Queensland: Future Directions Framework for Aboriginal and Torres Strait Islander Policy in Queensland
QAILSS	Queensland Aboriginal and Islander Legal Service Secretariat
SCAN	Suspected Child Abuse and Neglect
SCROGSP	Steering Committee for the Review of Government Service Provision of the Productivity Commission
VSM	Volatile Substance Misuse

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EXECUTIVE SUMMARY

The Aboriginal and Torres Strait Islander Justice Agreement was developed by the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB) and the Queensland Government. It was signed by the Premier, four Ministers and the Chair and members of ATSIAB on 19 December 2000. The Agreement lasts until 2011.

In December 2004 the Queensland Government invited tenders for an independent evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement in terms of its outcomes and possible future directions. The consultant (Professor Chris Cunneen) was contracted to undertake the evaluation. The governance arrangements for the consultancy were a Steering Committee, a Reference Group and a Project Manager.[1]

The evaluation is designed to meet strategic requirements which provide for:

- An assessment of the effectiveness of the Agreement in meeting its reduced incarceration goals
- An assessment of government agencies in meeting their commitments to the Justice Plan.
- The identification of positive initiatives (best practice) and blockages or shortcomings which need to be addressed.
- The identification of additional or alternative strategies that will assist in meeting the outcomes of the Justice Agreement.

ASSESSMENT OF GOVERNMENT EFFECTIVENESS IN REDUCING INCARCERATION

Juvenile Detention

By national standards Queensland has relatively low Indigenous and non-Indigenous rates of detention. Quarterly detention rates fluctuate, however the lowest rate for Indigenous detention over the 18 quarterly periods from 31 March 1999 to 30 June 2003 was in December 2000 at the time the Justice Agreement was signed. Since then quarterly rates of Indigenous detention have been consistently higher.

However, average annual detention rates (based on four days of the year) do show a decline over the period. Thus despite fluctuations, based on this measure, there has been a reduction in the rate of Indigenous youth incarceration, with the 2003 rate some 39% lower than the 1999 rate.

(4.2.1 National Comparisons)

[1] The Steering Committee was the CEO Sub-Committee on the implementation of the Justice Agreement chaired by Ms Rachel Hunter, Director General, Department of Justice and Attorney-General. The Reference Group comprised the Senior Officers' Group of the CEO Sub-Committee, chaired by Mr David Schultz, and later, Mr Terry Ryan, the Executive Director, Research and Executive Services, DJAG. The Project Manager was Mr Kevin Childs, Manager, Policy Directorate, DATSIP.

The juvenile admissions data shows there has been neither a drop in the rate of Indigenous detention nor a reduction in the level of over-representation of Indigenous young people in detention during the first four years of the Justice Agreement. In fact, based on admissions data, the Indigenous detention rate and level of over-representation was higher in 2003-04 than in 2000-01 when the Justice Agreement was signed.

(4.2.2 Queensland Admissions Data on Juvenile Detention)

Juvenile Remand and Custodial Sentences

The most significant impact on Indigenous detention rates will be achieved through programs and policies aimed at reducing the remand population. Specific further research needs to be done on the reasons for remand for Indigenous young people, so that programs can be developed to target these causes. Preliminary data suggest that only a small proportion of those who are remanded in custody actually receive a custodial sentence.

In terms of the Justice Agreement measures of success, there has been a reduction in Indigenous young people *sentenced* to detention between 2000-01 and 2003-04. However, this is overshadowed by the growing numbers in the remand population.

(4.2.3 The Impact of Remand on Indigenous Young People)

Adult Imprisonment

Queensland has a rate of Indigenous over-representation in adult prison which is among the lowest in the nation. In terms of the Justice Agreement, there are positive signs that a steady increase in the rate of Indigenous imprisonment in Queensland has been halted and there has been a decline in the rate since 2002 until the most recent prison census data (2004).

Admission data also reflects a decline in Indigenous numbers from a high point in 1999-2000. However, there has been an upward spike in 2004-05 over the previous three years.

(4.3.1 National Comparisons)

ASSESSMENT OF GOVERNMENT EFFECTIVENESS IN MEETING COMMITMENTS: SOME STRATEGIES ARE IN PLACE

Each of the relevant Departments have made progress in some areas and are limited in others in their response to the Justice Agreement.

Some of the key strategies which will reduce over-representation are already in place, but need substantial and immediate resourcing for any hope of achieving the outcome of reducing Indigenous incarceration rates by 50% by 2011. These strategies include

- Youth justice conferencing and police cautioning
- Conditional bail and bail support
- Crime prevention programs in remote communities like the PCYC and Community-Based Officers
- Diversionary programs for homeless and alcoholics, and the assistance of PLOs

- Indigenous offender programs
- Community-based supervision in remote and rural areas for adult and juvenile offenders
- Driver licensing project
- CJGs, Murri Courts, JP (Magistrates Courts)

To say that these strategies are in place is not to say that the current level of support is adequate. For example, we do not know whether the expansion of Youth Justice Service Centres will go anyway near what is needed to provide a proper set of community-based sentencing alternatives for the Childrens Court.

ADDITIONAL AND ALTERNATIVE STRATEGIES NEED SERIOUS CONSIDERATION

Other areas need serious consideration if the goal of reducing incarceration rates it to be met, including

- More targeted crime prevention programs
- Drug and alcohol courts and diversion designed to enhance Indigenous participation
- The abolition of short term prison sentences
- Release of offenders to Indigenous-run programs
- Development of Indigenous-specific residential alternatives
- Law reform in relation to alcohol restrictions

SOME STRATEGIES ARE IMPORTANT FOR REASONS OTHER THAN THEIR IMPACT ON OVER-REPRESENTATION

Some strategies are important to ensure that the criminal justice system is fair, equitable and just in its application to Indigenous people in Queensland. These strategies may not have the largest impact on over-representation, but they are intrinsically important for societies guided by the rule of law. These include:

- QATSIP in remote communities
- Cross cultural training
- Indigenous employment in justice agencies
- Mechanisms for recognising customary law
- Indigenous legal representation and provision of interpreters

WHAT HAVE BEEN THE GREATEST FAILING OF EACH DEPARTMENT?

In terms of meeting the outcomes of the Justice Agreement the most significant failures can be identified as following.

- The failure by the Department of Communities and Department of Corrective Services to ensure the availability of supervision for non-custodial sentencing options in Indigenous communities.

- The failure of the QPS to ensure alternatives to arrest are used for Indigenous juveniles and adults and the failure to develop the QATSIP program beyond the pilot communities
- The failure of DATSIP to properly train and resource the Community Justice Groups
- The failure of DJAG to resource and support the Murri Courts

Some of the most important initiatives like CJGs and Murri Court began as local initiatives. While on the one hand they can be seen as successes, they also represent a failure of government response.

REALISM, URGENCY AND RESOURCES

Perhaps the greatest failure of implementation in relation to the Justice Agreement is the least tangible: there appears to be little sense of urgency in meeting the primary goal set by the Justice Agreement.

The failure to resource justice initiatives means that it is unlikely that the target of reducing Indigenous incarceration rates will be met by 2011. However, the target should not be abandoned.

Perhaps the example of the Murri Court shows the missed opportunity in resourcing, expanding and developing an alternative to traditional courts. Although very approximate, we can estimate that currently the Murri Courts deal with about 0.2% of adult Indigenous court matters, and about 1.5% of juvenile Indigenous matters. Not every matter involving an Indigenous offender should go before the Murri Court, nor should it over-ride other initiatives involving CJGs and JPs (Magistrate Courts). However, we can gauge the level of expansion needed if the courts are to impact on Indigenous offenders.

A similar example might be drawn with the lack of funding to the CJGs comparative to their responsibilities. Some $3.4 million was allocated to all the CJGs in the 2004/05 financial year. That is only slightly more expensive than, for example, the cost of building one PCYC in a remote community.

Providing for proper supervision of orders in Indigenous communities will also require resources. However the longer term savings in reducing the costs of imprisonment are likely to be significant. For Department of Corrective Services, the daily cost of offenders in the community is $8.73 per offender compared to $167.24 per prisoner.

Finally it should be noted that not all strategies require significant resources. For example the greater use of diversionary options and alternatives to arrest by police is likely to be cost neutral in terms of decision-making, and have longer term savings in relation to fewer court appearances.

FINDINGS AND RECOMMENDATIONS

1. THE JUSTICE AGREEMENT

Aims and Principles of the Justice Agreement

It is important to note that the Justice Agreement sets out two contrasting aims: the long term aim is to reduce over-representation (i.e. the achievement of parity in the rates between Indigenous and non-Indigenous). However, the 2011 outcome is to reduce by 50% the rate of Indigenous incarceration, *rather than the rate of over-representation*. This is not merely a semantic difference. Reducing the rate of Indigenous incarceration by 50% is an absolute measure in itself. It is not dependent on any changes in the non-Indigenous rate of incarceration. By way of contrast, changes in the rate of over-representation are affected by both Indigenous and non-Indigenous rates. For example, if both the Indigenous and the non-Indigenous rates of incarceration are declining, it is possible that a 50% reduction in the rate of Indigenous incarceration could be achieved without substantially changing the level of over-representation.

(1.2.2 Justice Agreement Outcome by 2011)

In relation to evaluating the implementation and outcomes of the Justice Agreement thus far, it is important to acknowledge that the original Agreement was clear in the principles it prioritised as underpinning the Agreement. It is reasonable to expect that the principles will underpin government initiatives flowing from the Agreement, and will continue to inform policy development while the Agreement is in place.

(1.2.3 Guiding Principles, Over-Representation and Strategic Directions)

Indigenous Victims of Crime

An important omission in the aims, the guiding principles, the identification of over-representation and the broad strategic directions for the Justice Agreement is the failure to acknowledge Indigenous people as victims of crime (although there is one reference to the Aboriginal and Torres Strait Islander Women's Task Force on Violence). The assumption is that Indigenous contact with the criminal justice system is as offenders, yet we know that Aboriginal and Torres Strait Islander people are over-represented in the justice system as both victims and offenders.

(1.2.3 Guiding Principles, Over-Representation and Strategic Directions)

The Need to Prioritise Outcomes in the Justice Agreement

The Justice Agreement is founded on the view that the over-representation of Indigenous people can be reduced through significant changes to the criminal justice system, and these changes are summarised in the twenty 'supporting outcomes'. There is a need to prioritise and reconsider these supporting outcomes. While all can be justified on a range of grounds (such as access and equity, duty of care or effective policy development), some are more proximate than others to the task of reducing Indigenous over-representation.

(1.2.4 Supporting Outcomes)

There is too much overlap between the 20 outcome areas identified in the Justice Agreement. They should be reduced to three Key Result Areas: Diversion of Indigenous Children and Adults from All Stages of the Criminal Justice System; Indigenous Access and Equity/Equality Before the Law; and Effective Indigenous Policy and Programs for Offenders.

(5.21 Limitations of the Current Approach)

Over-representation and the Justice Agreement

The identification of and discussion relating to Indigenous over-representation is the weakest part of the Justice Agreement. This is an important limitation of the Agreement given that the primary aim is to reduce Indigenous contact with the criminal justice system. The more precise we are with identifying the causes of over-representation, the more effective we can be with building strategies and programs to change the situation.

(1.2.3 Guiding Principles, Over-Representation and Strategic Directions)

Recommendation 1. Continuation of the Justice Agreement

The Justice Agreement was signed in good faith by Indigenous representatives and Ministers of the Crown. The Agreement and the broad principles within it should be retained. However, there is also a need to reconsider specific elements of the Agreement in the light of more recent policy developments. The twenty outcome areas should be reduced to three Key Result Areas as identified in Section 5.21 of the evaluation report. Key strategies are identified in section 9.5 of the evaluation report.

The long term aims of the Justice Agreement should be revised to include specific reference to reducing Aboriginal and Torres Strait Islander contact with the criminal justice system as both offenders and victims of crime.

Recommendation 2. Implementation, Audit and Evaluation of the Justice Agreement

The original Justice Agreement made provisions for three evaluations during the life of the Agreement. The first evaluation has taken place after nearly five years. It is recommended that at least one further evaluation occur prior to the completion of the Agreement.

However, it is also recommended that ongoing auditing of the implementation of the Agreement be conducted by an independent body (eg the Crime and Misconduct Commission). An example of this type of auditing can be found in the New South Wales Ombudsman (2005) audit of the implementation of the New South Wales Police Aboriginal Strategic Direction. The audit process means that managers are more conscious of their obligations under the Justice Agreement.

2. THE POLICY CONTEXT

Measures of Success Connected to Socio-Economic Changes

The Justice Agreement noted at the time of the Agreement that the Government did not have all the necessary statistics to provide data on the above measures. However, strategies for better data collection and a uniform data system were to be put in place so that the success of the Justice Agreement could be measured.

As part of the measures for considering the context of the Justice Agreement there is also a need to include socio-demographic data covering such matters as health, housing, education, income, employment, etc. The Justice Agreement acknowledges the importance of the 'underlying issues' in affecting Indigenous contact with the criminal justice system. Although the Justice Agreement does not seek to directly change the 'underlying issues', changes in the socio-demographic profile of Indigenous people are likely to impact on the ability of the Justice Agreement to fulfil its own aims and objectives.

There also needs to be acknowledgement of the regional variations across the State in employment, income and housing overcrowding.

(1.3 How Success will be Measured)
(1.5.4 Regional Variations)

Successful labour market programs, and family support programs are likely to have long term effects on reducing Indigenous involvement in the criminal justice system.

(1.7.2 Unemployment and Poverty)

Other Agreements

Draft Agreements and Action Plans have been or were being developed in relation to Reconciliation, Family Violence, Economic Development and Land, Heritage and Natural Resources as part of the Ten Year Partnership. It is important to reaffirm the point made by the Justice Agreement that only limited positive effects can be made in relation to Indigenous over-representation in the criminal justice system without coordinated efforts in others areas of social and economic policy.

(2.1 Introduction)

Negotiation Tables, Community Action Plans

Negotiation Tables have not focussed primarily on justice issues. However, the community actions plans arising from the Tables may include justice issues. The current Negotiation Table for the Torres Strait is an exception in that justice issues are the core concern of the Table. It has had a slow development over a number of years, and is still at the 'pre-negotiation' stage. A local Justice Agreement is being developed in Aurukun.

The potential importance of the Aurukun Justice Agreement and the ongoing Torres Strait Justice Negotiation Table is that they may provide a mechanism for bridging the broader goals of the Queensland Aboriginal and Torres Strait Islander Justice Agreement with local issues, and of clearly defining governmental and non-governmental roles and responsibilities.

(2.4.1 Negotiation Tables)
(9.1 Localising Justice Agreements)

Partnerships Queensland

Of the priority action areas under *Partnerships Queensland* there are three which directly relate to criminal justice matters: *Successful childhood, Transition to adulthood,* and *Healthy, prosperous and safe adulthood*. However it should also be noted that the other priority action areas are also likely to directly impact on the relationship between Indigenous people and the criminal justice system. For example, a reduction in child abuse and neglect is likely to lead to a long term lowering of juvenile and adult contact with the criminal justice system. Similarly improvements in employment and economic security are likely to lead to less contact with the criminal justice system.

(2.4.1 What Does PQ Do?)

From the consultations undertaken for this evaluation, a significant difficulty will be in engaging Indigenous communities at a local level. A second difficulty will be the lack of any regional or statewide Indigenous body with which to negotiate. Relying on a process of 'invited participants' may well increase disharmony in communities.

(2.4.1 What Does PQ Do?)

Indigenous Representation

The disappearance of ATSIAB has a number of consequences in relation to the Justice Agreement.

- Firstly, there is no Indigenous input into the implementation and monitoring of the Agreement at a State level.
- Second, there is no state wide mechanism for the provision of Indigenous advice to government on matters relating to justice.
- Third, it is of concern that neither the SOG nor the CEO's subcommittee have Indigenous representation.

The abolition of ATSIC and de-funding of QAILSS has added to the vacuum of Indigenous representation. At present the processes for engaging Indigenous communities is essentially ad hoc and government driven. There is no independent Indigenous organisation with a monitoring role for the Justice Agreement, the Royal Commission into Aboriginal Deaths in Custody recommendations, or justice issues more generally.

(2.3 The Demise of ATSIAB and the CEO Committee)
(5.18 Informed Decision-Making on Indigenous Criminal Justice Issues)

Recommendation 3. Aboriginal and Torres Strait Islander Justice Advisory Council

It is recommended that an Aboriginal and Torres Strait Islander Justice Advisory Council be established which facilitates regional representation, as well as representation from Indigenous justice agencies or relevant organisations which might include but is not limited to CJGs, legal services and Indigenous local government. New South Wales and Victoria provide examples for effective regionally-based AJACs.

3. CRIME AND VICTIMISATION

Crime Rates

From the available data it appears that crime rates have been reasonably constant or falling. Thus increasing crime rates have not been factor working against the reduction of Indigenous contact with the criminal justice system.

(2.8 Crime Rates and Crime Trends)

Victimisation

In general Indigenous people living in Queensland report higher levels of victimisation of violence or threatened violence than the national average for Indigenous people.

(2.9 Indigenous and Non-Indigenous Crime Victimisation)

For Queensland as a whole, Indigenous women are twice as likely as Indigenous men to be victims of offences against the person. They are 4.7 times more likely to be victims compared to non-Indigenous men, and nearly six times more likely to be victims than non-Indigenous women.

In the northwest region, the rate of victimisation for Indigenous women is 118.4 per 1,000 of the Indigenous female population, which is a victimisation rate greater than one in ten Indigenous women in the community.

There needs to be more in-depth analysis of the data to underpin the provision of services for Indigenous victims. In particular, analysis needs to identify the specific locations which are problematic within the regions, the relevant age groups of the victims and the specific nature of the offences within the broader category of 'offences against the person'. Given what the data suggests about the north west region, this is an important place to start.

(2.9 Indigenous and Non-Indigenous Crime Victimisation)

Family Violence and Child Protection

It is important to recognise that policy changes in relation to both family violence and child protection are likely to lead to greater contact, at least in the short to medium term, with the criminal justice system for Indigenous people who may in the past have committed offences which have not been reported or acted upon.

(2.7.2 Indigenous child protection partnership)

Crime Prevention

It is reasonable to expect a positive benefit from general crime prevention programs. However, it is difficult to gauge their specific effect on Indigenous offending at a local level. It is reasonable to expect that the expansion of PCYC and associated support in Indigenous communities has had a positive impact on reducing offending levels given the literature linking the provision of leisure and sporting activities with effective crime prevention. However it is important that such initiatives are integrated with social support mechanisms. It is also important to recognise that the PCYC approach is expensive to establish. The multi-agency Community-Based Officers made provide a more sustainable alternative.

(5.1 Effective Early Intervention for Indigenous Young People)

Recommendation 4. Crime Prevention

It is recommended that funding for Indigenous crime prevention projects should prioritise programs that target the offending categories most prevalent among Indigenous people including theft and unlawful entry for juveniles, and public order and justice related offences for both adults and juveniles.

The multi-agency Community-Based Officers project in Cape York should be encouraged as a less expensive option to the full establishment of PCYCs.

4. CONTACT WITH THE CRIMINAL JUSTICE SYSTEM: POLICING

Police Custody

Some 24.4% of police custodies in Queensland involve Indigenous people. The rate of Indigenous custody in Queensland is 1483.1, and Indigenous people are 10.5 times more likely to be held in custody than non-Indigenous people in the State. By national standards the rate of Indigenous police custody and the level of over-representation is lower than the national average.

The published research does not provide data at a state or territory level on reasons for custody. Criminal Justice Research could usefully request this data for analysis, with a view to informing policy on reducing Indigenous police custody rates.

(3.1 Comparative Police Custody Rates)

Offences Leading to Police Intervention

Indigenous adults have a greater proportion of offences against the person (particularly assaults), and good order offences compared to non-Indigenous adults. Liquor (excluding drunkenness) offences are also substantially more prevalent. Non-Indigenous adults have significantly greater proportions of drug offences and traffic related offences than Indigenous adults.

(3.2.1 Police Interventions and Adults)

Indigenous juveniles have a greater proportion of property offences (particularly unlawful entry) than non-Indigenous juveniles and account for 72.3% of all police interventions for Indigenous youth. Generally the pattern of offences between Indigenous and non-Indigenous juveniles is similar, although non-Indigenous juveniles have a greater proportion of drug offences.

(3.2.2 Police Interventions and Juveniles)

Arrest Compared to Other Processes

More than half (52%) of adult Indigenous interventions involved the use of arrest compared to 36.5% of non-Indigenous interventions. Conversely, more than half of non-Indigenous interventions were commenced by way of ‘notice to appear’.

(3.2.1 Police Interventions and Adults)

Indigenous juveniles are twice as likely to be proceeded against by way of arrest compared to non-Indigenous juveniles and more likely to be required to appear in court either by way of summons or by court attendance notice. Conversely, non-

Indigenous juveniles are much more likely to be diverted from the more punitive and formal legal processes and to be cautioned by police or referred to a youth justice conference.

(3.2.2 Police Interventions and Juveniles)

Overall intervention rates are much higher for Indigenous adults and juveniles irrespective of the process used. Indigenous juveniles are 8.5 times more likely, and Indigenous adults 7.5 times more likely, to be processed by police than their non-Indigenous counterparts. The over-representation is highest for proceeding by way of arrest, and particularly so with Indigenous juveniles who have an (rate/ratio) over-representation of 17 for arrests.

(3.2.3 Intervention Rates)

Police Cautioning and Conferencing

There is evidence that police are referring Indigenous youth to conferences at a lower rate than non-Indigenous youth, they are less likely to refer Indigenous young people to a conference than court referrals to conferences, and there are variations in the rate of referrals across different areas of the State.

There is also evidence that that Indigenous young people are not receiving the benefits of cautioning to the same extent as non-Indigenous young people and there are variations in the use of cautioning in different parts of the State.

(3.5.1 Police Cautions and 3.5.2 Youth Justice Conferencing)

Alternatives to Arrest

A stronger management of police processing for minor offenders is required to ensure that attendance notices are used rather than arrest. The Operational Performance Reviews provide a method to ensure this outcome.

(5.2 Availability and Use of Appropriate Alternatives to Court)

Recommendation 5. Alternatives to Arrest: Diversion

It is recommended that the Police Service develop a strategic plan with strong management oversight to:

**** Increase police cautioning of Indigenous young people and referrals of Indigenous young people to conferences. In relation to conferencing, the strategic plan should be developed jointly with Youth Justice Services. Regions with low cautioning and conferencing referral rates should be targeted initially.***

**** Ensure that police processing of minor offenders involve the use of attendance notices rather than arrest.***

Cautioning rates, conferencing referrals rates and rates of arrests compared to attendance notices need to be monitored and incorporated into Operational Performance Reviews.

5. CONTACT WITH THE CRIMINAL JUSTICE SYSTEM: BAIL, COURTS AND SENTENCING

Effective Diversionary Strategies: Remand

The juvenile conditional bail and bail support programs appear to be functioning well with good levels of Indigenous participation and completion. However, they need to be expanded to deal effectively with the size of the Indigenous remand population. Although the remand population would most probably be higher without these initiatives, it is worth considering:

- whether there has been a 'net-widening effect' with the program covering young people who would perhaps not have been remanded in custody, irrespective of the programs;
- why the current Indigenous remand population were unable or ineligible to access either program.

The proposed Department of Corrective Services bail advocacy strategy may also reduce the Indigenous remand population if implemented with adequate attention to resourcing remote areas.

(5.3 Effective Diversionary Strategies)

Childrens Court: Offences and Sentencing

Some 19.5% of all Indigenous juvenile court appearances related to unlawful entry with intent, compared to 10.5% of non-Indigenous offences. In fact Indigenous appearances for these offences comprised more than half of the total (514 of a total 940).

Indigenous young people also had a greater proportion of justice related offences (19.6% compared to 7.7%). Conversely, non-Indigenous youth had greater proportions of fraud, drug and road traffic offences.

Indigenous young people are statistically more likely to receive sentencing outcomes at the higher end of the scale including custodial orders and community supervision. Probation periods are likely to be longer. However, there is no difference in length of custody or community service. The issue of sentencing disparity needs further analysis.

(3.3.1 Children's Court)

Magistrates Court: Offences and Sentencing

Public order offences are the single largest category of appearances for Indigenous adults in the magistrates courts.

- Some 30.2% of all Indigenous appearances relate to public order offences, compared to 12.5% on non-Indigenous offences.
- Some 19.7% of all Indigenous appearances relate to justice offences, compared to 11.7% on non-Indigenous offences.
- Some 10.4% of all Indigenous appearances relate to acts intended to cause injury, compared to 4.9% on non-Indigenous offences.

There is further research required in relation to sentencing Indigenous adults. However, from the available evidence, Indigenous adults are more than twice as likely to receive custodial sentences and more likely to receive supervised orders than non-Indigenous adults. However, the length of those orders is likely to be less for Indigenous adult offenders than for non-Indigenous offenders.

(3.3.2 Magistrates Court)

Property Offences and Offences Against the Person

Data on the use of imprisonment nationally shows that Queensland's incarceration rates for property offences and offences against the person are above the national average. The more extensive use of imprisonment for these particular offences has serious implications for Indigenous offenders given these are offence categories for which Indigenous offenders are most over-represented.

(4.3.4 Most Serious Offence of Prisoners)

Offences and Imprisonment

There needs to be further specific research on the offences for which Indigenous people are commonly imprisoned. This needs to consider both data deriving from census counts, as well as admissions data and sentencing data.

(1.7 Comment on the Underlying Causes of Offending and Victimisation)

Domestic and Family Violence

It is important for future policy development that we know the comparative use of domestic and family violence orders by Indigenous people. Indigenous people comprise 29.5% of adults breached in relation to domestic violence orders.

(2.6.1 Family Violence)

Alternatives to Court: Mediation

The expansion of mediation training for CJGs members, and support for their attendance at training is a priority. Effective use of mediation could significantly reduce court matters, particularly arising from family disputes.

(5.2 Availability and Use of Appropriate Alternatives to Court)

6. COMMUNITY SUPERVISION

Community Based Sentencing Options

There has been a significant failure to meet this outcome area in a meaningful way. Both Department of Corrective Services and Department of Communities have or are intending to initiate better service delivery models. This should lead to a greater capacity to supervise offenders in the community. Indigenous identified positions are important in this expansion. Greater use can also be made of properly resourced CJGs.

Increased capacity by the Department of Corrective Services for community supervision in remote communities may assist in increasing the number of Indigenous offenders on community based orders and correspondingly reduce the imprisonment rate. There needs to be independent and close monitoring to gauge whether the new service delivery models result in improved access to community-based sentencing options for Indigenous adult and juvenile offenders.

The data suggests that Indigenous offenders are not getting the benefit of community supervision orders such as parole or home detention. The reasons for this require further investigation. If eligibility criteria systematically disadvantages Indigenous offenders then the criteria needs to be addressed.

Successful completion rates vary for Indigenous offenders depending on the nature of the order. While it is important to understand why some types of orders have lower successful completions, we should also be encouraging the utilisation of those where success is more likely to occur (such as home detention and reparation).

(4.4.3 Completion of Community Supervision Orders)
(5.6 Availability and Use of Non-Custodial Sentencing Options)
(5.15 Effective Operation of Indigenous Services)

Recommendation 6. Alternatives to Custody

The capacity of the conditional bail and bail support programs needs to be expanded in areas of identified need, and particularly in remote communities.

Recommendation 7. Indigenous Criminal Justice Research Agenda

It is recommended that an Indigenous Criminal Justice Research Agenda be developed to drive policy initiatives. The Agenda should include but not be limited to the following:

**** Analysis of Indigenous victimisation data, particularly in relation to Indigenous women.***
**** Analysis of breach rates and prosecutions for domestic and family violence orders.***
**** Analysis of the reasons for high levels of remand for Indigenous young people.***
**** Analysis of the reasons behind sentencing disparities between Indigenous and non-Indigenous offenders (both juvenile and adult).***

7. IMPRISONMENT

Custodial Health and Safety

It is important that relevant state authorities continue to monitor deaths in custody. A decrease in Indigenous deaths in custody is a strategic outcome of the *PQ* process.

(5.7 Custodial Safety and Security)

Access to Open Custody

It is clear that Indigenous prisoners have not been accessing more open forms of custody. New policy developments in relation to WORC programs are expected to improve this situation. However, they need to be closely monitored to ensure that access for Indigenous prisoners improves significantly.

(4.3.5 Location of Prisoners)

Rehabilitation and Community Reintegration
Research suggests that effective post-release support can have a positive impact on reducing re-offending. There was no information provided on effectiveness of programs or post-release for Indigenous adult or young offenders. A range of indicators are important including participation rates, completion rates and effects on re-integration and re-offending.

There is widespread acknowledgment that many mainstream programs do not have the capacity to engage Indigenous offenders. It is necessary for the Department of Corrective Services to maintain its stated commitment to developing culturally appropriate rehabilitation programs including Ending Offending, Ending Family Violence and the Indigenous Sex Offenders Program.

(5.8 Effective Rehabilitation and Community Reintegration)

Child Removal and Child Abuse
There needs to be specific programs for Indigenous offenders that address the long-term trauma of child removal and child abuse. Research consistently shows that child abuse and neglect is related to criminalisation in later life.

(1.7.1 The Impact of the Stolen Generations)

Recidivism
On average over the last ten years, 67.1% of Indigenous young people who were currently in detention had been previously in detention, compared to 55.4% of non-Indigenous youth.

Indigenous adult offenders are more likely to have been previously imprisoned, are more likely to be returned to custody, and are more likely to be placed on a community corrections orders, than non-Indigenous offenders. This holds true for both Indigenous males and females. There has been little improvement in the situation over the five years for which data is available with the proportion of Indigenous people who have been previously imprisoned or are returned to custody or to a community corrections order remaining relatively stable.

(4.5 Adult and Juvenile Recidivism)

Abolishing Short Term Prison Sentences

New South Wales research has indicated that if Aboriginal adults given sentences of six months or less were given non-custodial sanctions instead, then the number of Aboriginal people sentenced to prison would be reduced by 54% over a twelve month period (Baker 2001:8). In 2004 some 72.4% of custodial sentences for Indigenous people in the lower courts in Queensland involved sentences of six months or less.

(9.2 Changes to Sentences of Imprisonment: Abolishing Short Term Prison Sentences)

Thinking About Alternatives Types of Custody and Alternatives to Custody

There are innovative approaches in Canada in terms of Indigenous offenders serving custodial sentences in Aboriginal communities, as well as other release mechanisms

to those communities. These processes deserve serious consideration by the Department of Corrective Services.

(9.3.2 Canadian Corrections and Aboriginal Offenders)

The Queensland Department of Corrective Services is planning to expand its WORC program. At present we know that Indigenous prisoners are only 3% of the WORC program and are therefore significantly under-represented (see section *3.3.5 Location of Prisoners*). There needs to be consideration of specific WORC programs related to Indigenous prisoners needs. The Yetta Dhinnakkal Centre and Warakirri Program in New South Wales should be considered.

(9.3.3 Corrective Services Operated, Indigenous-Specific Residential Alternatives)

The examples provided of Victoria and Western Australia show there is room to develop the processes for Indigenous community supervision of offenders. In the Queensland context this will most likely be achieved through the development of effective and sustainable CJGs.

(9.3.4 Indigenous Community Supervision)

Recommendation 8. Alternative Approaches

It is recommended that DJAG prepare a discussion paper for government consideration on the abolition of six month prison sentences, and that Department of Corrective Services give serious consideration to alternative approaches to working with Indigenous detainees developed in Canada and NSW.

8. ACCESS TO JUSTICE

Access to Justice

Local JP (Magistrates Court) have the potential to fulfil important justice functions at the community level, particularly as they are community driven. However, data was not available for this evaluation relating to the JP (Magistrates Courts) in terms of the number or type of matters they dealt with, or the penalties they imposed. The DJAG *Indigenous Justice Strategy* makes a commitment to evaluate the outcomes of the JP (Magistrates Courts), with respect to recidivism, culturally appropriate processes and other community justice issues. Such an evaluation is imperative, it should also include sentencing outcomes and should be conducted by an independent evaluator.

(5.4 Understanding by Indigenous People of Their Rights)

As a result of changes to ATSILS, DJAG need to put in place a process for monitoring the frequency of Indigenous people appearing unrepresented in the courts, particularly in remote areas.

(5.5 Effective Legal Assistance)

Many of the initiatives designed to improve communications and outlined by Departments are important. Perhaps, less clear (except for QPS and court initiatives) are the processes for gaining input from the broader Indigenous communities.

(5.11 Effective Communication)

A critical access to justice issue is the availability of interpreters. Although this was not raised in any of the government responses to the Justice Agreement, it was raised as an issue by some judicial officers working in the Cape York area. Representations have been made to government over many years concerning the need for accredited interpreters. There are still no accredited interpreters in any of the Cape languages.

(5.12 Improved Access to Justice)

Cultural Awareness

There have been improvements in cultural awareness training. However, much more could be done, particularly in developing Indigenous cultural awareness programs which are more specific to the needs of particular justice agency workers. The QPS model is the most developed in this regard. Cross cultural training should be compulsory for all justice agencies' staff and managers, and made relevant to their work and the day-to-day situations they face. Judicial officers should have cross cultural awareness courses at the time of their appointment and have ongoing cross cultural education courses made available.

(5.10 Improved Access to Justice)

Appropriate Criminal Justice Policies

Two examples are worth highlighting: youth justice conferencing and the Indigenous Licensing Program. They are examples which address issues of Indigenous participation (conferencing) and attempt to overcome an area of offending through adapting policy and procedure to meet Indigenous needs (license testing).

In the broader context of the *development* of appropriate policies, it appears that QPS is the only agency with *both* an Indigenous policy and a clear process for community consultation and negotiation.

(5.12 Appropriate Criminal Justice Policies)

Only DJAG and QPS have Indigenous Strategies. Child Safety is developing a Strategic Framework for Child Protection which will have a stream focussing on Indigenous child protection. All agencies should have a clearly articulated and publicly available Indigenous policy that also outlines key strategies for addressing Indigenous issues. These policies provide a mechanism for coordination and integration, as well as providing transparency and public accountability.

(5.19 Effective Coordination and Integration of Policies)

Greater Recognition of Customary Practices

Queensland is the only State with a large Indigenous population living on traditional lands that has not initiated in recent years an inquiry into the recognition of customary law. The Murri court, JPs (Magistrates Courts) and CJGs go some way to providing for Indigenous input into sentencing. However, this is not equivalent to understanding the demands for the recognition of customary law. Nor does it appear that community by-laws have ever provided a satisfactory response to the issue.

(5.16 Greater Recognition of Customary Practices)

Recommendation 9. JP (Magistrates Courts)

It is recommended that, in line with the DJAG Indigenous Justice Strategy commitments, the JP (Magistrates Courts) be independently evaluated with respect to sentencing outcomes, recidivism, culturally appropriate processes and other community justice issues.

Recommendation 10. Access to Justice

Legal representation and understanding of legal proceedings are basic requirements. It is recommended that DJAG develop strategies with LAQ and ATSILS to ensure legal representation and the availability of interpreters.

9. COMMUNITY JUSTICE GROUPS

It is important to recognise that previous evaluations of CJGs in the 1990s identified their successful strategies and cost effectiveness.

The CJGs are inadequately skilled and resourced for the work they are required to undertake. There are differentials in funding (which can range from unfunded to $90k per annum) and in some cases coordinators are working as part of CDEP. This situation is totally unacceptable for their level of responsibility. The CJGs provide an important avenue for community capacity building and the exercise of community self-determination. However, they are also filling the gap left through inadequate service provision by government. Although statutory CJGs have a role with AMPs, this does not justify the lower levels of funding to non-statutory groups.

In other jurisdictions, CJGs are funded through the Attorney-Generals Department, while specific functions such as night patrols are funded through crime prevention or police services.

It is recommended that the CJGs are funded by all justice agencies who utilise their services through a joint funding agreement, or a fee for service system is developed. Consideration should be given to transferring the administration of CJGs to DJAG given both the nature of their work and the move of DATSIP away from service delivery.

(6.1 – 6.6 Community Justice Groups)

Recommendation 11. Funding and Support of Community Justice Groups

It is recommended that the CJGs are funded by all justice agencies who utilise their services through a joint funding agreement, or a fee for service system is developed. Funding should provide for CJG members to be reimbursed for out-of-pocket expenses.

Consideration should be given to transferring the administration of community justice groups to DJAG given both the nature of their work and the move of DATSIP away from service delivery.

A statewide CJG reference group should be established, this group should feed into the Aboriginal and Torres Strait Islander Advisory Council.

10. THE MURRI COURTS

There is some research evidence and substantial anecdotal evidence that the Murri Courts are positively impacting on re-offending.

A significant difference between circle sentencing and Aboriginal courts (including the Murri Court) is the key role for the victim in circle sentencing. The Koori Court, Nunga Court and the Circle Sentencing Courts operate within a legislative framework. The legislative framework may include the definition and range of the jurisdiction and relevant procedural matters. These schemes have the allocation of specific court workers or project officers to organise the relevant assessments and procedures that are required to be followed. Involvement of other Indigenous groups (CJGs) in the procedures is also specified.

At present the Murri Court has developed on an ad hoc basis through the commitment of individual magistrates and judges, and local Indigenous elders. Unless there is a serious government commitment, it will not expand and will remain tentative and seriously limited in capacity. There are identified needs, including:

- Aboriginal and Torres Strait Islander court support officers assigned to the Murri Court.
- Promotion of the court among Indigenous organisations, and police, prosecutors and defence lawyers.
- A legislative framework for the court.
- Appropriate levels of funding, including for additional magistrates.
- The involvement of victims and appropriate victim support.
- Expansion of the Murri Court, particularly in the north where the lack of functional alternatives means there is little between fines and imprisonment.

(6.6 – 6.7 The Murri Courts)

Recommendation 12. Murri Courts

It is recommended that the Murri Court be developed as an integrated justice strategy that has a legislative base and is properly resourced and supported. As part of the development of the Murri Court there should be an evaluation of the effectiveness of the court which considers both re-offending measures and community capacity building.

11. ALCOHOL MANAGEMENT PLANS

There have been positive outcomes from the introduction of alcohol management plans, including a slight drop in arrests for assaults and significantly lower hospitalisations arising from assaults and other external trauma. There has also been an increase liquor offences (over 400%), and in cases such as *Callope* these convictions have lead to sentences of imprisonment.

The potential fines under the legislative are excessive, and penal provisions are inappropriate. The penalties applicable to Subsection 168B(1) of the *Liquor Act* should be reviewed and the penal sanctions should be repealed.

It was widely recognised during the consultations that the focus of recent government policy has relied too heavily on criminalisation. Measures to assist those with alcohol dependency are desperately needed.

The significant opposition to the alcohol restrictions in some communities, the failure to introduce measures to assist those with alcohol dependency, and the failure to develop an 'exit strategy' in relation to the restrictions, means that the alcohol restrictions may be in breach of the *Racial Discrimination Act*. These issues need to be comprehensively addressed.

(7.1 – 7.2 Alcohol Management Plans)

Recommendation 13. Alcohol Management Plans

It is recommended that the penalties applicable to Subsection 168B(1) of the Liquor Act should be reviewed and the penal sanctions should be repealed.

12. HOMELESSNESS, PUBLIC DRUNKENNESS AND DIVERSION FROM CUSTODY.

There have been important initiatives to deal with homelessness issues and public drunkenness. The approach in Cairns is highlighted in this regard. However, it must be recognised that there are few facilities or programs available in Indigenous communities. Basically diversionary centres do not exist outside of a few major towns. As noted previously public order offences are the single largest category for court appearances for Indigenous males – accounting for one in three appearances before the courts.

There is no shortage of potential initiatives as the Cairns model shows. However, there needs to be commitment and resources to expand these initiatives.

(7.3 Homelessness, Public Drunkenness and Diversion from Custody)

13. UNDERMINING DIVERSION : PUBLIC SPACE, NOTIFIED AREAS AND DISCRIMINATION

This evaluation has noted the many initiatives undertaken to ensure alternatives to the criminalisation for homeless people and diversion for those with alcohol problems using public space (see section 7.2). These initiatives are to be commended. However, we need to ensure that the use of particular legislation does not lead to unnecessary criminalisation or the abuse of human rights, in particular:

- The use of 'notified areas' under the *Police Powers and Responsibilities Act (2000)* and the subsequent use of move-on powers, and

- The use of provisions under the *Summary Offences Act (2005)*

Given that 30% of Indigenous finalised appearances in the magistrates courts in Queensland are for public order offences, there is reason for serious concern that diversionary processes are not being used and that Indigenous people's use of public space is being unnecessarily curtailed.

14. DIVERSION AND SPECIALIST DRUG AND ALCOHOL COURTS

The research shows that:

- Indigenous youth and adults have relatively low participation rates in drug and alcohol courts, at least when compared to their incarceration rates.
- Some research suggests Indigenous referrals are less likely to be accepted on to a program.
- Once on a program research results vary as to whether Indigenous completion rates are lower or the same as non-Indigenous participants.

Evaluations of drug courts which specifically considered Indigenous issues have developed similar recommendations to better meet the needs of Indigenous participants.

- Employ Indigenous caseworkers.
- Liaise more closely with Indigenous agencies and communities.
- Review eligibility restrictions.
- Develop culturally appropriate resources.
- Provide relevant staff training on Indigenous issues including cross cultural training.

While there has been discussion of establishing 'alcohol courts' it appears there is no real need to set-up a separate system to the drug courts, when drug court criteria can be altered to allow the courts to deal with alcohol issues. The Youth Drug and Alcohol Court in New South Wales is an example of this approach.

Establishing the capacity for the drug courts to deal with alcohol-related offending behaviour will increase the likely participation of Indigenous offenders. However, the critical issue recognised by staff working in specialist courts is the availability of community-based programs that can be utilised by the courts.

(7.4 – 7.5 Diversion and Specialist Drug and Alcohol Courts)

Recommendation 14. Drug Courts and Alcohol Diversion

It is recommended that

Needs analysis be undertaken to determine the potential development of a youth drug court, and expansion of the proposed adult alcohol diversionary program to young offenders

Previous recommendations from drug court and drug diversionary evaluations aimed at improving Indigenous participation be implemented

There be ongoing evaluation to ensure that existing and new drug and alcohol court diversionary processes meet the needs of Indigenous clients, particularly in rural and remote areas.

15. THE NEED FOR IMPROVED OUTCOMES: POLICING IN INDIGENOUS COMMUNITIES

There have been significant improvements in the training, skill levels, roles and responsibilities of the PLOs. The QPS policy of 'continuous improvements' should be maintained. In particular, the innovative use of PLOs in Cairns and Townsville should be adopted in other areas. The effective use of PLOs can have a positive impact on over-representation through avoiding conflict between Indigenous people and state, and through involvement in diversionary strategies.

The State Coroner's report in the recent Hope Vale matter shows that endemic problems continue with the use of Aboriginal community police, despite decades of reports that have identified the issues and recommendations to improve the situation.

The QATSIP program is at a crossroads. It is successful and supported by stakeholders. However, it is also clear there are re-emerging problems that are very similar to those which have plagued the operation of Aboriginal community police, particularly around training, enforcement powers, stability of employment and morale. It does not appear that the findings of the Review and Evaluation (2003) have been acted upon (for example, Woorabinda QATSIP are understaffed by 50% and employed on short term contracts).

The expansion of QATSIP in Aboriginal and Torres Strait Islander Communities is necessary, and needs to be integrated with broader community justice strategies including CJGs and the JP (Magistrates Courts). It is recognised that the QPS will require significant additional funding over a lengthy implementation period to introduce QATSIP into all Indigenous communities. This must be a priority matter.

(8.1-8.5 The Need for Improved Outcomes: Policing in Indigenous Communities)

Recommendation 15. QATSIP

It is recommended that as a matter of priority that a strategy be developed and implemented to effect the replacement of Indigenous community police with QATSIP.

LIST OF RECOMMENDATIONS

Recommendation 1. Continuation of the Justice Agreement

The Justice Agreement was signed in good faith by Indigenous representatives and Ministers of the Crown. The Agreement and the broad principles within it should be retained. However, there is also a need to reconsider specific elements of the Agreement in the light of more recent policy developments. The twenty outcome areas should be reduced to three Key Result Areas as identified in Section 5.21 of the evaluation report. Key strategies are identified in section 9.5 of the evaluation report.

The long term aims of the Justice Agreement should be revised to include specific reference to reducing Aboriginal and Torres Strait Islander contact with the criminal justice system as both offenders and victims of crime.

Recommendation 2. Implementation, Audit and Evaluation of the Justice Agreement

The original Justice Agreement made provisions for three evaluations during the life of the Agreement. The first evaluation has taken place after nearly five years. It is recommended that at least one further evaluation occur prior to the completion of the Agreement.

However, it is also recommended that ongoing auditing of the implementation of the Agreement be conducted by an independent body (eg the Crime and Misconduct Commission). An example of this type of auditing can be found in the New South Wales Ombudsman (2005) audit of the implementation of the New South Wales Police Aboriginal Strategic Direction. The audit process means that managers are more conscious of their obligations under the Justice Agreement.

Recommendation 3. Aboriginal and Torres Strait Islander Justice Advisory Council

It is recommended that an Aboriginal and Torres Strait Islander Justice Advisory Council be established which facilitates regional representation, as well as representation from Indigenous justice agencies or relevant organisations which might include but is not limited to CJGs, legal services and Indigenous local government. New South Wales and Victoria provide examples for effective regionally-based AJACs.

Recommendation 4. Crime Prevention

It is recommended that funding for Indigenous crime prevention projects should prioritise programs that target the offending categories most prevalent among Indigenous people including theft and unlawful entry for juveniles, and public order and justice related offences for both adults and juveniles.

The multi-agency Community-Based Officers project in Cape York should be encouraged as a less expensive option to the full establishment of PCYCs.

Recommendation 5. Alternatives to Arrest: Diversion

It is recommended that the Police Service develop a strategic plan with strong management oversight to:

** Increase police cautioning of Indigenous young people and referrals of Indigenous young people to conferences. In relation to conferencing, the strategic plan should be developed jointly with Youth Justice Services. Regions with low cautioning and conferencing referral rates should be targeted initially.*

** Ensure that police processing of minor offenders involve the use of attendance notices rather than arrest.*

Cautioning rates, conferencing referrals rates and rates of arrests compared to attendance notices need to be monitored and incorporated into Operational Performance Reviews.

Recommendation 6. Alternatives to Custody

The capacity of the conditional bail and bail support programs needs to be expanded in areas of identified need, and particularly in remote communities.

Recommendation 7. Indigenous Criminal Justice Research Agenda

It is recommended that an Indigenous Criminal Justice Research Agenda be developed to drive policy initiatives. The Agenda should include but not be limited to the following:

** Analysis of Indigenous victimisation data, particularly in relation to Indigenous women.*

** Analysis of breach rates and prosecutions for domestic and family violence orders.*

** Analysis of the reasons for high levels of remand for Indigenous young people.*

** Analysis of the reasons behind sentencing disparities between Indigenous and non-Indigenous offenders (both juvenile and adult).*

Recommendation 8. Alternative Approaches

It is recommended that DJAG prepare a discussion paper for government consideration on the abolition of six month prison sentences, and that Department of Corrective Services give serious consideration to alternative approaches to working with Indigenous detainees developed in Canada and NSW.

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Recommendation 15. QATSIP

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1. THE JUSTICE AGREEMENT

1.1 INTRODUCTION

The Aboriginal and Torres Strait Islander Justice Agreement was developed by the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB) and the Queensland Government. It was signed by the Premier, four Ministers and the Chair and members of ATSIAB on 19 December 2000. The Agreement lasts until 2011.

In December 2004 the Queensland Government invited tenders for an independent evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement in terms of its outcomes and possible future directions. The consultant (Professor Chris Cunneen[2]) was contracted to undertake the evaluation. The governance arrangements for the consultancy were a Steering Committee, a Reference Group and a Project Manager.[3]

The origins of the Justice Agreement derive from two national meetings held in 1997 to address the ongoing problem of Aboriginal deaths in custody. The first was an Indigenous Summit, attended by representatives of Indigenous communities from across Australia. The second was a National Ministerial Summit, where community representatives met with Commonwealth and State Ministers for justice, police, corrective services and Aboriginal affairs. As an outcome of the Ministerial Summit Ministers agreed, in partnership with Indigenous peoples, to develop strategic plans for the coordination of Commonwealth, State and Territory funding and service delivery for Indigenous programs and services, including working towards the development of multilateral agreements between Commonwealth, State and Territory Governments and Indigenous peoples and organisations to further develop and deliver programs. This resolution was signed by the Queensland Government and Aboriginal and Torres Strait Islander community representatives attending the Summit.

The Queensland Aboriginal and Torres Strait Islander Justice Agreement was an important outcome from this national commitment by the States and Territories. It was one of the first Justice Agreements to be signed in Australia.

1.2 THE AIMS OF THE JUSTICE AGREEMENT

The Justice Agreement contained both a long term aim, as well as setting specific targets to be met.

[2] Ms Neva Collings conducted approximately half the community consultations. Ms Nina Ralph assisted in formulating and editing the evaluation report.

[3] The Steering Committee was the CEO Sub-Committee on the implementation of the Justice Agreement chaired by Ms Rachel Hunter, Director General, Department of Justice and Attorney-General. The Reference Group comprised the Senior Officers' Group of the CEO Sub-Committee, chaired by Mr David Schultz, and later, Mr Terry Ryan, the Executive Director, Research and Executive Services, DJAG. The Project Manager was Mr Kevin Childs, Manager, Policy Directorate, DATSIP.

1.2.1 Long Term Aim of the Justice Agreement

The long term aim of the Justice Agreement is to reduce Indigenous contact with the criminal justice system to parity with the non-Indigenous rate. This aim specifies a reduction in over-representation of Indigenous people compared to non-Indigenous people in the criminal justice system.

1.2.2 Justice Agreement Outcome by 2011

The outcome by 2011 is to reduce by 50% the rate of Aboriginal and Torres Strait Islander peoples incarcerated in the Queensland criminal justice system. It will achieve this outcome through a range of twenty supporting outcomes and initiatives.

It is important to note that the Justice Agreement sets out two contrasting aims: the long term aim is to reduce over-representation (ie the achievement of parity in the rates between Indigenous and non-Indigenous). However, the 2011 outcome is to reduce by 50% the rate of Indigenous incarceration, *rather than the rate of over-representation*. This is not merely a semantic difference. Reducing the rate of Indigenous incarceration by 50% is an absolute measure in itself. It is not dependent on any changes in the non-Indigenous rate of incarceration. By way of contrast, changes in the rate of over-representation are affected by both Indigenous and non-Indigenous rates. For example, if both the Indigenous and the non-Indigenous rates of incarceration are declining, it is possible that a 50% reduction in the rate of Indigenous incarceration could be achieved without substantially changing the level of over-representation.

1.2.3 Guiding Principles, Over-Representation and Strategic Directions

The Justice Agreement has a set of nine principles to be used to guide policies, programs and services. These are considered an important part of the Justice Agreement.

(1) Indigenous Participation. Recognition that Aboriginal and Torres Strait Islander policies, programs and services are best developed and delivered in partnership with Aboriginal and Torres Strait Islander communities and that localised solutions are often the most successful.

(2) Recognition of Culture. Recognition that Aboriginal and Torres Strait Islander peoples have unique and diverse histories and cultures, including respect for the role of Elders.

(3) Acknowledgment of the Past. Acknowledgment of the impact of past policies, practices and philosophies, which have resulted in the current over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

(4) Respect for Indigenous Cultural Values. Acknowledgment that justice policies, programs and services for Aboriginal and Torres Strait Islander peoples must respect Aboriginal and Torres Strait Islander social values and customary practices.

(5) Equality Before the Law. Recognition that Aboriginal and Torres Strait Islander Queenslanders have the same right to equality before the law as all other Queenslanders.

(6) Improved Coordination. Acknowledgment of the need for better coordination within Government and between Government and community organisations in the development and delivery of Aboriginal and Torres Strait Islander justice policies, programs and services.

(7) Empowerment and Self- Determination. Recognition that justice policies, programs and services should promote empowerment and self-determination for Aboriginal and Torres Strait Islander peoples.

(8) Underlying Issues. Acknowledgment that the underlying social, cultural and economic issues must be addressed in order to achieve a long-term reduction in Aboriginal and Torres Strait Islander over-representation in the criminal justice system.

(9) Royal Commission. Continued commitment to implementing the recommendations of the Royal Commission of Inquiry into Aboriginal Deaths in Custody and the Aboriginal and Torres Strait Islander Women's Task Force on Violence.

In relation to evaluating the implementation and outcomes of the Justice Agreement thus far, it is important to acknowledge that the original Agreement was clear in the principles it prioritised as underpinning the Agreement. It is reasonable to expect that the principles will underpin government initiatives flowing from the Agreement, and will continue to inform policy development while the Agreement is in place.

The Justice Agreement identifies four reasons for over-representation, as follows:

(1) Underlying Issues. Living conditions in Aboriginal and Torres Strait Islander communities often contribute to crime – conditions such as poor health, poor housing and infrastructure, lack of economic development, limited employment and educational opportunities, institutionalised racism and poverty.

(2) Lack of Support. Individuals, whether in the community or in dealings with the criminal justice system, often fail to receive the support they need to function effectively.

(3) Cultural Differences. The criminal justice system is not fully in tune with Aboriginal and Torres Strait Islander cultures or the circumstances in which Aboriginal and Torres Strait Islander peoples live.

(4) Community Capacity. Aboriginal and Torres Strait Islander communities are not sufficiently empowered, organised or resourced to take responsibility for their own justice issues.

The identification of and discussion relating to Indigenous over-representation is the weakest part of the Justice Agreement. This is an important limitation of the Agreement given that the primary aim is to reduce Indigenous contact with the criminal justice system. The more precise we are with identifying the causes of over-representation, the more effective we can be with building strategies and programs to change the situation.

The Justice Agreement identifies five Broad Strategic Directions that derive from the identified causes of over-representation. They are as follows:

(1) Building Community Capacities. Strengthening communities by eliminating the conditions which lead to crime and cultivating positive attitudes in terms of respect for the law and socially acceptable behaviour.

(2) Building Individual Capacities. Strengthening individuals, especially those at risk and those who have already come into contact with the law, by providing them with the necessary support and helping them cope successfully with the demands of the criminal justice system.

(3) Building a More Culturally Sensitive Criminal Justice System. Increasing the relevance of the criminal justice system to Aboriginal and Torres Strait Islander peoples and changing laws and practices as necessary to make due acknowledgment of Aboriginal and Torres Strait Islander cultures, histories and life circumstances.

(4) Building a Stronger Role for Communities in Justice Administration. Increasing the capacities of communities, especially community organisations, to contribute to the criminal justice system in all its phases, from cautioning of first offenders through to post-release support for former detainees.

(5) Building Integrated and Coordinated Justice Related Services. Improving coordination between Government agencies involved in the administration of justice, individual community members and community organisations that play a role in support and service provision.

An important omission in the aims, the guiding principles, the identification of over-representation and the broad strategic directions for the Justice Agreement is the failure to acknowledge Indigenous people as victims of crime (although there is one reference to the Aboriginal and Torres Strait Islander Women's Task Force on Violence). The assumption is that Indigenous contact with the criminal justice system is as offenders, yet we know that Aboriginal and Torres Strait Islander people are over-represented in the justice system as both victims and offenders.

If the long term aim of the Justice Agreement were to be revised it might include specific reference to reducing Aboriginal and Torres Strait Islander contact with the criminal justice system as both offenders and victims of crime.

1.2.4 Supporting Outcomes

There are 20 specific outcomes and initiatives identified in the Justice Agreement. They can be summarised as follows:

- Effective early intervention for Indigenous young people at risk of criminal justice intervention.
- Availability and use of alternatives to court that are appropriate for Aboriginal and Torres Strait Islander offenders.
- Effective diversionary strategies.
- Understanding by Indigenous people of rights, legal procedures and forms of support.
- Effective legal assistance.
- Availability and use of community-based sentencing options that are appropriate for Indigenous people.
- Safety and security for Indigenous people in custody.
- Effective rehabilitation and community reintegration for Indigenous offenders.
- Increased employment of Indigenous people in justice-related agencies.
- Improved cultural awareness by all justice agency employees, including an understanding of Aboriginal and Torres Strait Islander cultures and histories.
- Effective communication between all people involved in Aboriginal and Torres Strait Islander criminal justice matters.
- Improved access to justice and just outcomes for Indigenous people.
- Criminal justice policies, procedures and practices that are appropriate for Aboriginal and Torres Strait Islander people.
- Increased participation by Aboriginal and Torres Strait Islander in the administration of justice including developing own solutions.
- Effective operation of Aboriginal and Torres Strait Islander criminal justice services in police, courts and corrections.
- Greater recognition of Aboriginal and Torres Strait Islander customary practices.
- Effective Indigenous community input into sentencing offenders.
- Informed decision-making on Indigenous criminal justice issues.
- Effective coordination and integration of policies, programs and services relating to Aboriginal and Torres Strait Islander people.
- A uniform data collection system to enable evaluation and monitoring of the outcomes of the Justice Agreement, and more informed decision-making in relation to Indigenous policies and programs.

The Justice Agreement is founded on the view that the over-representation of Indigenous people can be reduced through significant changes to the criminal justice system, and these changes are summarised in the twenty ‘supporting outcomes’. There is a need to prioritise and reconsider these supporting outcomes. While all can be justified on a range of grounds (such as access and equity, duty of care or effective policy development), some are more proximate than others to the task of reducing Indigenous over-representation.

1.3 HOW SUCCESS WILL BE MEASURED

The Justice Agreement directly discusses what can be seen as measures of success. It notes that the Justice Agreement will be considered a success if the rate of Aboriginal and Torres Strait Islander peoples put in prison or youth detention centres is halved by the year 2011.

The Justice Agreement refers to the 'broad outcome indicators' for success of the Agreement. This means by 2011 that there will have to be:

- A reduction in the number of Aboriginal and Torres Strait Islander adults in correctional facilities, and
- A reduction in the number of Aboriginal and Torres Strait Islander young people in youth detention centres.

The Justice Agreement also notes there are a number of other ways of measuring the success of the Agreement. Specifically these include:

- A reduction in the number of Aboriginal and Torres Strait Islander peoples being arrested;
- An increase in the number of Aboriginal and Torres Strait Islander peoples being formally cautioned, corresponding to a decrease in the number of Aboriginal and Torres Strait Islander people coming into contact with other aspects of the criminal justice system;
- A decrease in the number of Aboriginal and Torres Strait Islander peoples coming before courts;
- A reduction in the number of Aboriginal and Torres Strait Islander peoples receiving custodial sentences;
- An increase in the proportion of Aboriginal and Torres Strait Islander peoples receiving community corrections orders corresponding to a decrease in the number of Aboriginal and Torres Strait Islander people in adult custodial corrections and youth detention centres.

The Justice Agreement noted that at the time of the Agreement the Government did not have all the necessary statistics to provide data on the above measures. However, strategies for better data collection and a uniform data system were to be put in place so that the success of the Justice Agreement could be measured.

As part of the measures for considering the context of the Justice Agreement there is also a need to include socio-demographic data covering such matters as health, housing, education, income, employment, etc. The Justice Agreement acknowledges the importance of the 'underlying issues' in affecting Indigenous contact with the criminal justice system. Although the Justice Agreement does not seek to directly change the 'underlying issues', changes in the socio-demographic profile of Indigenous people are likely to impact on the ability of the Justice Agreement to fulfil its own aims and objectives.

The Justice Agreement provided for the development of an Action Plan to implement the Agreement and for the annual review of the Action Plan. The Justice Agreement also provided for an independent evaluation to be conducted every three years and for the independent report to be tabled in the Queensland Parliament.

1.4 METHODOLOGY

The evaluation presented in this report is the first independent evaluation of the Justice Agreement. The evaluation is designed to meet strategic requirements which provide for:

- An assessment of the effectiveness of the Agreement in meeting its reduced incarceration goals (what has been achieved in the four years 2001-2004?).
- An assessment of government agencies in meeting their commitments to the Justice Plan (what has been the impact of government actions?).
- The identification of positive initiatives (best practice) and blockages or shortcomings which need to be addressed (what has had the most effect?).
- The identification of additional or alternative strategies that will assist in meeting the outcomes of the Justice Agreement.

> The evaluation process has used both quantitative and qualitative methods. It has included approaches common to research in the area of criminal justice administration: outcome oriented assessment, process evaluation and stakeholder or participatory evaluation. The research methodology included interviews with key stakeholders (both government and community) to assess process evaluation, and assessment and analysis of statistical or empirical data to evaluate the extent to which the objectives of the Justice Agreement have been met. A full list of all persons and organisations interviewed during the course of the evaluation can be found in Attachment 1. Interviews were conducted by both Indigenous and non-Indigenous researchers.

The evaluation of whether the agreement is meeting its broader aims (reduction in custody rates) and the twenty specific outcome areas, whether government agency commitments have been met, and the identification of most effective initiatives have been based on the following sources.

1.4.1 Criminal Justice Indicators

Criminal justice data was supplied by Departments of Police, Corrections, Justice and Attorney-General and Department of Communities. The provision of data was coordinated by DATSIP with assistance from Department of Premier and Cabinet. Base line data for the research included arrest, summons, cautioning, conferences, sentencing outcomes, juvenile and adult imprisonment.

Some of the data requested for the evaluation was unavailable. This included bail status of Indigenous and non-Indigenous court appearances, and whether Indigenous and non-Indigenous defendants were legally represented at time of finalisation of their

matter. Specific data on Murri Courts and Justice of the Peace Magistrates Court could not be distinguished from magistrates court data set.

Generally there is a lack of time series data which identifies Indigenous people except for that generated by the Department of Corrective Services and the Department of Communities. Data is now available for 2004 which shows arrests, victims and court appearances by Indigenous status (Criminal Justice Research 2004). This is presented in the evaluation and can be used as a benchmark for future comparisons.

1.4.2 A Range of Social, Economic, Health, Land and Environment and Other Indicators

Data relevant to the 'underlying issues' was made available from the Office of Economic and Statistical Research and the ABS, and includes such matters as employment, income, housing, health and educational indicators. Data collection was coordinated through DATSIP.

1.4.3 The Broader Government Policy Framework

A large amount of policy documentation was analysed. The criterion for inclusion of documentation was whether it was either directly or indirectly related to the achievement of the identified outcomes of the Justice Agreement. Documentation included the following:

(i) Indigenous-specific policy development: the Ten Year Partnership, the Cape York Justice Study, the government's *Meeting Challenges, Making Choices* strategy, the development of Alcohol Management Plans, Cape York Partnerships and other policy initiatives arising from the Ten Year Partnership and subsequent agreements and plans (such as, Safe and Strong Families, Queensland Indigenous Economic Development Strategy, Looking After Country Together).

(ii) Justice Agreement Action Plans and Progress Reports.

(iii) Policy and program documentation provided by justice agencies for the evaluation.

(iv) Submissions for the evaluation prepared by DATSIP, DJAG, Department of Communities and Department of Corrective Services.

More generally, mainstream state and federal criminal justice and related policy developments such as changes in criminal justice law, policy and practice were considered in this evaluation where there was the possibility they have impacted on the relationship between Indigenous people and the criminal justice system.

1.4.4 Stakeholder Evaluation

Stakeholder evaluation included major Indigenous non-government and government organisations, relevant government departments, relevant statutory authorities, and relevant non-Indigenous non-government organisations. The full list of those included in interviews can be found in Attachment 1. Direct face-face consultation covered

Indigenous organisations and individuals in rural, remote and urban Indigenous communities.

In addition all Aboriginal councils, community justice groups and Aboriginal and Torres Strait Islander Legal Services were contacted by letter and phone.

1.4.5 Literature Review

An analysis of relevant research literature relating to Indigenous people and the criminal justice system was undertaken. The review considered best practice in other Australian jurisdictions relevant to the Justice Agreement in Queensland. There is a growing body of recent literature relevant to the Queensland Justice Agreement including:

- Analysis of Aboriginal courts outside of Queensland (eg Koorie and Nunga courts).
- Other Aboriginal Justice Plan initiatives outside of Queensland.
- Reports on night patrols in Indigenous communities around Australia.
- Discussion papers from Western Australia and Northern Territory Law Reform Commission Inquiries into the recognition of customary law.

1.5 SOCIO-ECONOMIC AND DEMOGRAPHIC PICTURE

Originally it was planned that this evaluation would consider both the current picture of the socio-economic condition of Indigenous people in Queensland as well as any changes over the last four or five years. The assumption was that either positive or negative changes in health, education, housing, employment and income would be likely to either positively or negatively effect contact with the criminal justice system. In other words, changes in the 'underlying issues' affecting the position of Indigenous people in relation to mainstream society will impact on contact with the criminal justice system.

While a snapshot of the socio-economic position of Indigenous people can be provided, time series information which might indicate the direction of change has not been available. The problem with accessing reliable time-series data has been acknowledged by the Productivity Commission (Banks 2003).

Indigenous Profiles from the ABS 2001 Census were made available by the Office of Economic and Statistical Research (OESR). Other ABS data was also utilised. The particular regional profiles utilised in this evaluation was decided upon in consultation with DATSIP and Department of Premier and Cabinet who coordinated the data requests.

According to the 2001 Census, some 3.5% of all Queenslanders identified as Aboriginal and Torres Strait Islander. The estimated resident Indigenous population of Queensland was 126,035 people (ABS 2001). Of particular importance is the comparatively young age of the Indigenous population in Queensland compared to the rest of the Queensland population. For example:

- 40.1% of the Aboriginal and Torres Strait Islander population is under the age of 15 years compared to 20.6% of the non-Indigenous population.

- The median age is 16 years younger than the general population (20 compared to 36 years old).

- Only 2.7% are aged 65 years or over compared to the 12.3% in the non-Indigenous population (Indigenous Regional Profiles 2005).

The age structure of the Indigenous population has been recognised for some time as a 'time bomb' in its implications for both adult and juvenile corrections if the situation of over-representation is not resolved.

1.5.1 Income and Employment

Some 63.6% of Indigenous people in Queensland had no income or income of less than $400 per week compared to 49.9% of the total population.

The median weekly income for Indigenous people was $256 compared to $361 for the total population, that is almost 30% less per week.

Indigenous people in Queensland have an unemployment rate two and a half times that of the non-Indigenous population (20.9% compared to 7.0%). Indigenous people who are employed are more likely to be concentrated in the trades and labouring occupations (46.9% compared 30.7%) and much less likely to be in management and professional employment (21.1% compared to 36.8%).

Some 7.3% of Indigenous people in Queensland are employed on CDEP.

1.5.2 Education

Indigenous people were seven times less likely to have a postgraduate degree, three times less likely to have a graduate diploma, and four times less likely to have an undergraduate degree than non-Indigenous people. Indigenous people were also much less likely to have any other type of diploma or certificate than non-Indigenous people.

1.5.3 Family and Household

Twice the percentage of Indigenous people lived in a single parent family (30.3% compared to 15.6%).

Indigenous households where the dwelling was fully owned was less than one third the percentage of non-Indigenous households that were fully owned (11% compared 39.3%).

The percentage of households that were defined as overcrowded was four times higher among Indigenous households compared to non-Indigenous households (24.5% compared to 6.0%).

1.5.4 Regional Variations

There are variations across the State in terms of basic socio-economic indicators such as low income, unemployment and overcrowded housing. These are shown in Table 1.1, and in Figures 1.1 to 1.4.

Table 1.1 Selected Socio-Economic Indicators by Statistical Division and Indigenous Status. Queensland

	Brisbane-Moreton		Northern		North West		Far North		Balance of Queensland		Queensland Total	
	I	NI	I	NI	I	NI	I	NI	I	NI	I	NI
	%	%	%	%	%	%	%	%	%	%	%	%
Population under 15 years												
	40.3	20.1	40.2	21.1	38.1	19.8	37.9	19.9	42.6	21.7	40.1	20.6
Population with no income or less than $400pw												
	58.2	49.0	64.9	47.9	68.4	41.6	66.7	48.1	65.0	54.1	63.6	49.9
Unemployed												
	21.7	8.2	26.7	7.3	13.9	3.8	14.9	6.8	23.3	7.8	20.9	7.0
On CDEP												
	0.3		1.9		18.7		17.8		3.3		7.3	
Households Defined as Overcrowded												
	16.6	5.5	29.8	6.9	38.2	9.5	33.4	6.9	22.7	7.0	24.5	6.0

Source: Indigenous Profiles ABS Census of Population 2001.
Notes: I=Indigenous, NI=non-Indigenous. CDEP is not relevant to non-Indigenous persons. The income measure compares Indigenous and total population (rather than non-Indigenous).

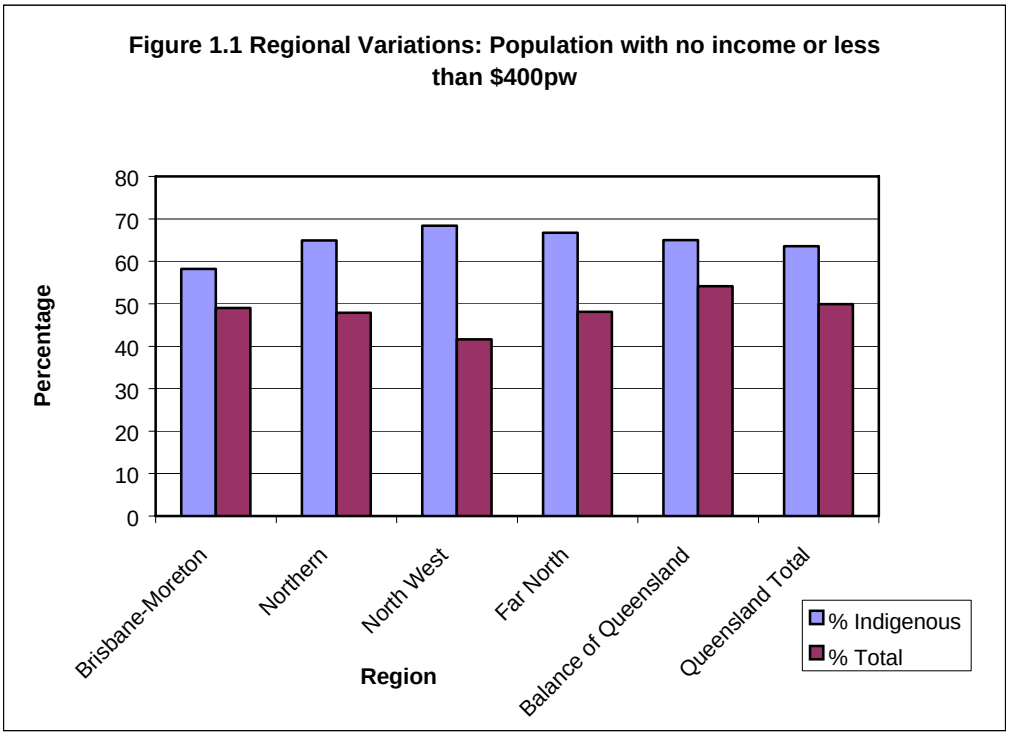


Figure 1.2 Regional Variations: Adult population unemployed

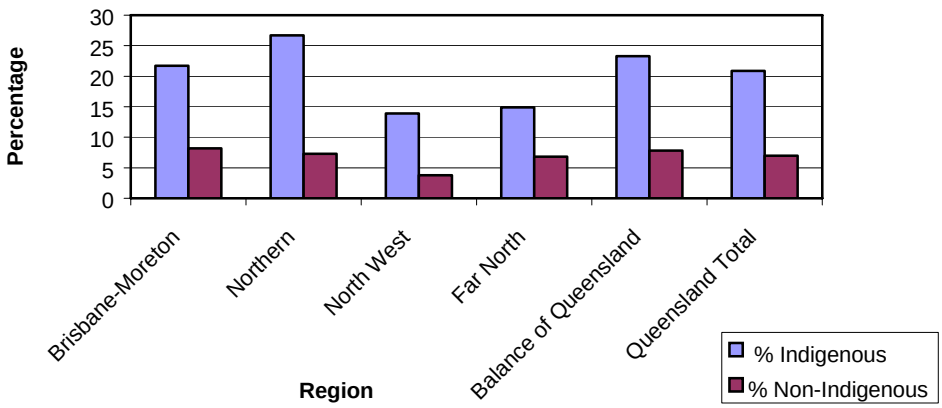


Figure 1.3 Regional Variations: Indigenous People Employed on CDEP

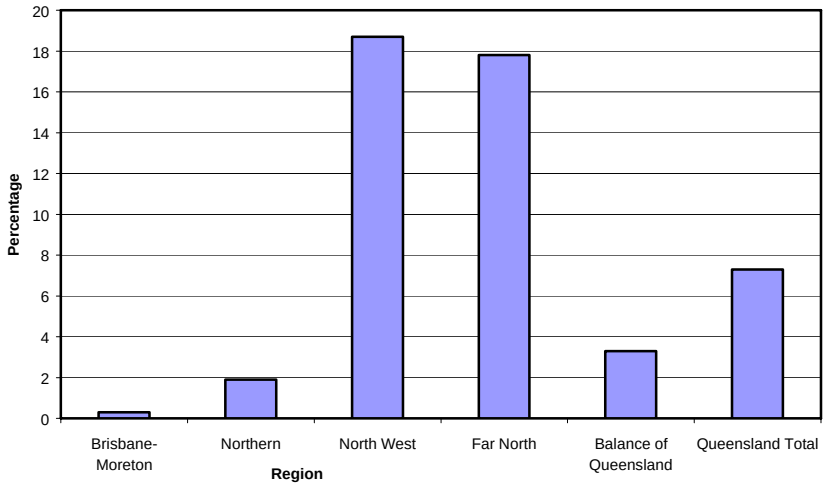
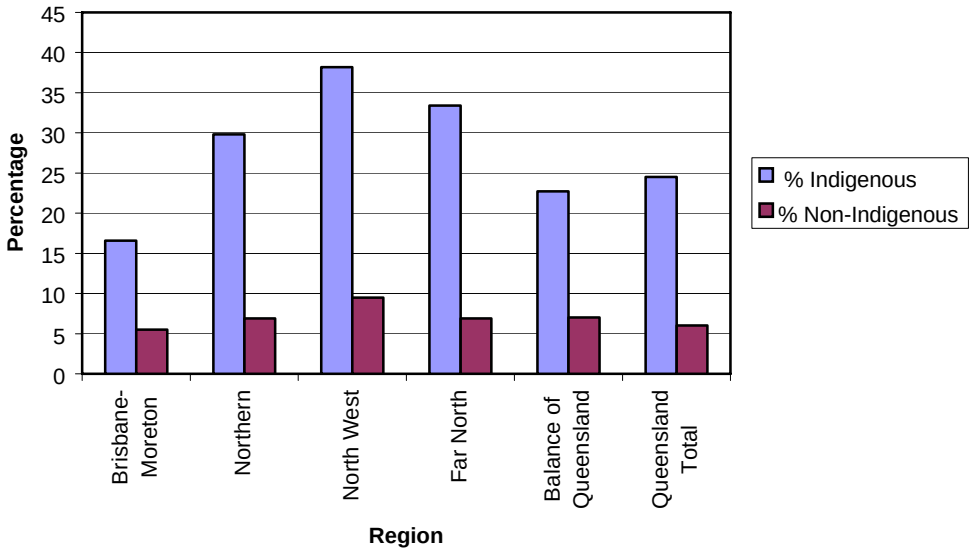


Figure 1.4 Regional Variations: Percentage of households defined as overcrowded



There is little variation in the age structure of the Indigenous population, although there are slightly lower proportions of the under-15 age group in the northwest and far north areas of the state.

Income levels for Indigenous people are lower in the northern, far north and northwest divisions than the Indigenous average across the State. The unemployment rate also varies across the State with lower unemployment in the north west and far north. This appears to be directly related to the significantly higher proportion of Indigenous people working on CDEP than in the rest of the State.

Lower unemployment and higher participation in CDEP does not appear to positively impact on income for Indigenous people. The northwest region has the lowest percentage unemployed, the highest percentage of people in CDEP, but also the greatest proportion of people on low incomes. It also has the worst measure of housing overcrowding.

1.6 HEALTH

1.6.1 Comparisons

Queensland Health (2004) has provided an analysis of the health of Indigenous people and noted that by almost any measure, Indigenous health is poorer than that of non-Indigenous people in Queensland. In particular the report notes that:

- In Queensland for the period 1999-2001 half of non-Indigenous deaths occurred over the age of 78 years, while half of the Indigenous deaths occurred in people aged 54 and younger.

- Chronic disease hospitalisations occur earlier in Indigenous Queenslanders than in non- Indigenous Queenslanders.
- Indigenous status and level of socioeconomic disadvantage, and to a lesser extent rural or remote location have a major impact on health (Queensland Health 2004:1).

The report draws the distinction between health outcomes for rural and remote Aboriginal people, Torres Strait Islander people in remote areas and Indigenous people in urban areas. The health outcomes for rural and remote Aboriginal people relative to the non-Indigenous population of Queensland were:

- Higher death and hospitalisation rates due to all causes, with higher death and/or hospitalisation rates specifically due to:
  – Injuries, especially those due to interpersonal violence, particularly in women
  – Diabetes
  – Respiratory disease
  – Lung cancer
  – Cervical cancer
  – Coronary heart disease
  – Suicide and self-harm.
- Higher hospitalisation rates due to infectious and parasitic diseases.
- Higher fertility and infant death rates.
- More people suffering from, and being hospitalised for sexually transmissible infections (Queensland Health 2004:1).

The health outcomes for remote Torres Strait Islanders relative to the non-Indigenous population of Queensland, Torres Strait Islanders were:

- Higher death and hospitalisation rates due to all causes, with higher death and/or hospitalisation rates specifically due to:
  – Diabetes
  – Coronary heart disease
  – Respiratory disease and
  – Lung cancer.
- Higher hospitalisation rates due to infectious and parasitic diseases.
- Higher fertility and infant death rates.
- More people suffering from, and being hospitalised for sexually transmissible infections (Queensland Health 2004:2).

The report notes that there is little data that defines the health of urban Indigenous peoples. However, urban Indigenous peoples have:

- The same basic demography as remote Indigenous peoples, suggesting that fertility and death rate patterns are the same.
- Higher rates of neonatal death (ie in the first 28 days of life) than in non-Indigenous peoples (Queensland Health 2004:2).

Overall, relative to the non-Indigenous population, Indigenous Queenslanders have:

- Higher prevalence of obesity, dyslipidaemia and hypertension.
- High prevalence of tobacco smoking, and risky alcohol consumption.
- Inflated costs of healthy food, contributing to low consumption of fruit and vegetables.
- Higher prevalence of sedentariness.

1.6.2 Broader Determinants

An important part of the Queensland Health report is to place health issues within broader determinants including environmental factors, socio-economic factors, community capacity and health behaviours. In relation to environmental factors, the report notes the data on overcrowded housing cited above, but also the following:

- Forty percent of permanent dwellings managed by Indigenous Housing Organisations required major repairs or replacement.
- The cost of healthy food in the very remote areas of Queensland was 27% higher than in the highly accessible parts of Queensland. This is especially salient, given that employment levels and income in very remote Queensland are low (Queensland Health 2004:2).

In relation to socioeconomic factors the report notes the previously cited data on unemployment, income and CDEP. However it also notes that:

- Forty-three percent of Indigenous peoples are living in areas designated as the most disadvantaged 20% of Queensland.
- Indigenous Queenslanders also have low access to computers and the Internet, meaning that many are denied the benefits of the information revolution (Queensland Health 2004:2).

In relation to community capacity the report notes that:

- Many Indigenous Queenslanders live in the remotest parts of Queensland.
- Most remote Indigenous Queenslanders have access to public broadcasts.
- Access to public telephones is poor.
- Half of the Indigenous communities with a population of 50 or more were located more than 50km from a hospital or from a school that was capable of educating to a year 10 level (Queensland Health 2004:2).

The report concludes that evidence-based strategies to address the determinants of health have the potential to reduce the burden of ill health and premature death in the lives of all Queenslanders, particularly those who are most disadvantaged.

The evidence relating to the comparative poor health of Indigenous people is clear. Importantly ill health has been placed in a broader context. Many of the ‘broader determinants’ of ill health are also associated with some types of crime, including poverty, unemployment, overcrowding and lack of access to facilities.

1.7 COMMENT ON THE UNDERLYING CAUSES OF OFFENDING AND VICTIMISATION

It is not the purpose of this evaluation to explain Indigenous over-representation. However it important to make some comments in this area, particularly given that it was not widely discussed in the Justice Agreement.

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

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

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

- Offending patterns (especially over-representation in offences likely to lead to imprisonment such as homicide, serious assaults, sexual assaults and property offences).
- The impact of policing (in particular the adverse use of police discretion, issues around police bail, and the availability and use of alternatives to arrest and of other diversionary options).
- Legislation (especially the impact of laws giving rise to indirect discrimination such as legislation governing public places or alcohol).
- Factors in judicial decision-making (in particular bail conditions, the weight given to prior record, the availability of non-custodial options).
- Environmental and locational factors (especially the social and economic effects of living in small rural and remote communities).
- Cultural difference (such as different child-rearing practices, the use of Aboriginal English, vulnerability during police interrogation).
- Socio-economic factors (in particular high levels of unemployment, poverty, lower educational attainment, poor housing, poor health).
- Marginalisation (in particular drug, alcohol and other substance abuse, alienation from family and community).
- The impact of specific colonial policies (especially the forced removal of Indigenous children).

It is beyond the scope of this report to review in detail the evidence in all of the areas referred to above. However, some recent research is relevant. Hunter (2001) has identified removal from family, alcohol and substance abuse, unemployment and low educational attainment as key issues distinguishing Indigenous arrests. Memmot (2001) has also stressed the role of alcohol in understanding violence in Indigenous communities, but emphasises the need to consider broader and varied causes. According to Hunter (2001), alcohol consumption is one of the largest single factors underlying overall Indigenous arrest rates.

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

There needs to be further specific research on the offences for which Indigenous people are commonly imprisoned. This needs to consider both data deriving from census counts, as well as admissions data.

1.7.1 The Impact of the Stolen Generations

The Stolen Generations Inquiry (NISATSIC 1997, in particular Chapter 11) examined the effects of forced removals and found that the policy lead to the destabilisation and/or destruction of kinship networks and the destabilisation of protective and caring mechanisms within Indigenous culture. It also led to or contributed to:

- The social and legal construction of Indigenous child-rearing as socially incompetent and Indigenous culture as worthless.
- The economic and sexual exploitation of Indigenous children.
- A culture of scepticism and resistance within Indigenous communities to welfare and criminal justice authorities.
- The generation of higher levels of mental illness, psychiatric disorders and alcohol and substance abuse among those removed.
- The creation of a new generation of Indigenous adults ill-equipped for parenting.

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

The effects of this policy continue to reverberate through the Indigenous community. Recent research has shown that at least 52% of Indigenous women interviewed in New South Wales prisons said they had come from a family affected by the stolen generation and a further 27% were not sure (Lawrie 2002:43). Some 70% of Indigenous women in prison revealed they had been victims of child abuse, and at least 70% were sexually assaulted as children. A further 14% said they were incest survivors (Lawrie 2002:39). The interviews also revealed a relationship between child

sexual assault, unresolved trauma and adult drug abuse – in particular heroin. Drug use was also directly linked to offending behaviour (Lawrie 2002:40).

Indigenous children and young people experience higher rates of abuse and neglect than non-Indigenous children (SCROGSP 2005a:3.60), although this finding also needs clarification because of identification and definitional issues (NISATSIC 1997). In 2003-04 the rate of children aged 0-16 for substantiated child protection notifications was 13.6 for non-Indigenous children and 20.8 for Indigenous children (SCROGSP 2005a:Table 3A.9.1).

There needs to be specific programs for Indigenous offenders that address the long-term trauma of child removal and child abuse.

1.7.2 Unemployment and Poverty

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

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

It is also necessary to consider the interlinking of childhood neglect, poverty and offending. Although not specifically analysing Indigenous families, research by Weatherburn and Lind (1998) found that there was a strong relationship between poverty, childhood neglect and involvement in juvenile offending. According to the researchers the most effective way of 'reducing the supply of motivated offenders' is to reduce the level of economic stress, prevent geographic concentration of poverty, and introduce family and child support programs to assist the parenting process (Weatherburn and Lind 1998:5-6).

Recent data shows that Indigenous children in Queensland are over-represented among children on care and protection orders by a factor of 4.5 (SCROGSP 2005a:Table 9A.1.1), and, as indicated previously, have higher rates than non-Indigenous children of substantiated child protection notifications.

Successful labour market programs, and family support programs are likely to have long term effects on reducing Indigenous involvement in the criminal justice system.

2. THE CHANGING POLICY FRAMEWORK FOR THE JUSTICE AGREEMENT

2.1 INTRODUCTION

In the previous section we indicated that the Justice Agreement grew out of a national commitment to reduce Indigenous over-representation in the criminal justice system. However, the Justice Agreement was also developed and signed in the Queensland-specific context of the *Towards a Queensland Government and Aboriginal and Torres Strait Islander Ten Year Partnership* (the Ten Year Partnership). The Ten Year Partnership was developed in 2000. It foreshadowed a series of state level agreements with the Indigenous community, the first of which was the Justice Agreement.

As the DATSIP (2005:3) submission states, 'a number of other agreements were envisaged, which were to focus on family and community violence, economic development and land and sea, cultural heritage and natural resource management'.

Thus the Justice Agreement positioned itself within a broader framework of state government policy. In particular, the Justice Agreement acknowledged that its Aims and Outcomes would only be met by addressing social, economic and cultural issues. Therefore there is an identified need for a holistic approach through seven key areas:

- Reduction in family violence.
- Enhanced understanding and mutual respect between Indigenous and non-Indigenous Queenslanders (Reconciliation).
- Improved economic development and employment outcomes.
- Improved Community governance.
- Higher standard of flexible service delivery.
- Equal access and outcomes from human services.
- Increased levels of involvement in decision-making etc over land, marine and aquatic environments.

It is also worth remembering that the national summits held in 1997 also identified the need to address the 'underlying issues' of over-representation, if Indigenous contact with the criminal justice system was to be effectively reduced. The Royal Commission into Aboriginal Deaths in Custody made a similar point in 1991.[4]

The draft Agreements and Action Plans have been or were being developed in relation to Reconciliation, Family Violence, Economic Development and Land, Heritage and Natural Resources as part of the Ten Year Partnership. It is important to reaffirm the point made by the Justice Agreement that only limited positive effects can be made in relation to Indigenous over-representation in the criminal justice system without coordinated efforts in others areas of social and economic policy.

[4] For a summary of both the Royal Commission into Aboriginal Deaths in Custody and 1997 Summit outcomes see Cunneen (2001).

2.2 ATSIAB AND IMPLEMENTATION OF THE JUSTICE AGREEMENT

The Justice Agreement stated that a number of bodies would coordinate to implement the Justice Agreement. These bodies were to operate at three levels:

- A central planning body called the Queensland Aboriginal and Torres Strait Islander Justice Negotiation Group
- Regional community negotiation structures, and
- Local community negotiation structures.

2.2.1 The Aboriginal and Torres Strait Islander Justice Negotiation Group

The Aboriginal and Torres Strait Islander Justice Negotiation Group was to contain three members of ATSIAB (including the Chair or Deputy Chair and a Torres Strait Islander member) and two senior representatives from each of the following Queensland Government agencies (as they were at the time):

- Department of Aboriginal and Torres Strait Islander Policy and Development
- Department of the Premier and Cabinet
- Department of Justice and Attorney-General
- Queensland Police Service
- Department of Corrective Services, and
- Families, Youth and Community Care Queensland.

Where appropriate, the Government agencies were to have an Aboriginal or Torres Strait Islander representative. The Justice Negotiation Group was to coordinate, monitor and review implementation of the Agreement; plan the allocation of resources, and link up with other groups in the [then] Ten Year Partnership. The Justice Negotiation Group was to report every quarter to the Steering Committee of the Ten Year Partnership and provide ongoing advice to Government on Aboriginal and Torres Strait Islander justice issues.

2.2.2 Regional Community Negotiation Structures

Regional community structures were to be established to provide for regional input into the implementation of the Justice Agreement, including the annual review of the Action Plan. These regional structures might include regional community forums. Regional issues and priorities were to be identified through these bodies and referred to the Justice Negotiation Group for consideration and action.

2.2.3 Local Community Negotiation Structures

Under the Justice Agreement, local structures were to be established to provide for community input at the grassroots level. These structures were to include community justice groups and/or other community organisations with established local networks. Their role was to identify local justice issues and priorities and to pass them on to the Justice Negotiation Group for consideration and action at the central level.

According to the Justice Agreement, the local and regional structures were not to be set up until Aboriginal and Torres Strait Islander peoples at both levels have determined what arrangements might best meet community needs.

2.3 THE DEMISE OF ATSIAB AND THE CEO COMMITTEE

In June 2003 the majority of ATSIAB members resigned. The government declined to re-appoint members to the Board which effectively led to its abolition.

Arising from the Partnerships Queensland process (see below) in July 2004, the Premier advised of arrangements for new CEO committees and sub-committees, including a CEO Law and Justice Committee and CEO sub-committee to oversee the implementation of the Justice Agreement.

The Justice Negotiation Group established under the Justice Agreement has become the Senior Officers' Group (SOG) supporting the CEO sub-committee. The following agencies are represented on the sub-committee and Senior Officers Group:

- Department of Justice and Attorney-General (Chair).
- Department of Aboriginal and Torres Strait Islander Policy.
- Department of Communities and Disability Services Queensland.
- Department of Corrective Services.
- Queensland Police Service.
- Department of the Premier and Cabinet.
- Queensland Treasury.
- Department of Child Safety.

The Terms of Reference for the CEO sub-committee are:

- to report on whether the initiatives described in the Justice Agreement annual action plans are enabling the government to meet its goal of reducing the rate of Indigenous persons' incarceration by 50 per cent by 2011
- to investigate additional, alternative or existing strategies and implement those which will aid in achieving this outcome (DATSIP 2005:4).

During the course of consultations for the evaluation, Indigenous people in various positions (elders groups, government employees, CJGs members) expressed concern over the abolition of the Aboriginal and Torres Strait Islander Justice Advisory Council.

The disappearance of ATSIAB has a number of consequences in relation to the Justice Agreement.

- Firstly, there is no Indigenous input into the implementation and monitoring of the Agreement at a State level.
- Second, there is no statewide mechanism for the provision of Indigenous advice to government on matters relating to justice.
- Third, it is of concern that neither the SOG nor the CEO's subcommittee have Indigenous representation.

Further, there is no established process for representation of Indigenous input into justice policy development or review. The abolition of ATSIC has added to the vacuum of Indigenous representation. At present the processes for engaging Indigenous communities is essentially ad hoc and government driven.

2.4 MEETING CHALLENGES, MAKING CHOICES

Following Justice Tony Fitzgerald's Cape York Justice Study in 2001, the government responded with the *Making Choices, Meeting Challenges* (MCMC) strategy in 2002. The response provided a range of recommendations and frameworks for action to address the alcohol and violence issues focussing primarily on Cape York Aboriginal communities, and other Aboriginal DOGIT communities. The three key mechanisms for progressing initiatives under MCMC are negotiation tables, government champions and the Cape York Strategy Unit.

According to the DATSIP submission (2005:17), following a review of the implementation of MCMC in July 2004, a revised MCMC implementation plan was endorsed. The domain areas of the revised plan under which strategic priorities are identified are:

- Alcohol intervention
- Governance
- Crime and justice
- Children, young people and families
- Health
- Education and training
- Economic development
- Land and sustainable natural resource management, and
- Housing.

Clearly, there is an overlap between several of these strategic priority areas and the Justice Agreement. The DATSIP submission makes no mention of how this overlap has been dealt with.

2.4.1 Negotiation Tables

According to the DATSIP submission (2005:17), negotiation tables are the key mechanism instituted by the Queensland Government for community engagement. Depending on circumstances, negotiation tables may be locally or regionally oriented.

They are seen by government as a process whereby 'Aboriginal and Torres Strait Islander community representatives can directly influence government decision-making. Negotiation tables also promote diversity, flexibility and equality of opportunity for communities.' An outcome from a negotiation table is a community action plan, which is an agreement between the community and government on cooperatively tackling the dominant issues affecting the quality of life of residents. Community action plans may include justice issues, as for example they have in Cherbourg.

Negotiation tables are operating in the following communities: Aurukun, Bamaga, Cherbourg, Coen, Doomadgee, Hope Vale, Injinoo, Kowanyama, Laura, Lockhart River, Mapoon, Mornington Island, Mossman Gorge, Napranum, New Mapoon, Palm Island, Pormpuraaw, Seisia, Umagico, Woorabinda, Wujal Wujal and Yarrabah.

Negotiation Tables have not focussed primarily on justice issues. However, the community actions plans arising from the Tables may include justice issues. The current Negotiation Table for the Torres Strait is an exception in that justice issues are the core concern of the Table. It has had a slow development over a number of years, and is still at the 'pre-negotiation' stage. A local Justice Agreement is being developed in Aurukun.

Under Partnerships Queensland (see below), the negotiation table process will be formalised and extended.

2.4.2 Government Champions

Under the government champions program, directors-general or CEOs of government agencies are each allocated a specific mainland Indigenous community. (None have been allocated to the Torres Strait.) The role of the government champion is to facilitate negotiation table processes and action planning for their assigned community, to deliver community-specific services.

Currently, CEO government champions exist in nearly all Aboriginal DOGIT communities and Aurukun and Mornington Shire Councils, as well as a small number of non-DOGIT Cape communities (Mossman, Laura and Coen). Although negotiation tables will be extended under Partnerships Queensland, no additional CEO government champions will be assigned to Indigenous communities (DATSIP 2005:19).

2.5 PARTNERSHIPS QUEENSLAND

In November 2004 the Queensland government endorsed *Partnerships Queensland: Future Directions Framework for Aboriginal and Torres Strait Islander Policy in Queensland* (PQ) as the whole of government initiative for improving outcomes for Indigenous people. PQ provides a framework that integrates and consolidates various policies including the *Ten Year Partnership* and *Meeting Challenges, Making Choices*.

According to the DATSIP submission (DATSIP 2005:6), PQ does not diminish the work previously undertaken to determine action required to address Aboriginal and Torres Strait Islander disadvantage, such as family violence and problems arising from addiction to alcohol and other substances. It provides a more effective way of reporting outcomes on issues previously identified and now grouped under Partnerships Queensland's four key goals:

- Strong families, strong cultures.
- Safe places.
- Healthy living.
- Skilled and prosperous people and communities.

Partnerships Queensland will be implemented throughout the whole of government response plans. Those response plans will be reflected in relevant government agency strategic and operational planning processes and integrated into community action plans through local level negotiation tables.

Partnerships Queensland's goals are integrated with the principles espoused in the Council of Australian Governments' (COAG) *National Framework of Principles for Government Service Delivery to Indigenous Australians*. Thus PQ is meant to respond to national policy changes and provide a systematic, cooperative and coordinated approach to enable the inclusion of future Australian Government initiatives (DATSIP 2005:6). Performance measures, including those for the Justice Agreement, are meant to be brought within the PQ framework and to correspond to the COAG National framework and the indicator framework set by the Steering Committee for the Review of Government Service Provision of the Productivity Commission in *Overcoming Indigenous Disadvantage – Key Indicators 2003* (SCROGSP 2003, 2005a).

In June 2004, COAG agreed to the *National Framework of Principles for Government Service Delivery to Indigenous Australians*. This framework provides the principles for operational approaches to addressing the disadvantages highlighted in the Productivity Commission report. These principles are:

- **Sharing responsibilities**
- Harnessing the mainstream
- Streamlining service delivery
- Establishing transparency and accountability
- Developing a learning framework
- Focussing on priority areas.

2.5.1 What Does PQ Do?

The DATSIP submission (2005:11) outlines the change to be effected by PQ:

> In the immediate past, the Queensland Government developed a range of policy initiatives focussing on Aboriginal and Torres Strait Islander peoples. These initiatives varied in nature and scope, being developed with a focus on particular issues, or specific geographic areas. This resulted in some confusion

in the public, community and government sectors as to the interrelationship of these initiatives and precedence to be accorded to each.

Partnerships Queensland is to provide an integrated strategic policy framework that establishes a set of goals and strategies to address issues affecting Aboriginal and Torres Strait Islander peoples across Queensland. It proposes to ensure a whole-of-government approach to the provision of services to Aboriginal and Torres Strait Islander communities.

In summary the PQ policy framework:

- Recognises that social and economic advancement in Indigenous communities requires both a whole-of-government effort and partnerships between community, business and public sectors
- Aims to enhance coordination and cooperation between all levels of government, and with Aboriginal and Torres Strait Islander communities throughout Queensland, and provide direction for devolution of decision-making and service delivery to the local level
- Reaffirms the critical and emerging role of DATSIP as a whole-of-government policy coordinator and broker of Aboriginal and Torres Strait Islander community engagement in Queensland (DATSIP 2005:10).

It is expected that outcomes, response plans and deliverables support the performance framework for Partnerships Queensland. Outcomes are linked to goal areas by a series of 'priority action areas'. According to the DATSIP submission (2005:11), it is intended that there be a number of priority action areas:

- Healthy outcomes for babies (relating to the 0 – 12 months group)
- Optimal development in childhood (relating to the 13 months – 6 age group)
- Successful childhood (relating to the 7 to 14 age group)
- Transition to adulthood (relating to the 15 to 24 age group)
- Healthy, prosperous and safe adulthood
- Economic security and employment participation
- Cultural strength.

The priority action areas align to the strategic areas for action identified in the *Overcoming Indigenous Disadvantage* report.

Of the priority action areas there are three which directly relate to criminal justice matters: *Successful childhood, Transition to adulthood,* and *Healthy, prosperous and safe adulthood*. However it should also be noted that other priority action areas are also likely to directly impact on the relationship between Indigenous people and the criminal justice system. For example, a reduction in child abuse and neglect is likely to lead to a long term lowering of juvenile and adult contact with the criminal justice system. Similarly improvements in employment and economic security are likely to lead to less contact with the criminal justice system.

Response plans will be developed to include whole-of-government actions for each priority action area. The response plans will be developed at both statewide and local levels.

According to DATSIP (2005: 12):

> It is intended that community engagement in the development of response plans occur through negotiation table processes. Further opportunities for engagement in these processes will be provided at the central level through a series of Partnerships Queensland Ministerial Round Tables, hosted by the Minister for Aboriginal and Torres Strait Islander Policy for invited participants. Those round tables will be comprised of experts and parties interested in forging partnerships between government, industry and non-government sectors. They will initiate high-level discussion of social, economic, justice and health issues. The focus of the round tables will be on initiatives relating to a Partnerships Queensland goal area with a specific focus.

From the consultations undertaken for this evaluation, a significant difficulty will be in engaging Indigenous communities at a local level. A second difficulty will be the lack of any regional or statewide Indigenous body with which to negotiate. Relying on a process of 'invited participants' may well increase disharmony in communities.

2.6 OTHER TEN YEAR PARTNERSHIP INITIATIVES

As noted earlier in this chapter, the Justice Agreement was originally contextualised within the Ten Year Partnership framework. Other draft agreements have been developed in the areas family violence, economic development and land, cultural heritage and natural resources. They are now incorporated, or are being incorporated, into the PQ process.

2.6.1 Family Violence

The Queensland Government endorsed the draft *Family Violence Agreement: Safe and Strong Families*. A proposal for a partnership agreement to reduce violence in Aboriginal and Torres Strait Islander communities was released for public consultation in October 2002. Statewide consultation was conducted from September to November 2003.

According to the DATSIP (2005:32) submission, following the Queensland Government endorsement of the release for consultation of Partnerships Queensland, the draft agreement is to be finalised as an action plan. DATSIP, the Department of Communities, and the Office for Women (in consultation with the Premier) are jointly developing an approach to reduce family violence, particularly against women and children, in Aboriginal and Torres Strait Islander communities.

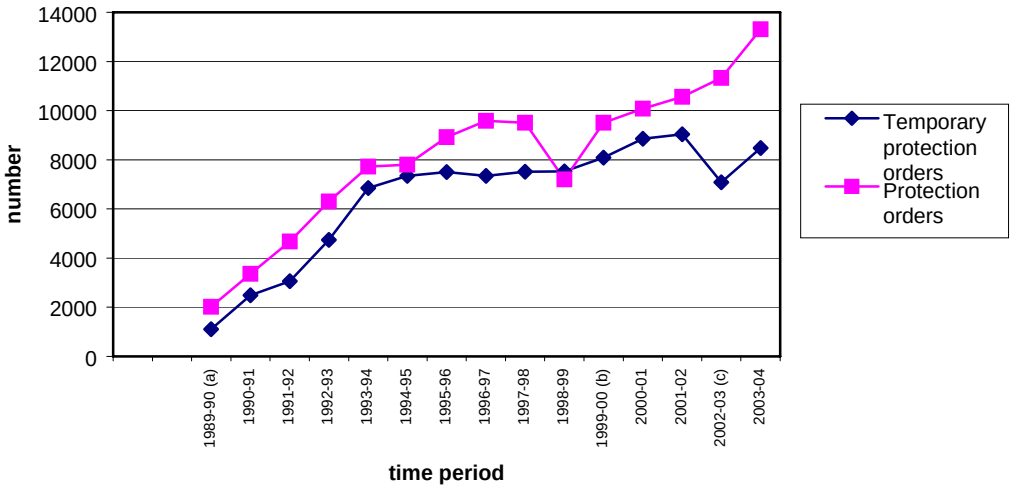
Table 2.1 and Figure 2.1 show the longer term increase in domestic and family violence protection orders in Queensland over the last 15 years. We do not know how this increase is related to Indigenous people seeking protection.

Table 2.1 Domestic and Family Violence Orders. Queensland. 1989-90 to 2003-04

Period	Temporary Protection Order	Protection Order
	No	No
1989-90 (a)	1,107	2,017
1990-91	2,486	3,356
1991-92	3,066	4,670
1992-93	4,735	6,306
1993-94	6,852	7,724
1994-95	7,341	7,804
1995-96	7,505	8,924
1996-97	7,340	9,585
1997-98	7,518	9,512
1998-99	7,532	7,196
1999-00 (b)	8,084	9,513
2000-01	8,851	10,075
2001-02	9,032	10,563
2002-03 (c)	7,080	11,336
2003-04	8,479	13,316

(a) From commencement date of the *Domestic Violence (Family Protection) Act 1989*.
(b) From July 1999 data are not comparable with those from previous periods due to changes in reporting arrangements.
(c) From commencement date of amendments to the *Domestic and Family Violence Protection Act 1989* that occurred on 10 March 2003.
Source: Queensland Government, Department of Communities, 20 May 2005. <http://www.communities.qld.gov.au/department/ig/quarterly/q3/comsup/documents/excel/dv_2_dvo_to_qld_var_marq0405.xls>, accessed 10/8/05.

Figure 2.1 Domestic and family violence orders: Number and type of order, Queensland, 1989-90 to 2003-04



We know from data supplied by the Queensland Centre for Domestic and Family Violence Research that Indigenous people using domestic and family violence prevention and support services funded by the Department of Communities are more likely to be in need of crisis intervention (25.9%) compared to non-indigenous users of the service (18.1%). There is also a higher percentage of family violence (as opposed to spousal) matters recorded for Indigenous people compared to non-Indigenous people. [5]

It is important for future policy development that we know the comparative use of domestic and family violence orders by Indigenous people.

An issue raised in consultations undertaken by the Centre was that police were making applications for protection orders after being called to family fights (often involving drinking). It was noted that police can make an application for a protection order without the consent of the party, though in the past this has not often occurred. There was some suggestion that police routinely make applications in these cases because they must make an application if they find, on investigation, that DV has occurred and is likely to occur again.[6]

There is some data available on breaches of domestic violence protection orders by police for 2004. There is no historical data.

Table 2.2 Police Arrest Data 2004. Breach of Domestic Violence Orders

Adults	**Arrest**		**Warrant**		**Summons**		**Notice To Appear**		**Caution**		**Other**		**Total**	
	No	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
Indigenous	1456	62.2	4	0.2	2	0.1	787	33.6	3	0.1	88	3.8	2340	100
Non-Indigenous	2765	49.4	28	0.5	33	0.6	2258	40.4	0	0.0	510	9.1	5594	100

Source: QPS.
Note. Data excludes 1 person who had an outcome of community conferencing.

In 2004 police data indicated that there were 2340 Indigenous breaches of domestic violence orders proceeded against, compared to 5594 non-Indigenous breaches. Thus Indigenous adults comprised 29.5% of all people dealt with by police for breaches of domestic violence orders.

It is important to recognise that Indigenous people are more concentrated among those dealt with by way of arrest rather than any other less intrusive legal process. Some 62.2% of Indigenous breaches of domestic violence orders are dealt with by way of arrest compared to 49.4% of non-Indigenous breaches.

[5] Data supplied from the DFV database, 10 August 2005, Queensland Centre for Domestic and Family Violence Research, Mackay, Central Queensland University. Data period 1 October 2003 to 31 July 2005.
[6] Correspondence with the Queensland Centre for Domestic and Family Violence Research, 11 August 2005.

In addition to the data above there were 11 non-Indigenous juveniles and 27 Indigenous juveniles dealt with by police for breach of a domestic violence order in 2004. Twelve of the 27 Indigenous juveniles were dealt with by way of arrest.

2.7 CHILD PROTECTION CHANGES

Indigenous child protection safety issues in Queensland need to be contextualised within the recent Crime and Misconduct Commission (2004) report and the government response to that Report. The Department of Child *Safety's Blueprint Implementation Progress Report* outlines major achievements for the key project areas including Aboriginal and Torres Strait Islander issues.

2.7.1 SCAN system

According to DATSIP (2005) submission, the revised Suspected Child Abuse and Neglect (SCAN) system was launched on 15 February 2005. The SCAN system operates statewide at 20 sites in Queensland. DATSIP is a key agency in the Child Safety Directors Network as part of cross government work on child protection.

2.7.2 Indigenous child protection partnership

According to DATSIP (2005) submission the Queensland Aboriginal and Torres Strait Islander Child Protection partnership was established to respond to Indigenous child protection issues. The partnership is expected to enhance the capacity of the Indigenous community to support at risk children in the child protection system. The aim of the partnership is to ensure that the needs of the Aboriginal and Torres Strait Islander children, young people and families, in the child protection system are effectively addressed.

The Department of Child Safety has established an Indigenous Support and Development Branch located in Cairns. The establishment of the Branch arose out of 'A Blueprint for implementing the recommendations of the Crime and Misconduct Commission (2004) Report. The Branch provides leadership in relation to Indigenous child protection issues for the Department of Child Safety, including the development of Recognised Entities (agencies) which are community based Indigenous organisations providing culturally appropriate child protection services.

There is an expectation that there will be greater development of partnerships between community organisations and government departments in the child protection area. These partnerships will aim to increase government and community capacity to deliver culturally sensitive services to Indigenous communities.

Table 2.3 and Figure 2.2 show the increasing rates of substantiated child protection notifications since 1999-2000. Rates have increased for both Indigenous and non-Indigenous children. However, the Indigenous rate of increase across this period has been 38.5% higher than the non-Indigenous rate. Furthermore, in 2003-04 the rate of Indigenous children with substantiated child protection notifications was nearly 53% higher than the non-Indigenous rate.

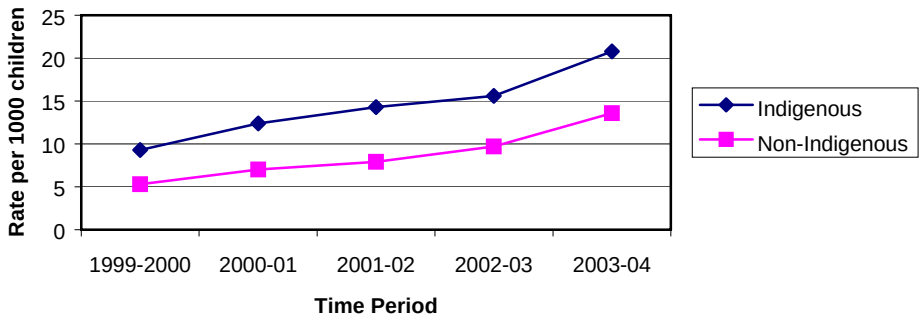
Table 2.3 Children aged 0-16 who were the subject of substantiated child protection notifications as a rate per 1000 children in Queensland, 1999-00 to 2003-04.

	1999-2000	2000-01	2001-02	2002-03	2003-04
Indigenous	9.3	12.4	14.3	15.6	20.8
Non-Indigenous	5.3	7.0	7.9	9.7	13.6
All children	5.6	7.3	8.3	10.1	14.0

Source: SCROGSP (2005a) Table 3A.9.1 Accessed 10/8/05. <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/index.html>.

Note: Data for children who were the subject of investigations and children who were subjects of substantiations in 2000-01 are not directly comparable with data from previous years due to system amendments, which allows for more accurate reporting of children who were the subject of more than one notification. Also note that data used in Table 2.3 and Figure 2.2 are based on counts of children aged 0-16 as reported by the SCROGSP (2005a). Queensland state and departmental reporting use figures for children aged 0-17. The rates reported here will not match other reports including those of the Commission for Children and Young People and child Guardian.

Figure 2.2 Children aged 0-16 with substantiated child protection notifications in Queensland, 1999-00 to 2003-04.



It is important to recognise that policy changes in relation to both family violence and child protection are likely to lead to greater contact with the criminal justice system for Indigenous people who may in the past have committed offences which have not been reported or have not been acted upon.

2.8 CRIME RATES AND CRIME TRENDS

In evaluating the Justice Agreement it is important to consider whether crime rates have risen or fallen over recent years. It is perhaps difficult to expect that there would be a reduction in Indigenous incarceration rates and arrest rates if the volume of crime in Queensland was increasing.

- Crime victim data shows that victimisation rates for personal crimes fell in Queensland between 1998 and 2002. The victimisation rate for household crime rose slightly (Criminal Justice Research 2005:3).

- Queensland police recorded crime statistics show that property crimes, which account for the majority of offences, have decreased significantly in the last three years. Offences against the person have remained fairly constant in recent years (Criminal Justice Research 2005:4).

From the available data it appears that crime rates have been reasonably constant or falling. Thus increasing crime rates have not been a factor working against the reduction of Indigenous contact with the criminal justice system.

2.9 INDIGENOUS AND NON-INDIGENOUS CRIME VICTIMISATION

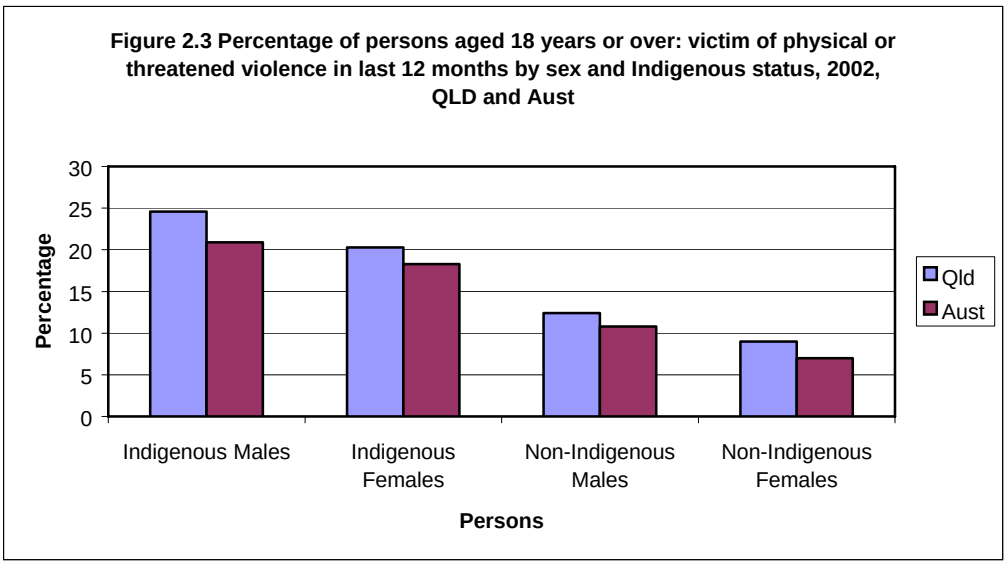
There is some limited data available on crime victimisation by whether the victim was Indigenous or not (SCROGSP 2005a). The data relates to physical violence. Table 2.4 and Figure 2.3 shows the comparison between Australian states in terms of the percentage of those who self-reported being a victim of violence or threatened violence.

Table 2.4 Percentage of persons aged 18 years or over: victim of physical or threatened violence in last 12 months by sex and Indigenous status, 2002

	NSW %	Vic %	Qld %	WA %	SA %	Tas %	ACT %	NT %	Aust %
Indigenous Males	16.6	25.1	24.6	21.7	27.1	17.4	29.1	17.3	20.9
Indigenous Females	16.3	25.9	20.3	20.5	22.9	17.1	22.0	10.5	18.3
Non-Indigenous Males	11.5	9.5	12.4	10.3	8.7	10.2	8.1	16.2	10.8
Non-Indigenous Females	5.7	6.9	9.0	8.6	6.5	6.1	6.3	13.1	7.0

Source: SCROGSP (2005a), Table 3A.11.2 Accessed 10/8/05. <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/index.html>.

Figure 2.3 Percentage of persons aged 18 years or over: victim of physical or threatened violence in last 12 months by sex and Indigenous status, 2002, QLD and Aust



In general Indigenous people living in Queensland report higher levels of victimisation of violence or threatened violence than the national average.

Data was supplied by the Queensland Police service relating to victims of crime during 2004, specifically for offences against the person. The data identified whether the victim was male or female and Indigenous or non-Indigenous. It is important to note that the data does not provide a unique victim count as one person may be counted several times if they were the victim of more than one offence. Cases where an organisation was the victim have been excluded (eg an armed robbery of a bank where the banking organisation is the victim).[7]

Table 2.5 shows the number and rate of victims by Indigenous status for the statistical regions of northern, north west and far north. The remaining statistical regions are collapsed into the 'balance of Queensland'.

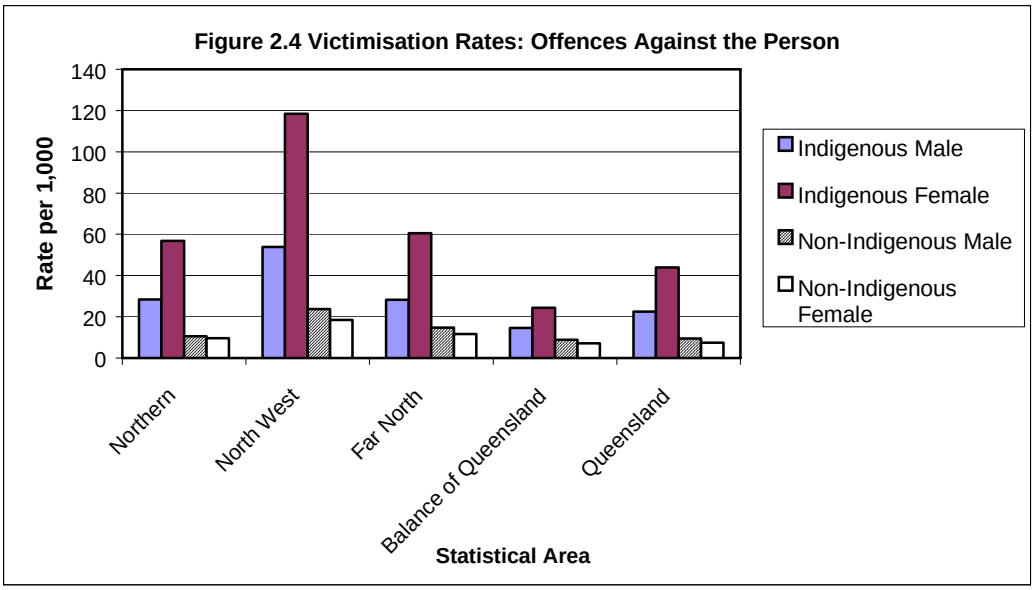
Table 2.5 Victims of Crime by Indigenous Status. Offences Against the Person. Queensland. 2004

	Crime Victims Offences Against the Person					
Statistical Area	**Indigenous**			**Non-Indigenous**		
	Male	Female	Total	Male	Female	Total
Northern						
Number	159	330	489	883	790	1673
*Rate**	28.4	56.8	42.9	10.5	9.7	10.1
North West						
Number	225	514	739	306	201	507
Rate	53.9	118.4	86.8	23.7	18.5	21.3
Far North						
Number	405	873	1278	1294	989	2283
Rate	28.3	60.6	44.5	14.7	11.6	13.2
Balance of Queensland						
Number	456	788	1244	12680	10410	23090
Rate	14.6	24.4	19.6	8.8	7.1	7.9
Queensland						
Number	1245	2505	3750	15163	12390	27553
Rate	22.5	44.0	33.5	9.4	7.5	8.4

Source: Queensland Police Service, ABS Census of Population and Housing, 2001.
*Rate per 1,000 of the relevant populations.

The rates from Table 2.5 are shown in a graph in Figure 2.4.

[7] See Queensland Police Service *Statistical Review 2003-04* http://www.police.qld.gov.au/pr/services/statsnet/0304/pdf/victimso.pdf . Accessed 1/11/05



Overall, the victimisation levels are approximately four times higher for offences against the person among Indigenous compared to non-Indigenous peoples. The rate of victimisation is particularly high in the north west region. The Indigenous rate of victimisation in the north west region is 2.6 times higher than the Indigenous rate for Queensland as a whole (86.6 compared to 33.5 per 1,000). Generally the northern and far north regions have higher rates than the rest of the State.

However, what stands out most dramatically in Table 2.5 and Figure 2.4 is the rate at which Indigenous women are victims of crimes against the person.

For Queensland as a whole, Indigenous women are twice as likely as Indigenous men to be victims of offences against the person. They are 4.7 times more likely to be victims compared to non-Indigenous men, and nearly six times more likely to be victims than non-Indigenous women.

In the north west region, the rate of victimisation for Indigenous women is 118.4 per 1,000 of the Indigenous female population, which is a victimisation rate greater than one in ten Indigenous women in the community.

There needs to be more in-depth analysis of the data to underpin the provision of services for Indigenous victims. In particular, analysis needs to identify the specific locations which are problematic within the regions, the relevant age groups of the victims and the specific nature of the offences within the broader category of 'offences against the person'. Given what the data suggests about the north west region, this is an important place to start.

2.10 CRIMINAL JUSTICE LEGISLATIVE AND POLICY CHANGES

Law, policy and procedure in criminal matters will obviously impact on the number of Indigenous people charged with criminal offences, brought before the courts and the sentencing alternatives which are available. A brief summary of legislative and policy changes is highlighted below. It is not meant to be comprehensive of all changes in

relation to the criminal law. However, it is meant to highlight those changes likely to impact on Indigenous people in some form.[8]

- **Juvenile Justice**

Amendments to the *Juvenile Justice Act* came into effect in 2003 including a new charter of juvenile justice principles, a new intensive supervision order, new court powers to name juvenile offenders in certain circumstances and the expansion of youth conferencing. Youth Justice Services offices were also expanded statewide.

- **Public Order and Policing**

The *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* created a new offence of 'public nuisance' with increased penalties.

Police Beats and Shopfronts were also expanded statewide from 34 to 48.

- **Alcohol Management**

The *Indigenous Communities Liquor Licences Act 2002* introduced new powers in relation to the management, consumption and possession of alcohol in Indigenous communities. It created a range of offences relating to the breach of local alcohol management plans.

- **Drug Diversion**

The *Drug Diversion Amendment Act 2002* assisted with the provision of drug assessment and education sessions for persons appearing before drug diversion courts.

The *Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002* impacted on the development the drug diversion program in Cairns including eligibility and intensive drug rehabilitation orders.

- **Sex Offenders**

The *Sexual Offences (Protection of Children) Amendment Act 2003* increased maximum penalties for child sex offenders. The *Dangerous Prisoners (Sexual Offenders) Act 2003* provides for the prevention of, or conditional release of sex offenders judged to be a continuing danger to the community.

- **Courts**

There was an expansion of the Murri Court from Brisbane to include Rockhampton, Mount Isa and a Youth Murri Court in Brisbane.

[8] The summary is drawn from the Criminal Justice System Bulletin (Criminal Justice Research 2005:2-3).

- **Corrections**

The *Corrective Services Amendment Act 2002* redefined eligibility criteria for access to the Work Outreach Camps (WORC) Program.

3. CHANGES IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM: POLICE AND COURTS

This chapter considers contact between Indigenous people and the police and courts. It provides analysis for both juveniles and adults.

The chapter provides data and analysis of police custody rates, and the use of arrest and other formal processes of intervention such as warrants, summons, and notices to appear in court. There is analysis of court data in relation to finalised appearances and sentencing outcomes, including sentence length. Finally the chapter provides some analysis in relation to cautioning and conferencing of juveniles.

3.1 COMPARATIVE POLICE CUSTODY RATES

In 2005 the fourth national police custody survey[9] was released by the Australian Institute of Criminology (Taylor and Bareja 2005). The results are based on individuals taken into police custody for the month of October 2002. For the purposes of the research, custody refers to being placed in a police cell for some period of time. The reasons for custody can arise from arrest, warrants, remand, for investigation, transit or for protective custody (in jurisdictions where public drunkenness has been decriminalised).

Table 3.1 shows the comparative use of police custody in different Australian jurisdictions and nationally.

Table 3.1 Number and Rates of Indigenous and Non-Indigenous Persons in Police Custody. October 2002

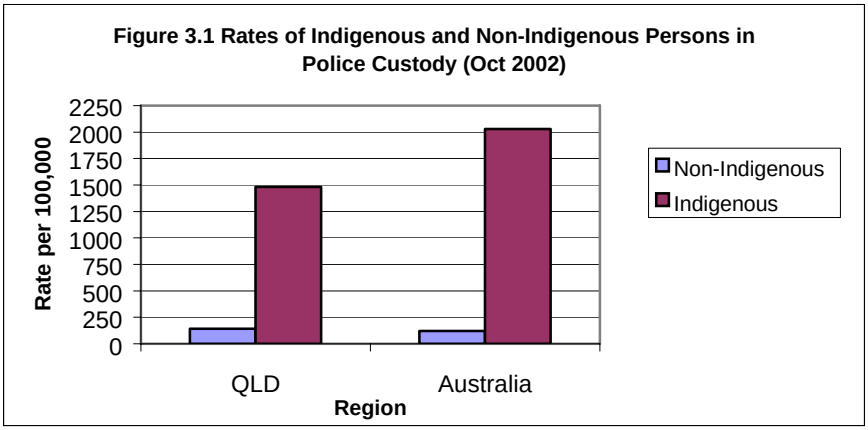
	Non-Indigenous	Indigenous	Total	Indigenous	Non-Indigenous	Indigenous	Over-Representation
	No	No	No	%	Rate	Rate	
NSW	8935	1738	10673	16.3	158.2	1693.2	10.7
QLD	4387	1416	5803	24.4	141.4	1483.1	10.5
WA	2072	1755	3827	45.9	128.4	3468.0	27.0
SA	1865	710	2575	27.6	142.4	3605.3	25.3
VIC	2099	187	2286	8.2	49.9	861.1	17.2
NT	282	1250	1532	81.6	234.9	2841.9	12.1
ACT	151	36	187	19.3	54.7	1187.7	21.7
TAS	145	19	164	11.6	36.6	144.2	3.9
Australia	19936	7111	27047	26.3	119.6	2028.7	17.0

Source: Taylor and Bareja (2005:22-23). Rate per 100,000 of the relevant population aged 10 years and over.

Some 24.4% of police custodies in Queensland involve Indigenous people. The rate of Indigenous custody in Queensland is 1483.1, and Indigenous people are 10.5 times more likely to be held in custody than non-Indigenous people in the State.

[9] Earlier surveys were conducted nationally in 1988, 1992, and 1995.

Although over-representation in police custody is a very significant problem in Queensland, by national standards the rate of Indigenous custody and the level of over-representation is on the lower side of the scale. Queensland has the second lowest level of over-representation after Tasmania. Figure 3.1 shows as a graph the Queensland and national Indigenous rates of custody.



Taylor and Bareja (2005:24-25) also indicate that:

- rates of Indigenous custody in Queensland have declined since the previous survey in 1995.
- A greater proportion of Indigenous custodies compared to non-Indigenous custodies involve women.
- A greater proportion of Indigenous custodies compared to non-Indigenous custodies involve young people under the age of 17 years.

The published research does not provide data at a state or territory level on reasons for custody. Criminal Justice Research could usefully request this data for analysis, with a view to informing policy on reducing Indigenous police custody rates.

3.2 ARRESTS AND OTHER INTERVENTION DATA

3.2.1 Police Interventions and Adults

Table 3.2 shows the offences and type of police intervention for Indigenous and non-Indigenous adults in Queensland for 2004. It is important to note that Queensland Police Service offender statistics are based on offence counts and do not refer to individuals. Rather, offender data refers to the number of offences cleared or solved through an action against an offender. As such, offender data does not equate to a unique offender count nor does it equate to the number of offences cleared. For example, an offender charged with motor vehicle theft, unlawful entry, assault and other theft would be counted four times. An 'action' against an offender such as

arrest, warrant, notice to appear, caution, etc is referred to in the evaluation as an intervention.[10]

Table 3.2 Type of Offence by Arrest and Other Police Interventions by Indigenous Status. Adults. Queensland 2004

	Arrest	Other[+]	Warrant	Summons	Notice to Appear	Caution	Conference[#]	Total*	
Non-Indigenous	No	No	No	No	No	No	No	No	%
Homicide (Murder)	45	6	1	0	0	0	0	52	0.0
Other Homicide	81	2	2	20	16	0	0	121	0.1
Assault	4220	403	39	47	2652	27	6	7394	4.3
Sexual Offences	1530	195	34	19	392	7	3	2180	1.3
Robbery	554	5	5	1	79	3	0	647	0.4
Extortion	24	0	0	0	4	0	0	28	0.0
Kidnapping & Abduction etc.	141	4	1	0	20	0	0	166	0.1
Other Offences Against the Person	802	862	3	17	364	3	0	2051	1.2
Offences Against the Person (subtotal)	**(7397)**	**(1477)**	**(85)**	**(104)**	**(3527)**	**(40)**	**(9)**	**(12639)**	**7.4**
Unlawful Entry	4876	92	51	12	2609	26	10	7676	4.5
Arson	120	5	2	1	27	0	0	155	0.1
Other Property Damage	3040	83	17	24	3303	37	108	6612	3.9
Unlawful Use of Motor Vehicle	1669	29	22	5	878	6	2	2611	1.5
Other Theft (excl. Unlawful Entry)	5848	212	62	46	10076	122	15	16381	9.6
Fraud	4805	510	176	105	6999	13	2	12610	7.4
Handling Stolen Goods	1806	24	15	20	2912	8	1	4786	2.8
Offences Against Property (subtotal)	**(22164)**	**(955)**	**(345)**	**(213)**	**(26804)**	**(212)**	**(138)**	**(50831)**	**29.8**
Drug Offences	7754	10040	44	56	18206	30	5	36135	21.1
Prostitution Offences	44	1	0	1	815	1	0	862	0.5
Liquor (excl. Drunkenness)	772	15	1	21	411	14	2	1236	0.7
Gaming Racing & Betting Offences	2	0	0	1	7	0	0	10	0.0
Breach DV Protection Order	2765	510	28	33	2258	0	0	5594	3.3
Trespassing and Vagrancy	478	12	1	11	803	9	58	1372	0.8
Weapons Act Offences	939	37	0	20	2149	10	0	3155	1.8
Good Order Offences	13157	88	46	61	7528	34	7	20921	12.2
Stock Related Offences	3	108	0	7	96	33	1	248	0.1
Traffic and Related Offences	5933	40	66	279	28763	3	9	35093	20.5
Miscellaneous Offences	1022	66	11	51	1582	26	3	2761	1.6
Other Offences (subtotal)	**(32869)**	**(10917)**	**(197)**	**(541)**	**(62618)**	**(160)**	**(85)**	**(107387)**	**62.9**
Non-Indigenous Total	**62430**	**13349**	**627**	**858**	**92949**	**412**	**232**	**170857**	**100**

[10] See Queensland Police Service *Statistical Review 2003-04* http://www.police.qld.gov.au/pr/services/statsnet/0304/pdf/OFFENDE1.pdf . Accessed 1/11/05

Indigenous									
Homicide (Murder)	5	1	0	0	0	0	0	6	0.0
Other Homicide	18	0	0	1	0	0	0	19	0.1
Assault	1950	71	14	9	980	5	1	3030	9.5
Sexual Offences	237	19	3	2	31	0	0	292	0.9
Robbery	188	2	3	0	24	0	0	217	0.7
Extortion	0	0	0	0	0	0	0	0	0.0
Kidnapping & Abduction etc.	43	0	0	1	5	0	0	49	0.2
Other Offences Against the Person	206	293	1	1	46	1	0	548	1.7
Offences Against the Person (subtotal)	**(2647)**	**(386)**	**(21)**	**(14)**	**(1086)**	**(6)**	**(1)**	**(4161)**	**13.0**
Unlawful Entry	1499	15	14	12	911	11	2	2464	7.7
Arson	72	0	0	0	2	0	0	74	0.2
Other Property Damage	1050	13	5	5	785	3	1	1862	5.8
Unlawful Use of Motor Vehicle	685	5	3	0	297	4	0	994	3.1
Other Theft (excl. Unlawful Entry)	1021	16	13	8	1374	16	1	2449	7.7
Fraud	251	3	7	16	393	2	0	672	2.1
Handling Stolen Goods	250	0	1	1	389	0	0	641	2.0
Offences Against Property (subtotal)	**(4828)**	**(52)**	**(43)**	**(42)**	**(4151)**	**(36)**	**(4)**	**(9156)**	**28.6**
Drug Offences	779	904	6	2	1209	1	0	2901	9.1
Prostitution Offences	0	0	0	0	11	0	0	11	0.0
Liquor (excl. Drunkenness)	510	6	0	11	1125	1	0	1653	5.2
Gaming Racing & Betting Offences	1	0	0	0	1	0	0	2	0.0
Breach DV Protection Order	1456	88	4	2	787	3	1	2341	7.3
Trespassing and Vagrancy	249	1	0	2	364	3	1	620	1.9
Weapons Act Offences	148	3	0	0	171	0	0	322	1.0
Good Order Offences	5034	18	19	25	2066	7	5	7174	22.4
Stock Related Offences	0	0	0	0	1	0	0	1	0.0
Traffic and Related Offences	1010	6	16	31	2143	0	0	3206	10.0
Miscellaneous Offences	182	10	4	32	216	0	0	444	1.4
Other Offences (subtotal)	**(9369)**	**(1036)**	**(49)**	**(105)**	**(8094)**	**(15)**	**(7)**	**(18675)**	**(58.4)**
Indigenous total	**16844**	**1474**	**113**	**161**	**13331**	**57**	**12**	**31992**	**100**

Source: Data supplied by QPS.
Notes: [+] The 'other' category (See the QPS Annual Statistical Review for more detail) refers to when 'the offender is known and sufficient evidence has been obtained but there is a bar to prosecution or other official process'.
[#] The conferencing category for adults is not clear. It may refer to the small number of adult who are conferenced in South East Queensland by the Alternate Dispute Resolution Branch in the Department of Justice and Attorney-General. Another explanation is that police can refer 17 year old adults to a conference if the offence occurred when they were a juvenile.
* Percentages lower than 0.05% have been rounded down to zero (0.0%).

Table 3.2 shows that the major offence categories leading to police intervention for both Indigenous (28.6%) and non-Indigenous (29.8%) adults are property offences. Within this broad category of offences, Indigenous adults have larger proportions of unlawful entry, property damage and unlawful use of motor vehicles. Non-Indigenous adults have higher proportions of fraud and ‘other theft’.

Indigenous adults have a greater proportion of offences against the person than non-Indigenous adults (13% compared to 7.4%), and assaults are particularly prevalent (9.5% compared to 4.3%).

Other major differences include:

- Drug offences which comprise 21.1% of police interventions for non-Indigenous adults, compared to 9.1% of Indigenous adults

- Traffic related offences which comprise 20.5% of police interventions for non-Indigenous adults, compared to 10.0% of Indigenous adults

- Good order offences which comprise 22.4% of police interventions for Indigenous adults, compared to 12.2% of non-Indigenous adults, and

- Liquor (excluding drunkenness) offences which comprise 5.2% of police interventions for Indigenous adults, compared to 0.7% of non-Indigenous adults. In absolute numbers there were 1653 police interventions (of which nearly a third were by arrest) for liquor offences involving Indigenous adults compared to 1236 police interventions for all other adult Queenslanders.

Table 3.3 shows the type of police intervention with Indigenous and non-Indigenous adults for the broad offence categories of offences against the person, offences against property and 'other' offences.

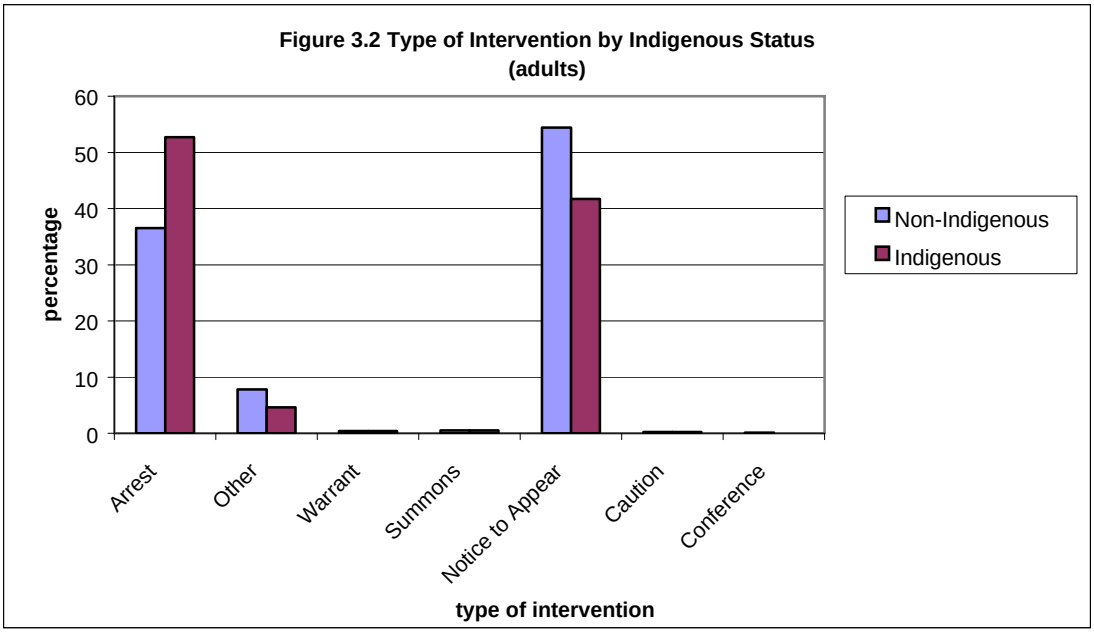
Table 3.3 Types of Intervention by Indigenous Status. Adults. Queensland 2004

	Arrest	**Other**	**Warrant**	**Summons**	**Notice to Appear**	**Caution**	**Conference**	**Total**
	%	%	%	%	%	%	%	%
Non-Indigenous								
Offences Against the Person	58.5	11.7	0.7	0.8	27.9	0.3	0.1	100.0
Offences Against Property	43.6	1.9	0.7	0.4	52.7	0.4	0.3	100.0
Other Offences	30.6	10.2	0.2	0.5	58.3	0.1	0.1	100.0
Non-Indigenous Total	**36.5**	**7.8**	**0.4**	**0.5**	**54.4**	**0.2**	**0.1**	**100.0**
Indigenous								
Offences Against the Person	63.6	9.3	0.5	0.3	26.1	0.1	0.0	100.0
Offences Against Property	52.7	0.6	0.5	0.5	45.3	0.4	0.0	100.0
Other Offences	50.2	5.5	0.3	0.6	43.3	0.1	0.0	100.0
Indigenous total	**52.7**	**4.6**	**0.4**	**0.5**	**41.7**	**0.2**	**0.0**	**100.0**

Note: percentages lower than 0.05% have been rounded down to zero (0.0%).

Indigenous adults were more likely to be proceeded against by arrest for offences against the person, offences against property and 'other' offences compared to non-Indigenous adults.

As shown in Figure 3.2, more than half (52%) of Indigenous interventions involved the use of arrest compared to 36.5% of non-Indigenous interventions. Conversely, more than half of non-Indigenous interventions were commenced by way 'notice to appear'.



It is important to recognise that intervention by way of arrest has a range of legal consequences including most importantly the need for a bail determination (and legal requirements which flow from this). It also may give rise to a range of associated offences (such as resist arrest). A summons or notice to appear is regarded as a less intrusive type of intervention and has less severe legal consequences.

3.2.2 Police Interventions and Juveniles

Table 3.4 shows the offences and type of police intervention for Indigenous and non-Indigenous juveniles in Queensland for 2004.

Table 3.4 Type of Offence by Arrest and Other Police Interventions by Indigenous Status. Juveniles. Queensland 2004

Non-Indigenous	Arrest	Other+	Warrant	Summons	Notice to Appear	Caution	Conference	Total*	
	No.	No.	No.	No.	No.	No.	No.	No.	%
Homicide (Murder)	3	0	0	0	0	0	0	3	0.0
Other Homicide	3	0	0	0	0	0	0	3	0.0
Assault	274	56	2	3	273	586	86	1280	5.4
Sexual Offences	74	59	0	0	26	137	16	312	1.3
Robbery	120	4	0	0	29	19	17	189	0.8
Extortion	0	0	0	0	0	0	0	0	0.0
Kidnapping & Abduction etc.	12	1	0	0	2	1	0	16	0.1
Other Offences Against the Person	40	22	0	0	24	107	13	206	0.9
Offences Against the Person (subtotal)	**(526)**	**(142)**	**(2)**	**(3)**	**(354)**	**(850)**	**(132)**	**(2009)**	**(8.5)**
Unlawful Entry	876	30	2	1	629	789	183	2510	10.6
Arson	31	4	0	0	14	31	5	85	0.4
Other Property Damage	564	52	1	5	650	1439	613	3324	14.0
Unlawful Use of Motor Vehicle	387	2	1	3	257	217	60	927	3.9
Other Theft (excl. Unlawful Entry)	869	215	0	7	1607	3702	317	6717	28.3
Fraud	14	1	2	1	73	339	62	492	2.1
Handling Stolen Goods	91	3	0	1	207	246	25	573	2.4
Offences Against Property (subtotal)	**(2832)**	**(307)**	**(6)**	**(18)**	**(3437)**	**(6763)**	**(1265)**	**(14628)**	**(61.7)**
Drug Offences	155	750	0	0	521	1078	28	2532	10.7
Prostitution Offences	0	1	0	0	0	0	0	1	0.0
Liquor (excl. Drunkenness)	63	14	0	1	92	327	8	505	2.1
Gaming Racing & Betting Offences	0	0	0	0	0	0	0	0	0.0
Breach Domestic Violence Protection Order	0	0	0	0	6	5	0	11	0.0
Trespassing and Vagrancy	76	11	0	2	212	507	68	876	3.7
Weapons Act Offences	50	8	0	2	96	214	14	384	1.6
Good Order Offences	599	21	1	4	802	467	42	1936	8.2
Stock Related Offences	0	0	0	0	0	0	0	0	0.0
Traffic and Related Offences	47	1	0	0	169	59	6	282	1.2
Miscellaneous Offences	48	73	0	1	145	253	14	534	2.3
Other Offences (subtotal)	**(1038)**	**(879)**	**(1)**	**(10)**	**(2043)**	**(2910)**	**(180)**	**(7061)**	**(29.8)**
Non-Indigenous Total	**4396**	**1328**	**9**	**31**	**5834**	**10523**	**1577**	**23698**	**100.0**

Indigenous									
Homicide (Murder)	3	0	0	0	0	0	0	3	0.0
Other Homicide	5	0	0	0	0	0	0	5	0.0
Assault	225	8	2	3	164	198	28	628	5.4
Sexual Offences	29	10	0	0	16	31	1	87	0.8
Robbery	66	1	0	0	20	2	0	89	0.8
Extortion	0	0	0	0	0	0	0	0	0.0
Kidnapping & Abduction etc.	7	0	0	0	0	0	0	7	0.1
Other Offences Against the Person	26	4	0	1	12	17	5	65	0.6
Offences Against the Person (subtotal)	**(361)**	**(23)**	**(2)**	**(4)**	**(212)**	**(248)**	**(34)**	**(884)**	**(7.6)**
Unlawful Entry	1146	30	1	4	737	677	136	2731	23.6
Arson	16	1	0	0	6	9	1	33	0.3
Other Property Damage	446	20	1	3	468	490	85	1513	13.1
Unlawful Use of Motor Vehicle	597	4	0	0	267	126	25	1019	8.8
Other Theft (excl. Unlawful Entry)	848	38	0	5	980	643	154	2668	23.0
Fraud	6	0	0	0	15	17	2	40	0.3
Handling Stolen Goods	114	1	1	1	176	65	13	371	3.2
Offences Against Property (subtotal)	**(3173)**	**(94)**	**(3)**	**(13)**	**(2649)**	**(2027)**	**(416)**	**(8375)**	**(72.3)**
Drug Offences	56	106	0	0	87	141	5	395	3.4
Prostitution Offences	0	0	0	0	1	0	0	1	0.0
Liquor (excl. Drunkenness)	40	7	0	0	49	34	2	132	1.1
Gaming Racing & Betting Offences	0	0	0	0	0	0	0	0	0.0
Breach Domestic Violence Protection Order	12	1	0	0	13	1	0	27	0.2
Trespassing and Vagrancy	86	6	0	0	192	133	18	435	3.8
Weapons Act Offences	21	0	0	0	42	23	0	86	0.7
Good Order Offences	445	5	3	1	481	76	16	1027	8.9
Stock Related Offences	0	0	0	0	0	0	0	0	0.0
Traffic and Related Offences	48	0	0	1	35	6	2	92	0.8
Miscellaneous Offences	35	4	0	0	55	32	7	133	1.1
Other Offences (subtotal)	**(743)**	**(129)**	**(3)**	**(2)**	**(955)**	**(446)**	**(50)**	**(2328)**	**(20.1)**
Indigenous Total	**4277**	**246**	**8**	**19**	**3816**	**2721**	**500**	**11587**	**100.0**

Source: Data supplied by QPS.
Notes: [+] The 'other' category (See the QPS Annual Statistical Review for more detail) refers to when 'the offender is known and sufficient evidence has been obtained but there is a bar to prosecution or other official process'.
* Percentages lower than 0.05% have been rounded down to zero (0.0%).

Table 3.4 shows that the major offence categories leading to police intervention for both Indigenous (72.3%) and non-Indigenous (61.7%) juveniles are property offences. Within this broad category of offences, Indigenous juveniles have larger proportions of unlawful entry and unlawful use of motor vehicles. Non-Indigenous juveniles have higher proportions of fraud, property damage and 'other theft'. Indeed the biggest single proportional difference relates to unlawful entry which comprises 23.6% of all Indigenous juvenile interventions compared to 10.6% for non-Indigenous juveniles.

Other major differences include drug offences which comprise 10.7% of police interventions for non-Indigenous juveniles, compared to 3.4% of Indigenous juveniles.

Non-Indigenous juveniles have a slightly larger proportion of offences against the person than Indigenous juveniles (8.5% compared to 7.6%).

Good order offences comprise similar proportions for both Indigenous and non-Indigenous juveniles (8.9% and 8.2% respectively).

Table 3.5 shows the type of police intervention with Indigenous and non-Indigenous juveniles for the broad offence categories of offences against the person, offences against property and 'other' offences.

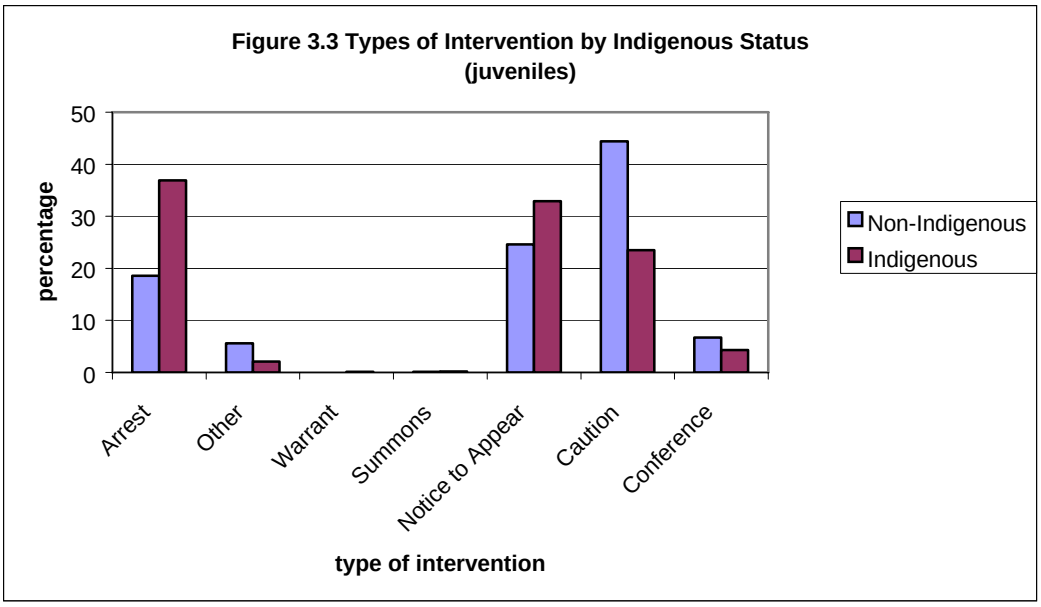
Table 3.5 Types of Intervention by Indigenous Status. Juveniles. Queensland 2004

	Arrest	Other	Warrant	Summons	Notice to Appear	Caution	Conference	Total
	%	%	%	%	%	%	%	%
Non-Indigenous								
Offences Against the Person	26.2	7.1	0.1	0.1	17.6	42.3	6.6	100.0
Offences Against Property	19.4	2.1	0.0	0.1	23.5	46.2	8.6	100.0
Other Offences	14.7	12.4	0.0	0.1	28.9	41.2	2.5	100.0
Non-Indigenous Total	**18.6**	**5.6**	**0.0**	**0.1**	**24.6**	**44.4**	**6.7**	**100.0**
Indigenous								
Offences Against the Person	40.8	2.6	0.2	0.5	24.0	28.1	3.8	100.0
Offences Against Property	37.9	1.1	0.0	0.2	31.6	24.2	5.0	100.0
Other Offences	31.9	5.5	0.1	0.1	41.0	19.2	2.1	100.0
Indigenous total	**36.9**	**2.1**	**0.1**	**0.2**	**32.9**	**23.5**	**4.3**	**100.0**

Note: percentages lower than 0.05% have been rounded down to zero (0.0%).

Table 3.5 shows that Indigenous juveniles are twice as likely to be proceeded against by way of arrest compared to non-Indigenous juveniles and are more likely to be required to appear in court either by way of summons or by court attendance notice. They are about half as likely to receive a police caution. This holds true irrespective of whether the offences are against the person, against property or in the 'other' category.

Conversely, non-Indigenous juveniles are much more likely to be diverted from the more punitive and formal legal processes and to be cautioned by police or referred to a youth justice conference. These are shown graphically in Figure 3.3.



3.2.3 Intervention Rates

The previous data and analysis has dealt with proportional differences in the way police intervene with Indigenous and non-Indigenous adults and young people. It is also important to compare various interventions as a rate per 1000 of the population. Table 3.6 shows the intervention rates for Indigenous and non-Indigenous adults and juveniles.

Table 3.6 shows that, as a rate per 1000 of the adult and juvenile populations, all types of police interventions are higher for Indigenous people. The rate of over-representation is highest for arrests compared to other forms of intervention for both Indigenous adults and juveniles.

Table 3.6 All Offences. Intervention Rates per 1000 of adult and juvenile population by Indigenous status. Queensland 2004

	Arrest	Other	Warrant	Summons	Notice to Appear	Caution	Conference	Total
Non-Indigenous Adults No.	62430	13349	627	858	92949	412	232	170857
Non-Indigenous Adult Rate	**25.1**	**5.4**	**0.2**	**0.3**	**37.4**	**0.2**	**0.1**	**68.7**
Indigenous Adults No.	16844	1474	113	161	13331	57	12	31992
Indigenous Adult Rate	**271.0**	**23.7**	**1.8**	**2.6**	**214.5**	**0.9**	**0.2**	**514.8**
Over-Representation	**10.8**	**4.4**	**9.0**	**8.7**	**5.7**	**4.5**	**2**	**7.5**
Non-Indigenous Juveniles No	4396	1328	9	31	5834	10523	1577	23698
Non-Indigenous Juvenile Rate	**13.0**	**4.0**	**0.0**	**0.1**	**17.6**	**31.8**	**4.8**	**71.6**
Indigenous Juveniles No	4277	246	8	19	3816	2721	500	11587
Indigenous Juvenile Rate	**225.5**	**13.0**	**0.4**	**1.0**	**201.2**	**143.5**	**26.4**	**611.0**
Over-Representation	**17.0**	**3.2**	**4.0**	**10**	**11.4**	**4.5**	**5.5**	**8.5**

Note: Rates based on 10-16 years old for the respective juvenile populations, 17 years and over for the adult populations.

Figure 3.4 shows the intervention rates for Indigenous and non-Indigenous adults.

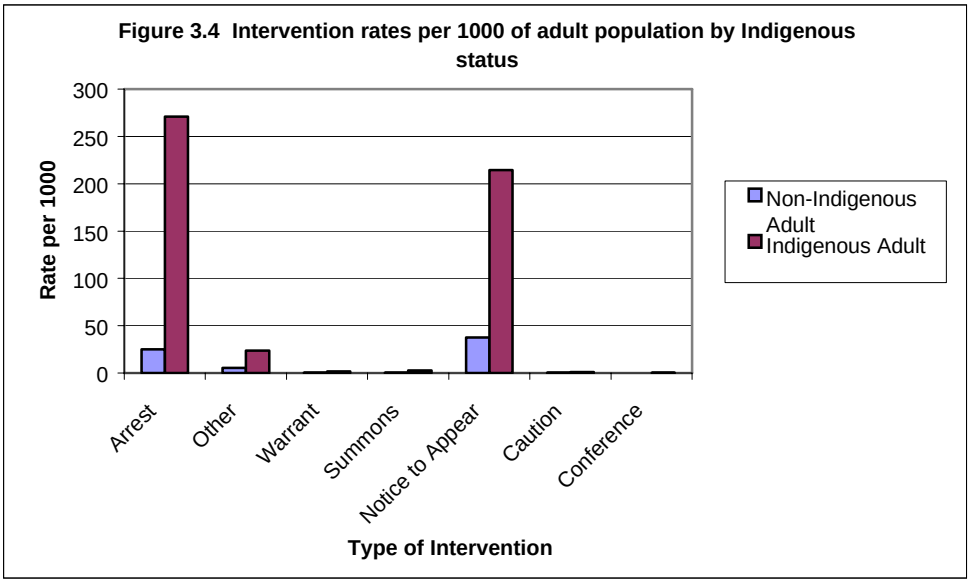
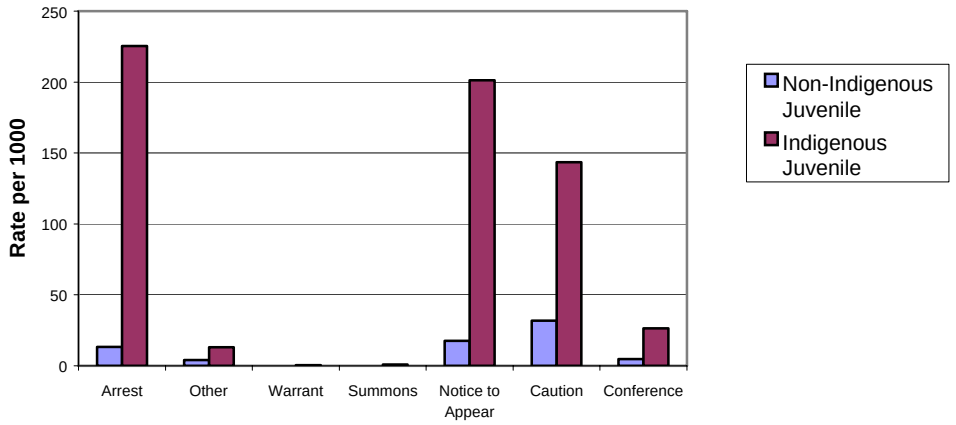


Figure 3.5 shows the intervention rates for Indigenous and non-Indigenous juveniles. It shows graphically that the greatest difference in interventions between Indigenous

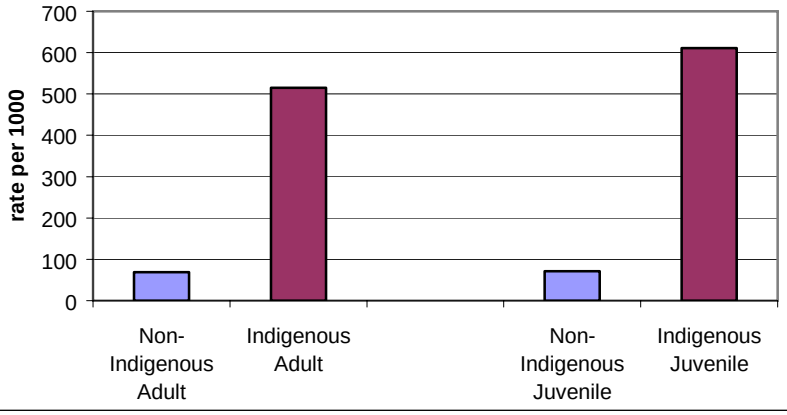
and non-Indigenous juveniles is with arrests. As Table 3.6 notes Indigenous young people are 17 times more likely to be proceeded against by way of arrest than a non-Indigenous youth.

Figure 3.5 Intervention rates per 1000 of juvenile population by Indigenous status



Finally, Figure 3.6 shows the difference in total police intervention rates for Indigenous and non-Indigenous adults and juveniles. Besides the difference in the rates between Indigenous and non-Indigenous interventions, one particular aspect of the data that is disturbing is that the rate of intervention is greater among Indigenous juveniles than Indigenous adults. Such a result is not promising given the research that indicates the links between juvenile offending and later adult criminalisation, particularly where the juvenile intervention was of a more intrusive nature.

Figure 3.6 Total Intervention rates per 1000 of adult and juvenile populations by Indigenous status



Overall intervention rates are much higher for Indigenous adults and juveniles irrespective of the process used. Indigenous juveniles are 8.5 times more likely, and Indigenous adults 7.5 times more likely, to be processed by police than their non-Indigenous counterparts. The over-representation is highest for proceeding by way of arrest, and particularly so with Indigenous juveniles who have an (rate/ratio) over-representation of 17 for arrests.

3.3 ADULT AND CHILDRENS COURT APPEARANCES

An Indigenous identifier has been introduced for adults and children appearing before the childrens, magistrates and higher courts. The identifier was introduced from the beginning of 2003 through a pilot process. Data are not available before January 2004. Indigenous identification in court data is based on information provided by the Police. As many matters are lodged with courts from sources other than police and because some matters were lodged with courts prior to the introduction of the Indigenous identifier, there will always be a relatively high proportion of court finalisations where the Indigenous status of the offender is unknown. While it is expected to decrease over time, it will plateau at some time in the future.

Higher court data for 2004 is unreliable because of the very high proportion of matters where Indigenous status is unknown, and it has been recommended that it not be used (Criminal Justice Research 2004). However, there was a request for magistrates and Childrens Court data for 2004 by Indigenous status and this was supplied for the evaluation. Data was requested for finalised appearances on the basis of offence type by most serious outcome.[11]

Table 3.7 Indigenous status and finalised court appearance. 2004

	Lower Court		Childrens Court	
	No	%	No	%
Non-Indigenous	97,788	69.1	4,044	55.1
Indigenous	18,784	13.3	2,638	36.0
Unknown*	24,940	17.6	651	8.9
Total	141,512	100.0	7,333	100.0

Source: DATSIP using data supplied by DDJAG.
Notes: Excludes 970 companies from the lower court data. Data does not include court ordered conferences from the Childrens Court.
* The 'unknown' category includes cases where identification was refused by the offender, where it was not provided by the agency, and in matters such as traffic offences where it was not requested.

Table 3.7 shows that there are still a large proportion of 'unknowns' in the adult lower court data (17.6%). The proportion of 'unknowns' exceeds the percentage of those identified as Indigenous. The percentage of 'unknowns' is less for the childrens court data (8.9%). In the subsequent analysis the 'unknown' cases have been removed. However, some care needs to be exercised in drawing conclusions because of the size of the 'unknown' group in the lower court matters. Companies are also excluded from the following analysis.

[11] Offence categories reflect the 16 ASOC division codes and most serious outcomes are grouped as not proven, custodial order, community supervision, monetary orders, and other non-custodial orders

3.3.1 Childrens Court

Table 3.8 shows the finalised appearances in the Childrens Court for 2004. For both groups theft and related offences comprised 27% of appearances before the Childrens Court.

The greatest difference between Indigenous and non-Indigenous juvenile appearances were as follows:

- Some 19.5% of all Indigenous juvenile appearances related to unlawful entry with intent, compared to 10.5% of non-Indigenous offences. In fact Indigenous appearances for these offences comprised more than half of the total (514 of a total 940).
- Indigenous young people also had a greater proportion of justice related offences (10.6% compared to 7.7%). Conversely, non-Indigenous youth had greater proportions of fraud, drug and road traffic offences.

Table 3.8 Finalised Appearances by Offence. Childrens Court, Queensland 2004

Offences	**Non-Indigenous**		**Indigenous**		**Total**	
	No	%	No	%	No	%
Homicide and related offences	1	0.0	4	0.2	5	0.1
Acts intended to cause injury	333	8.2	229	8.7	562	8.4
Sexual assault and related offences	50	1.2	27	1.0	77	1.2
Dangerous or negligent acts	100	2.5	38	1.4	138	2.1
Abductions and related offences	5	0.1	4	0.2	9	0.1
Robbery and extortion offences	61	1.5	37	1.4	98	1.5
Unlawful entry with intent	426	10.5	514	19.5	940	14.1
Theft and related offences	1,095	27.1	719	27.3	1,814	27.1
Deception and related offences	211	5.2	94	3.6	305	4.6
Illicit drug offences	234	5.8	41	1.6	275	4.1
Weapons and explosives offences	49	1.2	19	0.7	68	1.0
Property damage/environmental pollution	259	6.4	181	6.9	440	6.6
Public order offences	499	12.3	326	12.4	825	12.3
Road traffic offences	389	9.6	102	3.9	491	7.3
Justice and government offences	312	7.7	280	10.6	592	8.9
Miscellaneous offences	20	0.5	23	0.9	43	0.6
Total	4,044	100.0	2,638	100.0	6,682	100.0

Notes: Excludes 651 'Unknowns'. Percentages lower than 0.05% have been rounded down to zero (0.0%).

Table 3.9 shows Childrens Court outcomes for 2004. Indigenous young people had significantly different outcomes to non-Indigenous young people, with outcomes at the harsher end of the sentencing scale including proportionately more custodial orders and supervisory orders. Non-Indigenous young people were more likely to receive non-custodial orders and fines.

Table 3.9 Childrens Court Outcomes. Queensland 2004

Outcomes	**Non- Indigenous**		**Indigenous**		**Total**	
	No	%	No	%	No	%
Not proven	629	15.6	367	13.9	996	14.9
Custodial order*	22	0.5	65	2.5	87	1.3
Community supervision#	854	21.1	812	30.8	1,666	24.9
Monetary order	360	8.9	100	3.8	460	6.9
Non-custodial order	1,929	47.7	1,159	43.9	3,088	46.2
Committed to a higher court	250	6.2	135	5.1	385	5.8
Total	4,044	100.0	2,638	100.0	6,682	100.0

Notes: Excludes 651 'Unknowns'. Chi-square = 176.51, df = 5, $p < 0.0001$ (Significant).
* Includes intensive corrections orders, suspended sentences and imprisonment.
# Includes probation (770), community service (814) and immediate release order (82).

Table 3.9 shows *prima facie* that there are statistically significant disparities in sentencing between Indigenous and non-Indigenous young people. However, it does not take account of the type of offence, criminal history, age, plea, bail or other factors which may impact on the sentencing decision. It is important that this issue be followed up with further research that considers more fully the question of sentencing disparity (see for example, Gallagher and Polletti 1998).

Table 3.10 shows offence by outcome for Indigenous and non-Indigenous young people. It provides the opportunity to consider in more depth the offence categories leading to sentences of imprisonment for Indigenous youth. Offences leading to custodial sentences for Indigenous young people were, in order, unlawful entry (21), acts intended to cause injury (15), theft (12) and justice offences (6). In each of these offence categories Indigenous young people were more likely than non-Indigenous youth to receive a custodial order.

Table 3.10 Offence by Outcome. Childrens Court. Queensland 2004

		Not proven		Custodial order		Community supervision		Monetary order		NonCustodial order		Committed higher court		Total	
		No	%	No	%	No	%	No	%	No	%	No	%	No	%
Homicide and related offences	Non-Indigen.	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100
	Indigenous	2	50.0	0	0.0	0	0.0	0	0.0	0	0.0	2	50.0	4	100
Acts intended to cause injury	Non-Indigen.	66	19.8	3	0.9	100	30.0	9	2.7	85	25.5	70	21.0	333	100
	Indigenous	23	10.0	15	6.6	94	41.0	6	2.6	44	19.2	47	20.5	229	100
Sexual assault and related offences	Non-Indigen.	12	24.0	0	0.0	0	0.0	0	0.0	0	0.0	38	76.0	50	100
	Indigenous	4	14.8	2	7.4	3	11.1	0	0.0	0	0.0	18	66.7	27	100
Dangerous or negligent acts	Non-Indigen.	11	11.0	0	0.0	28	28.0	14	14.0	41	41.0	6	6.0	100	100
	Indigenous	7	18.4	3	7.9	12	31.6	2	5.3	14	36.8	0	0.0	38	100
Abductions and related offences	Non-Indigen.	1	20.0	1	20.0	0	0.0	0	0.0	0	0.0	3	60.0	5	100
	Indigenous	2	50.0	0	0.0	0	0.0	0	0.0	0	0.0	2	50.0	4	100
Robbery and extortion offences	Non-Indigen.	19	31.1	0	0.0	0	0.0	0	0.0	0	0.0	42	68.9	61	100
	Indigenous	8	21.6	0	0.0	5	13.5	0	0.0	0	0.0	24	64.9	37	100
Unlawful entry with intent	Non-Indigen.	64	15.0	11	2.6	183	43.0	20	4.7	106	24.9	42	9.9	426	100
	Indigenous	71	13.8	21	4.1	271	52.7	9	1.8	113	22.0	29	5.6	514	100
Theft and related offences	Non-Indigen.	158	14.4	5	0.5	235	21.5	87	7.9	579	52.9	31	2.8	1095	100
	Indigenous	88	12.2	12	1.7	233	32.4	32	4.5	346	48.1	8	1.1	719	100
Deception and related offences	Non-Indigen.	13	6.2	0	0.0	26	12.3	30	14.2	140	66.4	2	0.9	211	100
	Indigenous	5	5.3	0	0.0	20	21.3	3	3.2	66	70.2	0	0.0	94	100
Illicit drug offences	Non-Indigen.	20	8.5	0	0.0	72	30.8	19	8.1	120	51.3	3	1.3	234	100
	Indigenous	1	2.4	0	0.0	15	36.6	2	4.9	23	56.1	0	0.0	41	100
Weapons and explosives offences	Non-Indigen.	11	22.4	1	2.0	7	14.3	3	6.1	27	55.1	0	0.0	49	100
	Indigenous	2	10.5	0	0.0	5	26.3	2	10.5	10	52.6	0	0.0	19	100
Property damage/ environmental pollution	Non-Indigen.	41	15.8	1	0.4	80	30.9	32	12.4	93	35.9	12	4.6	259	100
	Indigenous	33	18.2	2	1.1	63	34.8	8	4.4	71	39.2	4	2.2	181	100
Public order offences	Non-Indigen.	74	14.8	0	0.0	47	9.4	31	6.2	347	69.5	0	0.0	499	100
	Indigenous	27	8.3	2	0.6	43	13.2	21	6.4	232	71.2	1	0.3	326	100
Road traffic offences	Non-Indigen.	28	7.2	0	0.0	45	11.6	98	25.2	218	56.0	0	0.0	389	100
	Indigenous	5	4.9	2	2.0	17	16.7	6	5.9	72	70.6	0	0.0	102	100
Justice and government offences	Non-Indigen.	105	33.7	0	0.0	28	9.0	17	5.4	161	51.6	1	0.3	312	100
	Indigenous	89	31.8	6	2.1	27	9.6	9	3.2	149	53.2	0	0.0	280	100
Miscellaneous offences	Non-Indigen.	5	25.0	0	0.0	3	15.0	0	0.0	12	60.0	0	0.0	20	100
	Indigenous	0	0.0	0	0.0	4	17.4	0	0.0	19	82.6	0	0.0	23	100

Notes: Excludes 651 ‘Unknowns’.

Table 3.11 shows the length of probationary orders for Indigenous and non-Indigenous young people. There is a statistically significant difference in the length of those orders, with Indigenous young people more likely to receive longer orders.

Table 3.11 Probation Periods By Length for Indigenous and non-Indigenous Juveniles. 2004

Probation Periods	Non- Indigenous		Indigenous	
	No	%	No	%
Under 3 months	9	2.3	3	0.8
3 months and under 6 months	43	10.9	41	10.9
6 months and under 12 months	233	59.3	195	51.7
12 months and under 24 months	107	27.2	137	36.3
2 years and under 5 years	1	0.3	1	0.3
Total	393	100.0	377	100.0

Excludes 37 'Unknowns'. Chi-square = 9.78, df = 4, p = 0.0443 (Significant).

Table 3.12 shows community service orders by length of time. There is no statistically significant difference in the length of time for community service orders, although the direction is for Indigenous young people to have shorter orders.

Table 3.12 Community Service Orders By Hours for Indigenous and non-Indigenous Juveniles. 2004

Community Service Order Hours	Non- Indigenous		Indigenous	
	No	%	No	%
Under 40 hours	115	26.7	129	33.7
40 hours and under 80 hours	186	43.2	162	42.3
80 hours and under 120 hours	90	20.9	69	18.0
120 hours and under 160 hours	32	7.4	20	5.2
160 hours and under 200 hours	3	0.7	1	0.3
200 hours and under 240 hours	5	1.2	2	0.5
Total	431	100.0	383	100.0

Excludes 37 'Unknowns'. Chi-square = 7.48, df = 5, p = 0.1872 (Not Significant).

Table 3.13 shows the length of custodial sentences for Indigenous and non-Indigenous young people. There is no statistically significant difference in the length of custodial orders for young people.

Table 3.13 Custodial Sentences By Months for Indigenous and non-Indigenous Juveniles. 2004

Length of Custodial Sentence	Non- Indigenous		Indigenous	
	No	%	No	%
Under 3 months	7	31.8	20	30.8
3 months and under 6 months	8	36.4	27	41.5
6 months and 12 months	7	31.8	17	26.2
12 months and under 24 months	0	0.0	1	1.5
Total	22	100.0	65	100.0

Excludes 37 'Unknowns'. Chi-square = 0.64, df = 3, p = 0.8861 (Not Significant).

In summary, Indigenous young people are statistically more likely to receive sentencing outcomes at the higher end of the scale including custodial orders and community supervision. Probation periods are likely to be longer. However, there is no difference in length of custody or community service. The issue of sentencing disparity needs further analysis.

3.3.2 Magistrates Court

Table 3.14 shows the finalised appearances for Indigenous and non-Indigenous adults in the lower courts for 2004. There are major differences in the reasons for Indigenous and non-Indigenous adults appearing in the lower courts.

- Some 30.2% of all Indigenous appearances relate to public order offences, compared to 12.5% on non-Indigenous offences.
- Some 19.7% of all Indigenous appearances relate to justice offences, compared to 11.7% on non-Indigenous offences.
- Some 10.4% of all Indigenous appearances relate to acts intended to cause injury, compared to 4.9% on non-Indigenous offences.

Conversely, non-Indigenous appearances have a greater proportion of road traffic offences (32.2% compared to 12.3%), drug offences (10.8% compared to 4.9%), theft (10.1% compared to 7.7%) and dangerous acts (7.3% compared to 3.9%).

Table 3.14 Finalised Appearances by Offence. Lower Court. Queensland 2004

Offences	Non-Indigenous		Indigenous		Total	
	No	%	No	%	No	%
Homicide and related offences	126	0.1	20	0.1	146	0.1
Acts intended to cause injury	4,775	4.9	1,954	10.4	6,729	5.8
Sexual assault and related offences	638	0.7	95	0.5	733	0.6
Dangerous or negligent acts	7,154	7.3	727	3.9	7,881	6.8
Abductions and related offences	58	0.1	8	0.0	66	0.1
Robbery and extortion offences	212	0.2	70	0.4	282	0.2
Unlawful entry with intent	1,712	1.8	597	3.2	2,309	2.0
Theft and related offences	9,864	10.1	1,438	7.7	11,302	9.7
Deception and related offences	3,097	3.2	266	1.4	3,363	2.9
Illicit drug offences	10,534	10.8	927	4.9	11,461	9.8
Weapons and explosives offences	1,118	1.1	148	0.8	1,266	1.1
Property damage/environmental pollution	2,482	2.5	730	3.9	3,212	2.8
Public order offences	12,254	12.5	5,668	30.2	17,922	15.4
Road traffic offences	31,485	32.2	2,307	12.3	33,792	29.0
Justice and government offences	11,472	11.7	3,703	19.7	15,175	13.0
Miscellaneous offences	807	0.8	126	0.7	933	0.8
Total	97,788	100.0	18,784	100.0	116,572	100.0

Notes: Excludes 24,940 'Unknowns'. Percentages lower than 0.05% have been rounded down to zero (0.0%).

Table 3.15 shows lower court outcomes for 2004. Indigenous adults had significantly different outcomes to non-Indigenous adults, with outcomes at the harsher end of the sentencing scale including proportionately more custodial orders and supervisory orders. Indeed Indigenous adults had more than twice the proportion of custodial orders (8.8% compared to 3.7%). Non-Indigenous adults were more likely to receive non-custodial orders and fines.

Table 3.15 Lower Court Outcomes. Queensland 2004

Outcomes	Non- Indigenous		Indigenous		Total	
	No	%	No	%	No	%
Not proven	9,457	9.7	2,439	13.0	11,896	10.2
Custodial order*	3,597	3.7	1,644	8.8	5,241	4.5
Community supervision#	4,028	4.1	1,061	5.6	5,089	4.4
Monetary order	72,452	74.1	11,901	63.4	84,353	72.4
Non-custodial order	4,390	4.5	950	5.1	5,340	4.6
Committed to a higher court	3,864	4.0	788	4.2	4,652	4.0
Other	0	0.0	1	0.0	1	0.0
Total	97,788	100.0	18,784	100.00	116,572	100.00

Notes: Excludes 24,940 'Unknowns'. Chi-square = 1425.73, df = 6, $p < 0.0001$ (Significant).
* Includes intensive corrections orders, suspended sentences and imprisonment.
# Includes probation (3,451) and community service (1,638).

We noted above in relation to young people that there is a *prima facie* statistically significant disparity in sentencing between Indigenous and non-Indigenous offenders. The same holds true for adults. However, we need further research to determine the precise reason for this disparity.

Table 3.16 shows offence by outcome for Indigenous and non-Indigenous adults. It provides the opportunity to consider in more depth the offence categories leading to sentences of imprisonment for Indigenous adults appearing the lower courts. Offences leading to custodial sentences for Indigenous adults were, in order:

- Justice offences (542).
- Acts intended to cause injury (318).
- Road traffic offences (183).
- Unlawful entry (141).
- Theft (139).
- Public order (121).

In each of these offence categories Indigenous adults were more likely than non-Indigenous adults to receive a custodial order.

Table 3.16 Offence by Outcome. Lower Courts

		Not proven		Custodial order		Community supervision		Monetary order		NonCustodial order		Committed higher court		Total	
		No	%	No	%	No	%	No	%	No	%	No	%	No	%
Homicide and related offences	Non-Indigen.	19	15.1	0	0.0	0	0.0	0	0.0	0	0	107	84.9	126	100
	Indigenous	1	5.0	0	0.0	0	0.0	0	0.0	0	0	19	95.0	20	100
Acts intended to cause injury	Non-Indigen.	793	16.6	240	5.0	385	8.1	2,005	42.0	329	6.9	1,023	21.4	4,775	100
	Indigenous	295	15.1	318	16.3	220	11.3	578	29.6	111	5.7	432	22.1	1,954	100
Sexual assault and related offences	Non-Indigen.	141	22.1	11	1.7	11	1.7	20	3.1	6	0.9	449	70.4	638	100
	Indigenous	22	23.2	2	2.1	2	2.1	1	1.1	0	0.0	68	71.6	95	100
Dangerous or negligent acts	Non-Indigen.	300	4.2	234	3.3	413	5.8	5,936	83.0	34	0.5	237	3.3	7,154	100
	Indigenous	33	4.5	67	9.2	45	6.2	555	76.3	2	0.3	25	3.4	727	100
Abductions and related offences	Non-Indigen.	23	39.7	1	1.7	2	3.4	1	1.7	2	3.4	29	50.0	58	100
	Indigenous	3	37.5	0	0.0	0	0.0	1	12.5	1	12.5	3	37.5	8	100
Robbery and extortion offences	Non-Indigen.	56	26.4	0	0.0	0	0.0	1	0.5	1	0.5	154	72.6	212	100
	Indigenous	28	40.0	1	1.4	0	0.0	0	0.0	0	0.0	41	58.6	70	100
Unlawful entry with intent	Non-Indigen.	350	20.4	250	14.6	291	17.0	367	21.4	51	3.0	403	23.5	1,712	100
	Indigenous	75	12.6	141	23.6	171	28.6	123	20.6	18	3.0	69	11.6	597	100
Theft and related offences	Non-Indigen.	1,009	10.2	515	5.2	626	6.3	6,556	66.5	657	6.7	501	5.1	9,864	100
	Indigenous	114	7.9	139	9.7	116	8.1	944	65.6	65	4.5	60	4.2	1,438	100
Deception and related offences	Non-Indigen.	374	12.1	172	5.6	318	10.3	1,764	57.0	163	5.3	306	9.9	3,097	100
	Indigenous	16	6.0	7	2.6	13	4.9	211	79.3	9	3.4	10	3.8	266	100
Illicit drug offences	Non-Indigen.	602	5.7	304	2.9	500	4.7	7,750	73.6	937	8.9	441	4.2	10,534	100
	Indigenous	54	5.8	35	3.8	30	3.2	741	80.0	54	5.8	12	1.3	926	100
Weapons and explosives offences	Non-Indigen.	74	6.6	14	1.3	22	2.0	928	83.0	79	7.1	1	0.1	1,118	100
	Indigenous	7	4.7	7	4.7	6	4.1	115	77.7	13	8.8	0	0.0	148	100
Property damage/ environmental pollution	Non-Indigen.	224	9.0	90	3.6	216	8.7	1,739	70.1	109	4.4	104	4.2	2,482	100
	Indigenous	56	7.7	77	10.5	89	12.2	462	63.3	25	3.4	21	2.9	730	100
Public order offences	Non-Indigen.	3,174	25.9	85	0.7	148	1.2	8,276	67.5	542	4.4	29	0.2	12,254	100
	Indigenous	1,369	24.2	121	2.1	54	1.0	3,935	69.4	175	3.1	14	0.2	5,668	100
Road traffic offences	Non-Indigen.	740	2.4	926	2.9	619	2.0	29,078	92.4	122	0.4	0	0.0	31,485	100
	Indigenous	52	2.3	183	7.9	85	3.7	1,969	85.3	18	0.8	0	0.0	2,307	100
Justice and government offences	Non-Indigen.	1,436	12.5	741	6.5	448	3.9	7,593	66.2	1,229	10.7	25	0.2	11,472	100
	Indigenous	303	8.2	542	14.6	227	6.1	2,174	58.7	454	12.3	3	0.1	3,703	100
Miscellaneous offences	Non-Indigen.	142	17.6	14	1.7	29	3.6	438	54.3	129	16.0	55	6.8	807	100
	Indigenous	11	8.7	4	3.2	3	2.4	92	73.0	5	4.0	11	8.7	126	100

Notes: Excludes 24,940 ‘Unknowns’ and 1 ‘Other’ outcome.

Table 3.17 shows the length of probationary orders for Indigenous and non-Indigenous adults. There is a statistically significant difference in the length of those orders, with non-Indigenous adults more likely to receive longer orders.

Table 3.17 Probation Periods By Length for Indigenous and non-Indigenous Adults. Queensland Lower Courts. 2004

Probation Periods	Non- Indigenous		Indigenous	
	No	%	No	%
Under 6 months	2	0.0	0	0.0
6 months and under 12 months	316	11.4	111	16.5
12 months and under 24 months	1,956	70.4	481	71.7
2 years and under 5 years	506	18.2	79	11.8
Total	2,780	100.0	671	100.0

Excludes 233 'Unknowns'. Chi-square = 25.49, df = 3, $p < 0.0001$ (Significant).

Table 3.18 shows community service orders by length of time. There is a statistically significant difference in the length of time for community service orders, with non-Indigenous adults more likely to receive longer orders.

Table 3.18 Community Service Orders By Hours for Indigenous and non-Indigenous Adults. Queensland Lower Courts. 2004

Community Service Order Hours	Non- Indigenous		Indigenous	
	No	%	No	%
Under 40 hours	2	0.2	2	0.5
40 hours and under 80 hours	445	35.7	187	47.9
80 hours and under 120 hours	425	34.1	119	30.5
120 hours and under 160 hours	207	16.6	49	12.6
160 hours and under 200 hours	33	2.6	12	3.1
200 hours and under 240 hours	83	6.7	16	4.1
240 hours and over	53	4.2	5	1.3
Total	1,248	100.0	390	100.0

Excludes 233 'Unknowns'. Chi-square = 28.12, df = 6, $p = 0.0001$ (Significant).

Table 3.19 shows the length of custodial sentences for Indigenous and non-Indigenous adults. There is a statistically significant difference in the length of custodial orders with non-Indigenous adults more likely to receive longer orders.

Table 3.19 Custodial Sentences By Months for Indigenous and non-Indigenous Adults. Queensland Lower Courts. 2004

Length of Custodial Sentence	**Non- Indigenous**		**Indigenous**	
	No	%	No	%
Under 3 months	1,117	31.1	672	40.9
3 months and under 6 months	1,172	32.6	518	31.5
6 months and 12 months	884	24.6	313	19.0
12 months and under 24 months	219	6.1	69	4.2
2 years and under 5 years	29	0.8	8	0.5
Missing	176	4.9	64	3.9
Total	3,597	100.0	1,644	100.0

Excludes 233 'Unknowns'. Chi-square = 58.88, df = 5, $p < 0.0001$ (Significant).

There is further research required in relation to sentencing Indigenous adults. However, from the available evidence, Indigenous adults are more than twice as likely to receive custodial sentences and more likely to receive supervised orders than non-Indigenous adults. However, the length of those orders is likely to be less for Indigenous adult offenders than for non-Indigenous offenders.

3.4 JUVENILE DIVERSION

In section 3.2 above data was presented on police intervention rates relating to juveniles. This section further discusses issues relating to police cautioning and youth justice conferencing.

3.4.1 Police Cautions

It would appear there has been a decline in the number of cautions. Judge O'Brien of the Childrens Court notes that in 2003/04 the number of police cautions of young people fell by 7% from the previous year (15,139 down to 14,092) (O'Brien 2004:3). In 2003/04 the number of charges against young people also fell by 13.5% from the previous year (19,223 down to 16,627) (O'Brien 2004:2). These figures might suggest some reduction in juvenile crime rates.

Data supplied by the Queensland Police Service allows analysis of police cautioning by region, as shown below in Table 3.20.

Table 3.20 Police Cautioning. Queensland 2004

	Police Cautioning			
Statistical Area	**Indigenous**		**Non-Indigenous**	
	No	**Rate***	**No**	**Rate**
Brisbane-Moreton	460	77.1	6118	28.2
Northern	224	105.5	393	23.1
North West	286	228.1	58	27.3
Far North	740	163.5	829	48.4
Balance of Queensland	1011	198.6	3125	39.9
Queensland Total	2721	143.5	10523	31.8

Source: Queensland Police Service, ABS Census of Population and Housing, 2001.
*Rate per 1,000 of the relevant youth population.

Table 3.20 shows variation between different regions in the use of cautions, with high rates for Indigenous young people recorded in the north west and 'balance of Queensland'.[12] Simply looking at the rate of cautions does not provide us with any comparative benchmark for use – such a benchmark is important given that police cautions are a 'diversionary' procedure. As diversionary procedures they imply comparison against other more formalised interventions.

In Table 3.21 below, the rate of cautioning is compared to the rate of arrest for Indigenous and non-Indigenous young people. The ratio provides us with an opportunity to see the extent to which cautioning is being used in comparison to arrest for both Indigenous and non-Indigenous youth.

[12] The closer analysis of the statistical divisions of Brisbane-Moreton, Northern, Far North and North West was suggested through consultations in the development of the evaluation methodology.

Table 3.21 Police Cautioning v Arrest. Queensland 2004

	Police Cautioning v Arrest		
	Cautioning Rate	Arrest Rate	Ratio
Indigenous Young People			
Brisbane-Moreton	77.1	176.2	1 : 2.3
Northern	105.5	248.1	1 : 2.3
North West	228.1	284.7	1 : 1.2
Far North	163.5	160.2	1 : 1
Balance of Queensland	198.6	317.5	1 : 1.6
Queensland Total	143.5	225.5	1 : 1.6
Non-Indigenous Young People			
Brisbane-Moreton	28.2	12.2	1 : 0.4
Northern	23.1	14.8	1 : 0.6
North West	27.3	6.1	1 : 0.2
Far North	48.4	9.9	1 : 0.2
Balance of Queensland	39.9	16.9	1 : 0.4
Queensland Total	31.8	13.0	1 : 0.4

Source: Queensland Police Service, ABS Census of Population and Housing, 2001.
*Rate per 1,000 of the relevant youth population.

In relation to Indigenous young people, Table 3.21 shows that in the far north region the rate of cautioning is almost the same as the rate of arrest with a ratio of 1:1. By way of contrast in the Brisbane-Moreton statistical regions and the northern region, arrest is used 2.3 times more frequently than cautioning. It is important to consider why these regional variations in police cautioning exist. Generally across Queensland generally, for every Indigenous young person cautioned, there are 1.6 arrests.

The ratio of cautioning to arrests for non-Indigenous young people is reversed. For every non-Indigenous young person cautioned, there are 0.4 arrests.

3.4.2 Youth Justice Conferencing

A significant change in juvenile justice legislation likely to positively impact on the number of Indigenous young people in detention has been the provisions of the *Juvenile Justice Amendment Act 2002* which created new sentencing options and allowed for expansion of the power to order youth justice conferencing. According to the President of the Childrens Court, 'these amendments undoubtedly represent the most significant changes made to the administration of juvenile justice in this State since the *Juvenile Justice Act* was first introduced in 1992' (O'Brien 2004:1).

Referrals

The Queensland Police Service provided data relating to police referrals. However, for a full picture, this needs to be compared to court referrals for the same period. Some information has been gleaned from the Childrens Court Annual Report for 2003/04 (O'Brien 2004).

- There was 175.5% increase in the number of youth justice conferences held between 2002/03 and 2003/04. Almost half the referrals were from police (47%) (O'Brien 2004:31).

- In 2003/04, 32% of all referrals to conferences were for Indigenous young people. This proportion was a significant increase over the previous year when 24% of referrals involved Indigenous youth (O'Brien 2004:31). Data supplied by the Department of Communities indicated that Indigenous referral rates for 2004/05 were likely to be around 31%.

- In 2003/04 the number of young people appearing before the Childrens Court in Queensland fell by 10.3% from the previous year (8,109 down to 7,276). According to Judge O'Brien, 'this is likely to be the consequence of a huge increase in the number of youth justice conferences held in 2003/04' (O'Brien 2004:2). However, there was also a drop in the number of young people charged by police.

Data was also supplied for 2003/04 by the Department of Communities.

Table 3.22 Referral to Conferencing. Queensland 2003/04

Source	Indigenous	Non-Indigenous
	%	%
Police	41	55
Court – Indefinite	42	34
Court – Before Sentence	17	11
Total	100	100

Source: Department of Communities.

In interviews with magistrates for the evaluation, it was noted that more court referrals would be made to conferencing except for limited support and availability of the Department of Communities in remote areas, and perceptions of a conferencing backlog in urban areas.

The most significant factor in Table 3.22 is the lower proportion of Indigenous young people referred to conferencing by police. For conferencing to operate effectively as a diversionary strategy and for it to be conducted within a reasonable period after the offence there needs to be greater use made of the process by police officers.

Some data supplied by the Department of Communities also indicated differing levels of referrals originating from the police depending on area. In the Sunshine Coast 60% of Indigenous referrals came directly from police, compared to the Gold Coast, Caboolture and Brisbane where 15%, 27% and 22% respectively of Indigenous referrals were from police rather than the court. The remainder of the services ranged from 43% to 50% of Indigenous referrals being generated from police with the remainder from the courts.

Table 3.23 shows data from the Queensland Police Service for 2004. There are significant variations with the rate of referrals to conferences between different regions, with higher rates than the state average in the northern region and 'balance of Queensland'.

Table 3.23 Police Conferencing Referrals. Queensland 2004

	Police Conferencing Referrals			
Statistical Area	**Indigenous**		**Non-Indigenous**	
	No	**Rate**	**No**	**Rate**
Brisbane-Moreton	52	8.7	1123	5.2
Northern	77	36.2	46	2.7
North West	33	26.3	7	3.3
Far North	77	17.0	76	4.4
Balance of Queensland	261	51.3	325	4.1
Queensland Total	500	26.4	1577	4.8

Source: Queensland Police Service, ABS Census of Population and Housing, 2001.
*Rate per 1,000 of the relevant youth population.

As noted with the discussion on cautioning, simply looking at the rate of conferencing referrals does not provide us with any comparative benchmark for use – and such a benchmark is important given that conferencing is a 'diversionary' procedure.

In Table 3.24 below, the rate of referral to conferencing is compared to the rate of arrest for Indigenous and non-Indigenous young people. The ratio provides us with an opportunity to see the extent to which conferencing referrals are being used in comparison to arrest.

Table 3.24 Police Conferencing Referrals v Arrest. Queensland 2004

	Police Conferencing Referrals v Arrest		
	Conferencing Rate	Arrest Rate	Ratio
Indigenous Young People			
Brisbane-Moreton	8.7	176.2	1 : 20.2
Northern	36.2	248.1	1 : 6.8
North West	26.3	284.7	1 : 10.8
Far North	17.0	160.2	1 : 9.4
Balance of Queensland	51.3	317.5	1 : 6.2
Queensland Total	26.4	225.5	1 : 8.5
Non-Indigenous Young People			
Brisbane-Moreton	5.2	12.2	1 : 2.3
Northern	2.7	14.8	1 : 5.5
North West	3.3	6.1	1 : 1.8
Far North	4.4	9.9	1 : 2.2
Balance of Queensland	4.1	16.9	1 : 4.1
Queensland Total	4.8	13.0	1 : 2.7

Source: Queensland Police Service, ABS Census of Population and Housing, 2001.
*Rate per 1,000 of the relevant youth population.

For Indigenous young people, the ratio of conferencing to arrests appears to vary dramatically across different regions. The statewide ratio is 8.5 arrests of Indigenous youth for every conference referral. However, in the Brisbane-Moreton region there are over 20 arrests of Indigenous youth for every conference referral.

For non-Indigenous young people the ratio of arrests to conference referrals is lower than with Indigenous youth. The statewide ratio is 2.7 arrests of non-Indigenous youth for every conference referral. There is a particularly strong contrast between Indigenous and non-Indigenous youth treatment in the Brisbane – Moreton region. There are also marked differences in the far north and the north west.

Breach Rates of Youth Justice Conferencing Agreements

Some data was supplied by the Department of Communities relating to breach rates for youth justice conferencing plans.

The Department was unable to break down the overall breach rates for a comparison between Indigenous and non-Indigenous young people. However, the data supplied did indicate that the Queensland statewide breach rate for all young people for youth justice conference agreements was 9% in 2003/04 and 6% in 2004/2005.

Although the breach rates could not be supplied by whether the young person was Indigenous or not, data was supplied relating to areas where there were larger numbers of Indigenous referrals. In Townsville in 2003/04 67% of the service's referrals were Indigenous referrals, and in 2004/05 62% of referrals received were for Indigenous young people. This service receives one of the highest levels of Indigenous referrals. The breach rate for the Townsville service was 9% in 2003/04 and 5% in 2004/05.

Central Queensland Youth Justice Conferencing office had 41% Indigenous referrals in 2003/04. Only 10% of agreements reached that year were breached.

From the evidence presented there would appear to be no significant variation based on the proportion of Indigenous young people in the client base when looking at the breach rates in the state. It appears that Indigenous young people are as likely to successfully complete their conferencing agreements as non-Indigenous youth.

Satisfaction Rates

Judge O'Brien noted that satisfaction rates with the youth just conferences are high: 98% of participants viewed the conference as fair, 98% were satisfied with the agreement reached and 97% would advise a friend to proceed to conference (O'Brien 2004:31).

Data supplied by the Department of Communities that in 2003/04 satisfaction rates were 97.2% for young offenders and 97.5% for victims. Data from the Townsville's office showed satisfaction rates for young offenders were 98.2%, and for victims, 97.8%. This would suggest that Indigenous conferences have similar levels of satisfaction as non-Indigenous conferences. The satisfaction rates for 2004/05 are 97.9% for young offenders and 98% for victims. Data from Townsville office shows satisfaction rates of 97.2% and 98.5% respectively, indicating that satisfaction rates are consistent with areas that have a percentage of Indigenous conferences.

3.4.3 Conclusion

In relation to youth justice conferencing the evidence suggests no difference in either breach rates for Indigenous young offenders for failing to complete conferencing plans, nor less satisfaction with the conferencing process by either offenders or victims. Research in other States demonstrates that conferencing is more successful in reducing re-offending than the courts for both Indigenous and non-Indigenous participants (Luke and Lind 2002), although the impact is likely to be greatest among those with lower risks of re-offending (Hayes and Daly 2004).

However, there is evidence that police are referring Indigenous youth to conferences at a lower rate than non-Indigenous youth, they are less likely to refer Indigenous young people to a conference than court referrals to conferences, and there are variations in the rate of referrals across different areas of the State.

There is also evidence that that Indigenous young people are not receiving the benefits of cautioning to the same extent as non-Indigenous young people and there are variations in the use of cautioning in different parts of the State.

We do not know the reasons for these differences in referral. However, we do know that difference in treatment at the discretionary stage of diversion has long term compounding effects for young people entering the juvenile justice system in relation to factors such as bail determinations, remand, the accumulation of prior record and harsher sentencing outcomes (Gale et al 1990, Luke and Cunneen 1995).

There is the need for a joint approach between Youth Justice Services and the Police Service to develop a strategic plan to increase police cautioning of Indigenous young people and referrals of Indigenous young people to conferences. Regions with low cautioning and conferencing referral rates should be targeted initially.

Cautioning rates and conferencing referrals rates need to be incorporated into Operational Performance Reviews.

4. CHANGES IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM: JUVENILE DETENTION AND ADULT IMPRISONMENT

4.1 INTRODUCTION

It was noted in Chapter One of this evaluation that measurements of success for the Justice Agreement include:

- A reduction in the number of Aboriginal and Torres Strait Islander adults in correctional facilities.
- A reduction in the number of Aboriginal and Torres Strait Islander young people in youth detention centres.
- A reduction in the number of Aboriginal and Torres Strait Islander peoples receiving custodial sentences.
- An increase in the proportion of Aboriginal and Torres Strait Islander peoples receiving community corrections orders corresponding to a decrease in the number of Aboriginal and Torres Strait Islander people in adult custodial corrections and youth detention centres.

This section of the evaluation analyses the data relating to juvenile detention and adult corrections to determine whether these outcomes have been meet.

4.2 JUVENILE DETENTION

4.2.1 National Comparisons

National data on juvenile detention is only available to 30 June 2003[13] and provides a snapshot at the last day of each quarter. Generally juvenile detention rates in Queensland are below the national average. Indeed over the last 22 years for which data is available, the only time the rate in Queensland was higher than the national figure was on 30 June 1999. As shown below in Table 4.1, since 2000 the rate of juvenile detention has been the second lowest in Australia, after Victoria.

Table 4.1 Juvenile Detention. Australia.
Rate per 100,000 Persons Aged 10-17 in Juvenile Detention as at 30 June 1999-2003

Year	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS
1999	39.4	11.8	33.7	57.1	20.9	55.5	57.3	44.0	32.8
2000	38.5	10.1	24.7	51.9	36.2	40.5	49.5	41.2	30.7
2001	32.2	12.7	20.3	43.3	34.4	67.0	24.0	68.4	27.9
2002	28.0	10.9	22.7	35.1	28.9	47.3	83.8	41.4	25.0
2003	30.5	14.4	23.2	46.3	43.7	34.6	92.1	64.2	29.1

[13] The Australian Institute of Criminology released its publication 'Statistics on juvenile detention in Australia: 1981 to 2004' (Veld and Taylor) on 4 November 2005, too late to be considered in this evaluation.

Source: adapted from Charlton and McCall 2004:16.

The data in Table 4.1 is shown in Figure 4.1 and compared for Queensland and Australia. The decline in juvenile detention rates from 1999 to 2001 has stabilised and increased slightly since then in Queensland.

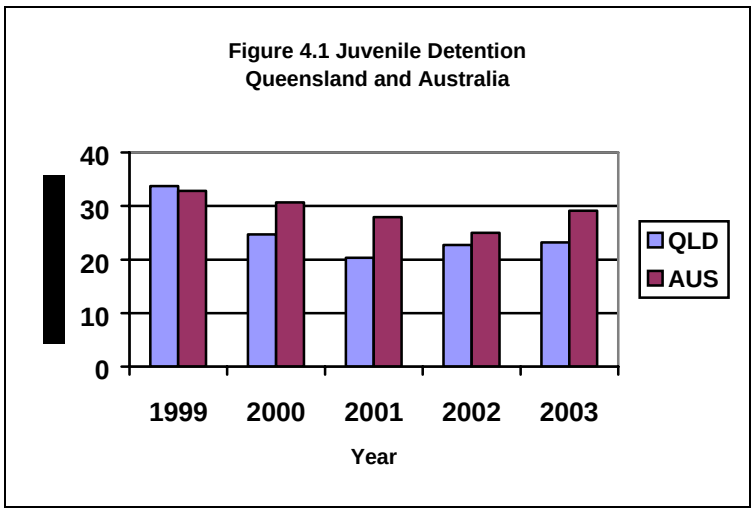


Table 4.2 shows the rate of detention for Indigenous young people throughout Australia at the end of each quarter for the period 1999 to 2003. Queensland has tended to have lower rates of incarceration for Indigenous young people than most states and territories, excepting Victoria and the Northern Territory. As Table 4.2 and Figure 4.2 show, the Queensland rate has been consistently lower than the national rate.

Table 4.2 Juvenile Detention. Indigenous Young People
Rate per 100,000 Persons Aged 10-17 in Juvenile Detention, Quarterly 1999-2003

Year	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS
1999									
31Mar	365.6	225.0	369.6	714.3	320.9	-	222.4	261.8	389.9
30Jun	365.6	225.0	330.5	714.3	213.9	-	101.1	261.8	357.5
30Sep	326.2	202.5	234.8	564.8	363.6	-	101.1	392.7	303.9
31Dec	302.7	247.5	234.8	664.5	213.9	-	121.3	261.8	306.4
2000									
31Mar	347.0	192.2	289.2	676.9	182.7	-	59.3	241.0	326.3
30Jun	398.1	85.4	244.4	590.3	304.5	-	108.8	241.0	323.9
30Sep	295.8	149.5	215.9	543.1	304.5	-	98.9	241.0	278.1
31Dec	281.2	128.2	175.2	495.9	345.1	-	197.8	722.9	272.3
2001									
31Mar	337.0	116.7	257.4	599.2	248.3	-	129.2	283.7	309.5
30Jun	384.9	175.0	240.2	623.2	165.6	-	59.6	851.1	318.1
30Sep	412.4	213.9	197.3	623.2	289.7	-	59.6	851.1	324.2
31Dec	349.6	77.8	197.3	623.2	413.9	-	139.2	709.2	312.0
2002									
31Mar	331.0	125.8	254.9	545.6	454.2	-	135.5	535.5	313.8
30Jun	312.4	125.8	234.7	430.3	394.9	-	145.2	401.6	281.4
30Sep	327.2	215.6	206.4	522.6	473.9	-	193.6	937.1	312.7
31Dec	345.8	89.8	182.1	576.3	572.7	-	203.3	0.0	310.4
2003									
31Mar	402.8	219.8	222.1	741.6	495.6	186.5	181.1	512.8	362.3
30Jun	339.2	169.1	237.4	578.4	610.0	133.2	152.5	384.6	320.9

Source: adapted from Charlton and McCall 2004:24.

Figure 4.2 Indigenous Detention Rates
Queensland and Australia

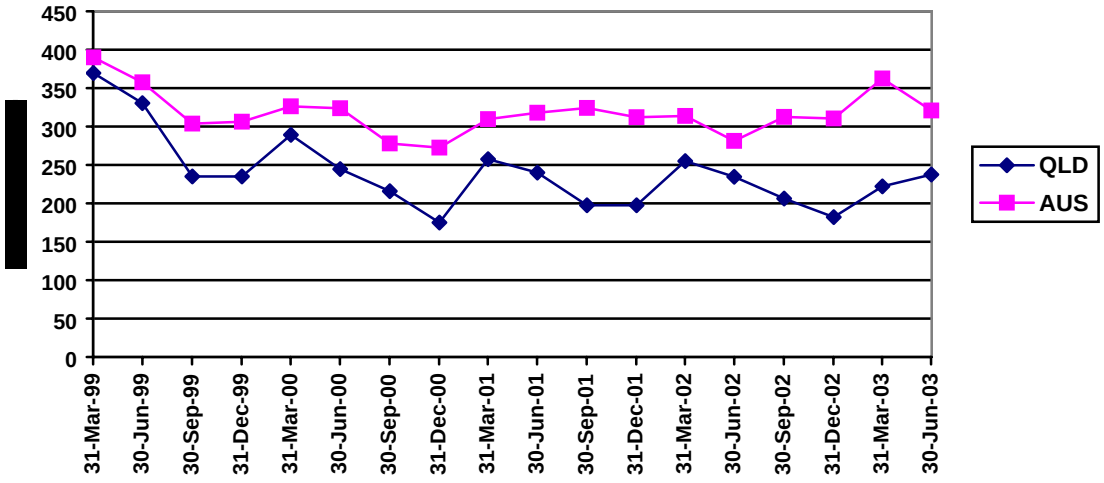


Table 4.3 shows the rate of detention for non-Indigenous young people throughout Australia on a quarterly basis for the period 1999 to 2003. Queensland has generally

tended to have much lower rates of incarceration for non-Indigenous young people than most states and territories, excepting Victoria.

Table 4.3 Juvenile Detention. Non-Indigenous Young People.
Rate per 100,000 Persons Aged 10-17 in Juvenile Detention, Quarterly 1999-2003

Year	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS
1999									
31Mar	28.0	11.3	15.1	23.7	20.9	-	27.5	5.6	19.9
30Jun	27.2	10.0	15.9	18.9	15.2	-	27.5	39.3	19.0
30Sep	24.7	14.7	18.0	20.3	23.5	-	41.3	14.0	20.2
31Dec	22.3	10.3	11.2	16.4	16.5	-	41.3	19.6	16.1
2000									
31Mar	23.1	9.0	13.7	19.1	19.6	-	24.7	28.1	17.2
30Jun	24.1	9.4	10.8	19.1	27.9	-	19.8	36.5	17.8
30Sep	21.8	10.6	8.8	22.0	25.3	-	29.7	39.3	17.2
31Dec	21.1	9.6	8.8	16.3	29.8	-	29.7	25.3	16.2
2001									
31Mar	17.4	11.4	9.9	13.2	31.6	-	46.9	27.9	15.5
30Jun	19.3	11.1	7.3	9.0	30.4	-	0.0	53.0	15.1
30Sep	21.4	10.7	8.9	16.5	23.4	-	13.4	41.9	16.2
31Dec	16.1	10.5	7.8	24.6	28.5	-	20.1	47.4	15.5
2002									
31Mar	17.0	11.8	8.9	17.4	22.9	-	20.4	19.7	14.7
30Jun	17.0	9.6	9.7	10.8	17.2	-	40.8	33.8	13.5
30Sep	18.6	9.1	10.9	10.8	21.6	-	27.2	22.5	14.2
31Dec	16.7	8.9	10.9	12.3	22.2	-	27.2	28.2	13.8
2003									
31Mar	16.6	10.7	10.0	13.1	26.7	45.0	20.7	39.9	15.4
30Jun	18.0	12.6	9.5	12.7	24.8	27.4	48.4	57.1	16.1

Source: adapted from Charlton and McCall 2004:24.

Figure 4.3 shows a comparison between Queensland and Australia for non-Indigenous detention rates. The last national quarterly figures for 30 June 2003 show that Queensland has the lowest rate of non-Indigenous detention in Australia. At 30 June 2003 the Queensland rate was less than 60% of the national rate.

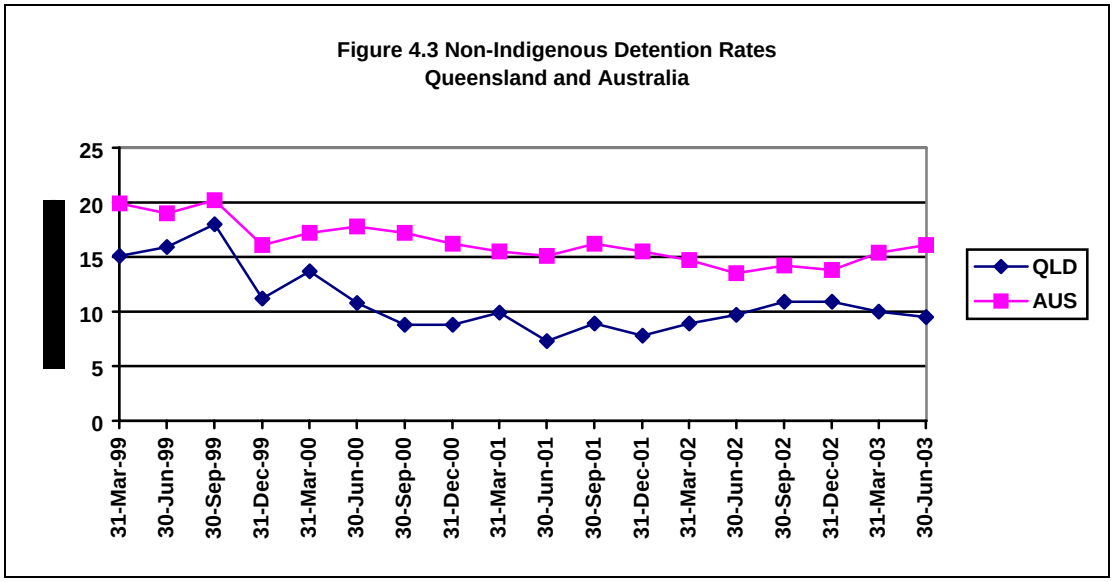


Figure 4.4 compares the Indigenous and non-Indigenous rates for Queensland over the period 31 March 1999 to 30 June 2003.

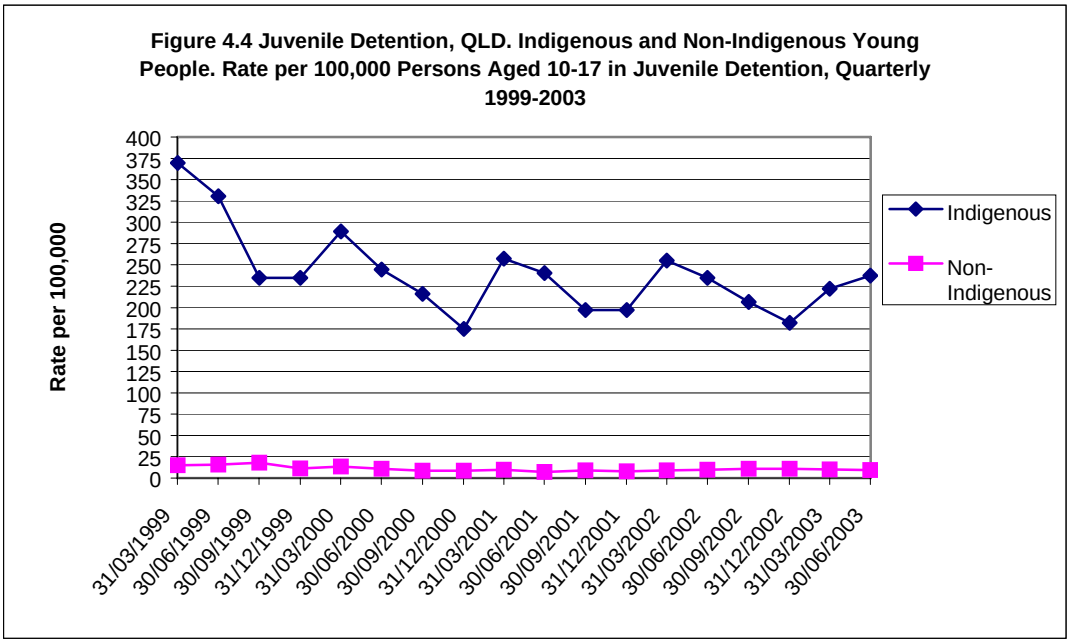


Table 4.2 (and Figure 4.4) showed that quarterly detention rates for Indigenous young people fluctuated, however the lowest rate for Indigenous detention over the 18 quarterly periods from 31 March 1999 to 30 June 2003 was in December 2000 at the time the Justice Agreement was signed. Since then rates of Indigenous detention have been consistently higher, although there has been a longer downward trend from the beginning 1999.

An alternative measure used by the Productivity Commission in the Report on Government Services (SCRGSP 2005b) is to base the yearly rate on the average detention centre population at each quarter of the financial year. This shows a decline in Indigenous detention rates over the five year period. While the decline is real, the reported figures and the rate of decline are not a full annual representation as they are

based on only four days in the year. However, the 2003 rate was 39% lower than the 1999 rate for Indigenous incarceration.

Table 4.4 Average Rate of Detention of Indigenous Young People Aged 10-17 Years in Juvenile Detention, per 100,000 persons. As at 30 June 1999 to 30 June 2003.

Year	Indigenous Rate
1999	347.1
2000	250.8
2001	222.2
2002	221.1
2003	212.0

Source: adapted from SCRGSP (2005b), Table F.6
http://www.pc.gov.au/gsp/reports/rogs/2005/prefacef.pdf Accessed 1/11/05.
Note. Detention rates based on average population of juvenile corrective institutions on the last day of each quarter of the financial year.

Age of Indigenous Young People in Detention

National data is also available on the age of young people in detention. We are particularly concerned with children under the age of 15 years in detention because of the long-term impact and increased likelihood that this group will become entrenched in the juvenile justice and then criminal justice system.[14]

Table 4.5 Juvenile Detention. Queensland and Australia. Indigenous and Non Indigenous by Number of Persons Aged 10-14 in Juvenile Detention at 30 June 1999-2003

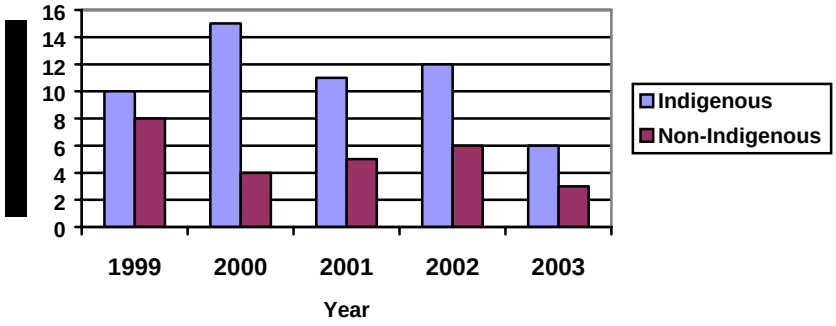
	Queensland				Australia			
	Indigenous		Non-Indigenous		Indigenous		Non-Indigenous	
Year	No	%	No	%	No	%	No	%
1999	10	55.6	8	44.4	47	49.0	49	51.0
2000	15	78.9	4	21.1	59	61.5	37	38.5
2001	11	68.8	5	31.3	59	59.0	41	41.0
2002	12	66.7	6	33.3	42	54.5	35	45.5
2003	6	66.7	3	33.3	47	55.3	38	44.7

Source: adapted from Charlton and McCall 2004:19.

Table 4.5 shows that the proportion of under 15 year olds in detention in Queensland who are Indigenous is consistently greater than the proportion nationally. While the numbers in Queensland are relatively small, this is still of concern.

[14] Recent evidence to support this outcome can be found in Lynch, Buckman and Krenske (2003).

Figure 4.5 Juvenile Detention. Aged 10-14. Queensland



A positive sign shown in Figure 4.5 is that the number of Indigenous under 15 years olds in detention has declined significantly between 2000 and 2003.

In summary, by national standards Queensland has relatively low Indigenous and non-Indigenous rates of detention. Quarterly detention rates fluctuate, however the lowest rate for Indigenous detention over the 18 quarterly periods from 31 March 1999 to 30 June 2003 was in December 2000 at the time the Justice Agreement was signed. Since then rates of Indigenous detention have been consistently higher.

However, average annual detention rates (based on four days of the year) do show a decline over the period. Thus despite fluctuations, using this measure there has been a reduction in the rate of Indigenous youth incarceration, with the 2003 rate some 39% lower than 1999 rate.

4.2.2 Queensland Admissions[15] Data on Juvenile Detention

Data supplied by the Department of Communities is based on admissions to detention over a twelve month period,[16] rather than the census data used in the national comparisons. The Department of Communities data is useful for analysing the throughput of Indigenous and non-Indigenous young people into detention over a twelve month period, irrespective of the length of time they are incarcerated.[17] Data is available for the ten year period from 1994/95 until 2003/04.

Table 4.6 shows all admissions to detention in Queensland for Indigenous and non-Indigenous young people from 1994-95 to 2003-04. During the ten year period the only time admissions of Indigenous young people were less than half of all admissions to detention was for the year 1995-96.

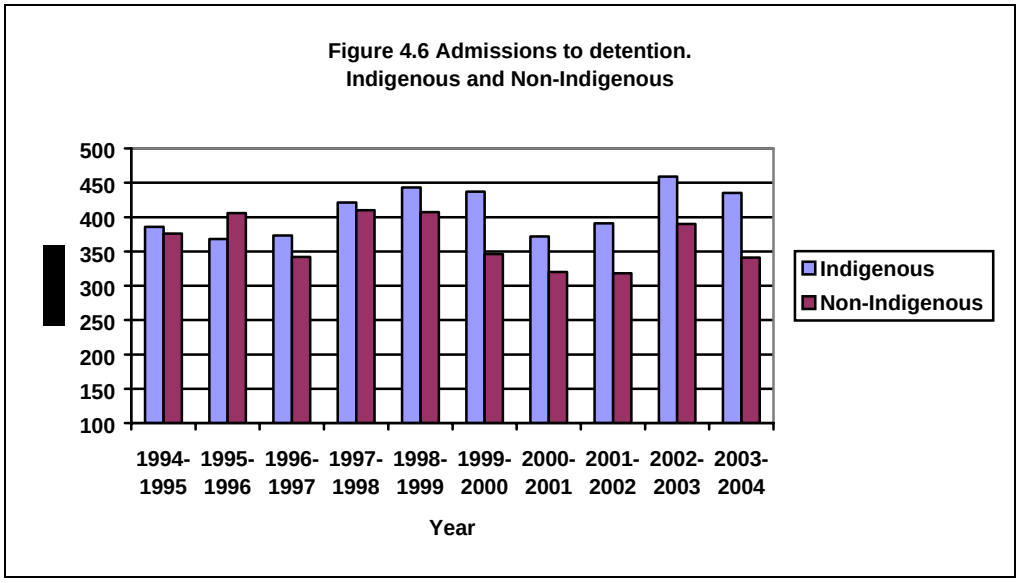
[15] Admissions data is based on episodes of custodial juvenile detention. An episode is a continuous period of time during which a young person is detained. A new episode is triggered when the there is a gap in time, where a remand period follows a completed sentenced period, or when a sentence is completed but another immediately follows.
[16] These are a count of admissions to a detention centre rather a count of detention orders.
[17] Census data tends to over-represent persons serving longer sentences. This can impact on the apparent picture of Indigenous incarceration if they are moving in and out of detention more quickly on shorter remands or sentences than non-Indigenous persons.

Table 4.6 Admissions to Juvenile Detention. Queensland. Indigenous and Non-Indigenous. 1994-95 to 2003-04

	Indigenous		Non-Indigenous		Total	
Year	No	%	No	%	No	%
1994-1995	386	50.7	376	49.3	762	100
1995-1996	368	47.5	406	52.5	774	100
1996-1997	373	52.2	342	47.8	715	100
1997-1998	421	50.7	410	49.3	831	100
1998-1999	443	52.1	407	47.9	850	100
1999-2000	437	55.8	346	44.2	783	100
2000-2001	372	53.8	320	46.2	692	100
2001-2002	391	55.1	318	44.9	709	100
2002-2003	459	54.1	390	45.9	849	100
2003-2004	435	56.1	341	43.9	776	100

Source: Data supplied by Department of Communities.

Figure 4.6 shows the trend in detention admissions over the same ten year period. There was some decline in 2000-01 and 2001-02, however the figure has increased more recently. In 2003-04 there were virtually the same number of admissions involving Indigenous young people as there were in 1999-2000 - the year prior to when the Justice Agreement was signed (ie 435 compared to 437). Generally the trend in Indigenous and non-Indigenous detention numbers has paralleled each other.



The data below in Table 4.7 and reproduced in Figure 4.7 is based on age-specific population rates.[18] The rate of detention for non-Indigenous young people was almost the same in 2003-04 as it was in 1999-2000. For Indigenous young people it had dropped by only the slightest margin. Indeed the rate of Indigenous over-representation was almost identical in 2003-04 to what it had been the year prior to the signing of the Justice Agreement in 1999-2000.

[18] ABS Census of Population and Housing. Usual Resident Population. 2001. Data supplied by DATSIP. It is important to note that rates are calculated using admissions counts rather than person counts and so will be over-stated.

Table 4.7 Admissions to Juvenile Detention. Queensland. Indigenous and Non-Indigenous. Rate per 100,000 of Persons Aged 10-16. 1999-00 to 2003-04

	Indigenous Rate	Non-Indigenous Rate	Over-Representation
Year			
1999-2000	2304.4	104.5	22.0
2000-2001	1961.6	96.6	20.3
2001-2002	2061.8	96.0	21.5
2002-2003	2420.4	117.8	20.5
2003-2004	2293.8	103.0	22.3

Source: Data supplied by Department of Communities.

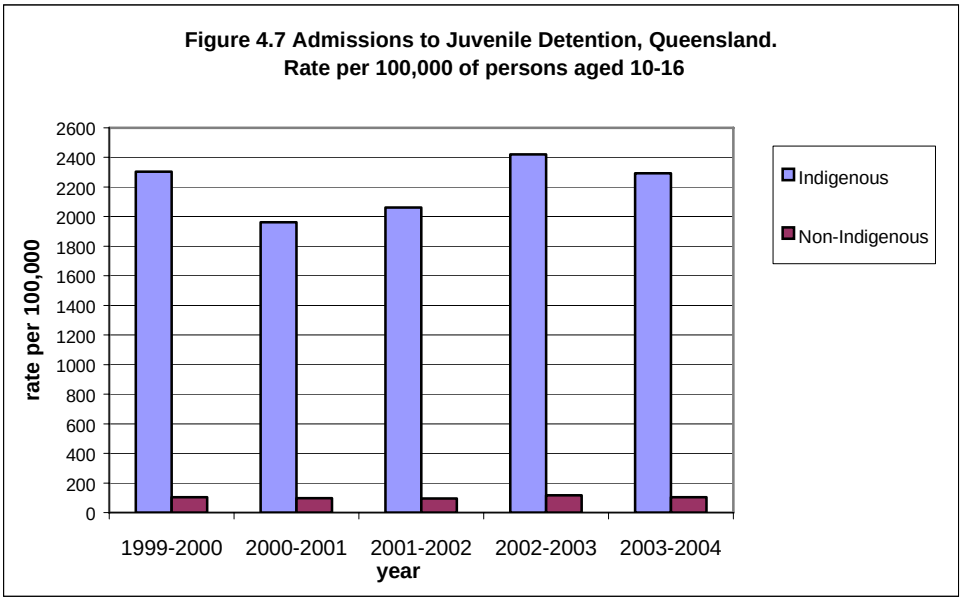


Figure 4.7 shows clearly the magnitude of difference between the detention rates for Indigenous and non-Indigenous youth. In 2003-04 Indigenous young people remain 22 times more likely to be admitted to detention than non-Indigenous youth.

The juvenile admissions data shows there has been neither a drop in the rate of Indigenous detention nor a reduction in the level of over-representation of Indigenous young people in detention during the first four years of the Justice Agreement. In fact the Indigenous detention rate and level of over-representation was higher in 2003-04 than in 2000-01 when the Justice Agreement was signed.

4.2.3 The Impact of Remand on Indigenous Young People

The admissions[19] data also shows reason for admission and is separated into three categories with each referring to a distinct period (or episode) of detention:

- Remanded (at start and end of episode)

[19] In this section, admissions data relate to episodes and reflect the legal status of the young person at the time of completion of their episode.

- Remanded then sentenced (remanded at start of episode but sentenced to a detention order at end of episode)
- Sentenced to a detention order (at both start and end of episode, although may have also been remanded at some stage in the episode).

Tables 4.8 to 4.10 (and Figures 4.8 to 4.10) show the changes over the ten year period in the reasons for admission to detention by these three categories, and comparative admissions for Indigenous and non-Indigenous young people.

Table 4.8 Admissions to Juvenile Detention. Remand[20]. Indigenous and Non-Indigenous 1994-5 to 2003-04

	Indigenous		Non-Indigenous		Total	
Year	No	%	No	%	No	%
1994-1995	266	49.5	271	50.5	537	100
1995-1996	262	45.9	309	54.1	571	100
1996-1997	261	52.0	241	48.0	502	100
1997-1998	300	51.1	287	48.9	587	100
1998-1999	337	50.4	331	49.6	668	100
1999-2000	327	53.8	281	46.2	608	100
2000-2001	284	51.4	269	48.6	553	100
2001-2002	304	53.0	270	47.0	574	100
2002-2003	394	53.5	342	46.5	736	100
2003-2004	365	53.9	312	46.1	677	100

Source: Data supplied by Department of Communities.

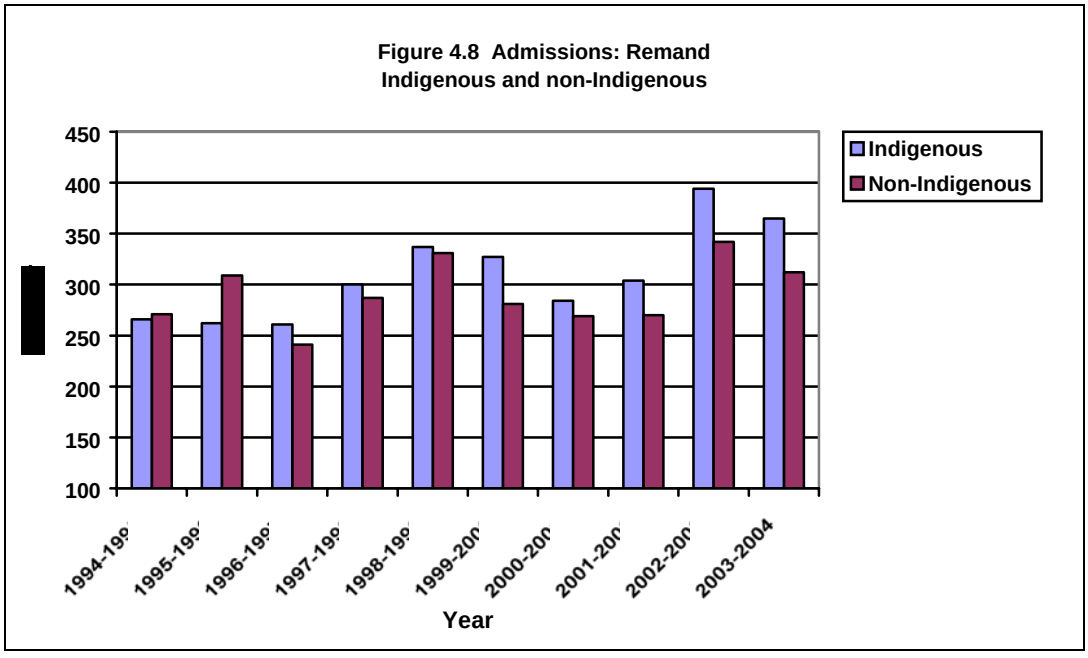


Table 4.8 and Figure 4.8 show an upward trend in admissions for remand for both Indigenous and non-Indigenous young people. However Indigenous remand numbers have increased more rapidly: Indigenous remand numbers have increased by 27%

[20] Figures in this table are a subset of all episodes that commenced with the young persons remand in custody. Those whose legal status changed in the period are excluded.

over the 10 year period and non-Indigenous remand numbers by 13%. For 2003-04 Indigenous youth comprised 53.9% of admissions to detention on remand, where the legal status was still remand at the end of the year.

Table 4.9 Admissions to Juvenile Detention. Remanded then Sentenced. Indigenous and Non-Indigenous 1994-5 to 2003-04

	Indigenous		Non-Indigenous		Total	
Year	**No**	**%**	**No**	**%**	**No**	**%**
1994-1995	80	57.1	60	42.9	140	100
1995-1996	76	56.3	59	43.7	135	100
1996-1997	78	56.1	61	43.9	139	100
1997-1998	84	52.2	77	47.8	161	100
1998-1999	76	57.6	56	42.4	132	100
1999-2000	62	60.8	40	39.2	102	100
2000-2001	60	69.0	27	31.0	87	100
2001-2002	64	71.9	25	28.1	89	100
2002-2003	47	58.0	34	42.0	81	100
2003-2004	47	79.7	12	20.3	59	100

Source: Data supplied by Department of Communities.

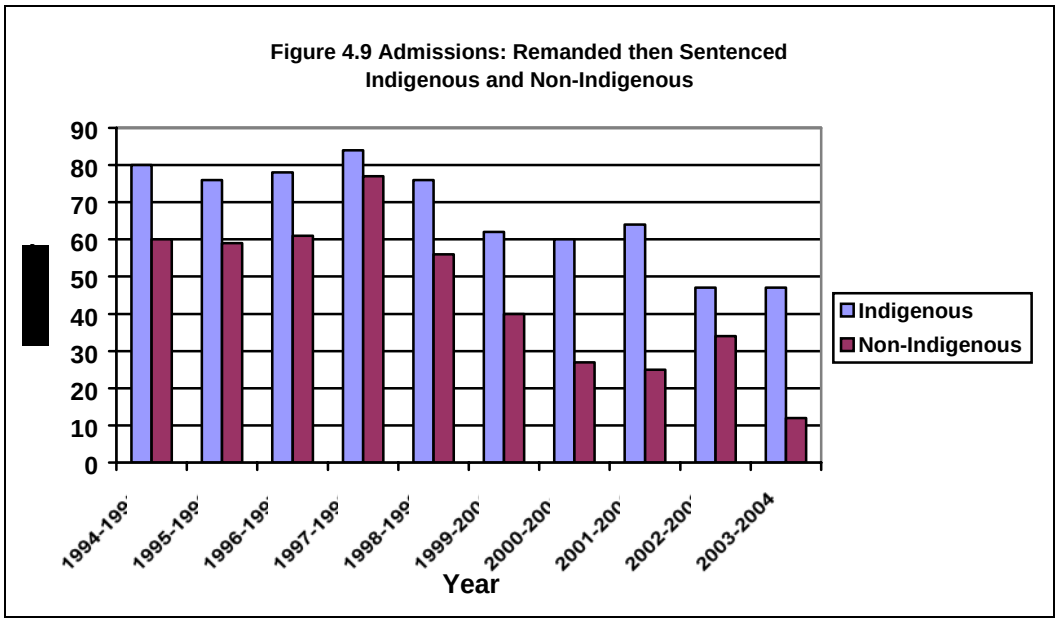


Table 4.9 and Figure 4.9 show that the numbers of admissions involving Indigenous and non-Indigenous people where the young person was sentenced following their remand (in a single episode) have declined. However, the decline has been greater for non-Indigenous youth: non-Indigenous numbers declined by 80% compared to a 41% decline for Indigenous youth. For 2003-04 admissions, Indigenous youth comprised 79.7% of the total in the category of remand then sentenced.

Table 4.10 Admissions to Juvenile Detention. Sentenced. Indigenous and Non-Indigenous 1994-5 to 2003-04

	Indigenous		Non-Indigenous		Total	
Year	No	%	No	%	No	%
1994-1995	40	47.1	45	52.9	85	100
1995-1996	30	44.1	38	55.9	68	100
1996-1997	34	45.9	40	54.1	74	100
1997-1998	37	44.6	46	55.4	83	100
1998-1999	30	60.0	20	40.0	50	100
1999-2000	48	65.8	25	34.2	73	100
2000-2001	28	53.8	24	46.2	52	100
2001-2002	23	50.0	23	50.0	46	100
2002-2003	18	56.3	14	43.7	32	100
2003-2004	23	57.5	17	42.5	40	100

Source: Data supplied by Department of Communities.

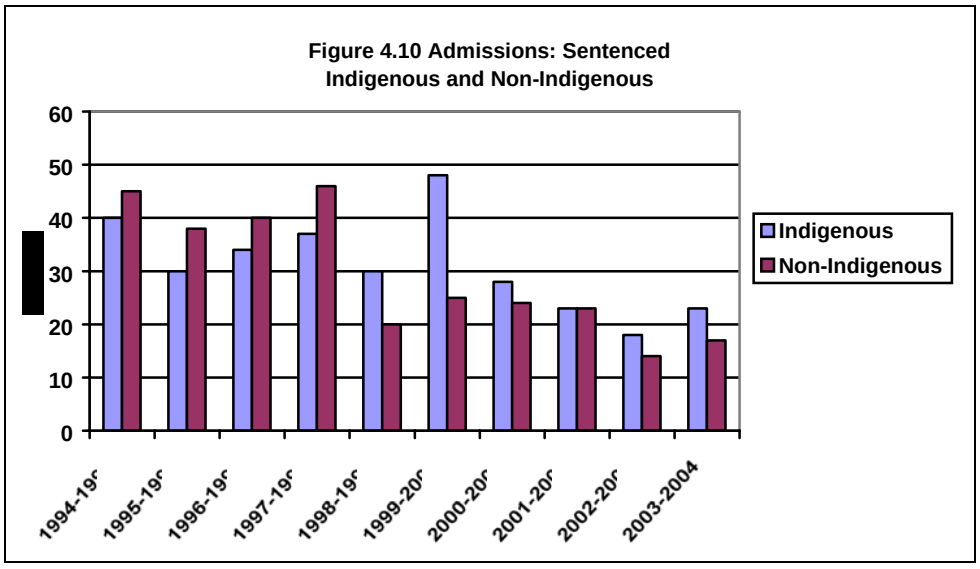


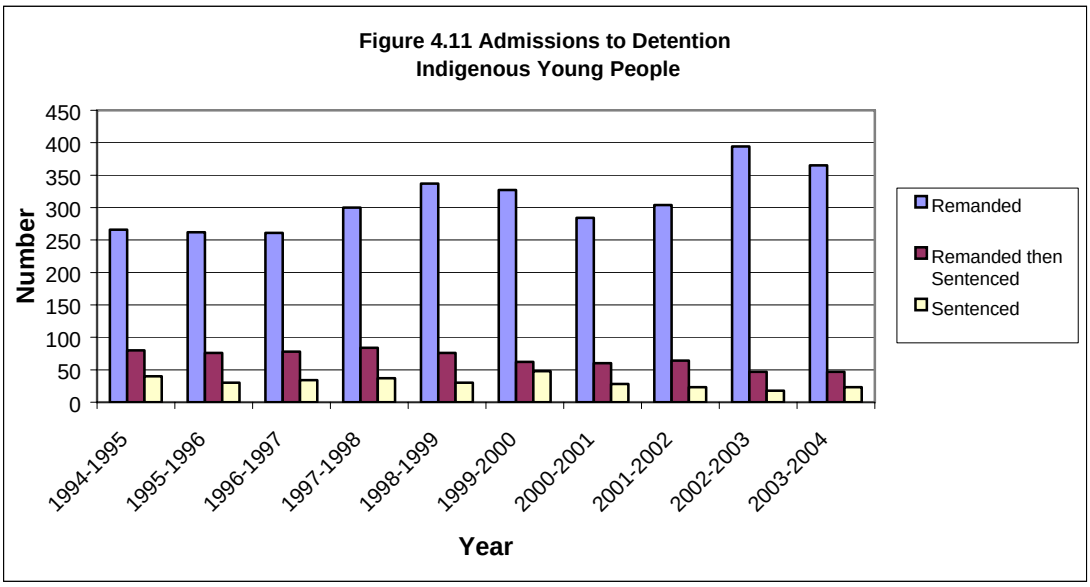
Table 4.10 and Figure 4.10 show that the numbers of Indigenous and non-Indigenous sentenced admissions to detention have declined. However, the decline has been greater for non-Indigenous youth: non-Indigenous numbers declined by 62% compared to a 43% decline for Indigenous youth. For 2003-04 sentenced admissions, Indigenous youth comprised 57.5% of the total.

The issue of remand is critical to understanding the reason for the continuing high rates of Indigenous detention. Table 4.11 and Figure 4.11 shows that the majority of admissions to detention involving Indigenous young people are for reasons of remand and this number and proportion of the total has increased over time. This may also mean that courts are taking longer to finalise matters.

Table 4.11 Admissions to Detention. Queensland.
Indigenous Young People

	Remanded		Remanded then Sentenced		Sentenced		Total	
Year	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
1994-1995	266	68.9	80	20.7	40	10.4	386	100
1995-1996	262	71.2	76	20.7	30	8.2	368	100
1996-1997	261	70.0	78	20.9	34	9.1	373	100
1997-1998	300	71.3	84	20.0	37	8.8	421	100
1998-1999	337	76.1	76	17.2	30	6.8	443	100
1999-2000	327	74.8	62	14.2	48	11.0	437	100
2000-2001	284	76.3	60	16.1	28	7.5	372	100
2001-2002	304	77.7	64	16.4	23	5.9	391	100
2002-2003	394	85.8	47	10.2	18	3.9	459	100
2003-2004	365	83.9	47	10.8	23	5.3	435	100

Source: Data supplied by Department of Communities.



In 2003-04, 83.9% of all admissions to detention that involved Indigenous young people were as a result of being remanded in custody. The significance of this data needs to be considered against policy initiatives such as the conditional bail and bail support programs put in place by Department of Communities and discussed further in this evaluation.

Further, preliminary data shows that few Indigenous young people who are remanded in custody later receive a custodial sentence. For the period 2000-01 to 2003-04, some 16% of Indigenous young people remanded in custody were subsequently sentenced to a custodial sentence while some 62% received a community based supervision order. [21]

[21] Data supplied by Criminal Justice Research, Department of Premier and Cabinet.

The most significant impact on Indigenous detention rates will be achieved through programs and policies aimed at reducing the remand population. Specific further research needs to be done on the reasons for remand of Indigenous young people, so that programs can be developed to target these causes. Preliminary data suggest that only a small proportion of those who are remanded in custody actually receive a custodial sentence.

In terms of the Justice Agreement measures of success, there has been a reduction in Indigenous young people *sentenced* to detention between 2000-01 and 2003-04. However this is overshadowed by the growing numbers in the remand population.

4.3 ADULT IMPRISONMENT

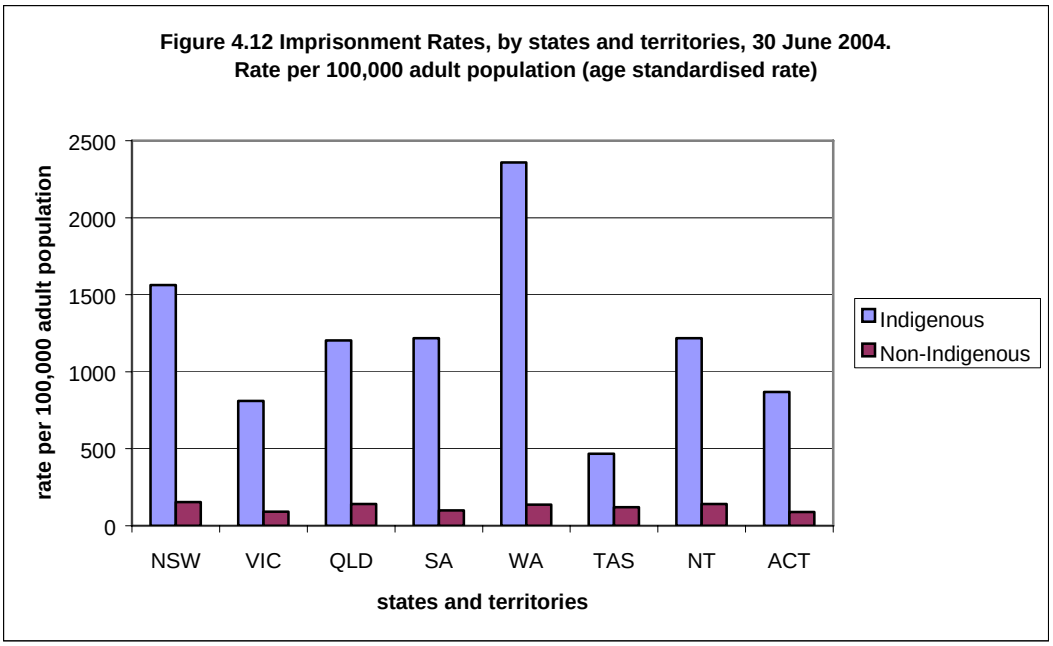
4.3.1 National Comparisons

The most recent national data on adult imprisonment is available for the period 30 June 2004. The data is shown below in Table 4.12 and Figure 4.12. The Queensland rate of adult Indigenous incarceration is below the national rate and less than Western Australia, South Australia, New South Wales and the NT. The level of over-representation is also below the national rate and the second lowest in the Australia after Tasmania.

Table 4.12 Adult Imprisonment. Australia.
Number and Rate as at 30 June 2004

Number									
	NSW	**VIC**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**	**AUS**
Indigenous	1576	186	1195	249	1217	59	556	26	5048
Non-Indigenous	7629	3438	3989	1069	1952	388	161	252	18776
Unknown	124	0	56	167	0	0	0	0	347
Total	9329	3624	5240	1485	3169	447	717	278	24171
Age Standardised Rate (rate per 100,000)									
	NSW	**VIC**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**	**AUS**
Indigenous	1561.9	810.5	1203.5	1218.5	2358.7	467.2	1218.7	867.8	1416.9
Non-Indigenous	153.6	91.1	141.4	100.1	136.6	121.3	141.0	88.9	129.0
Over-Representation									
	NSW	**VIC**	**QLD**	**SA**	**WA**	**TAS**	**NT**	**ACT**	**AUS**
	10.2	8.9	8.5	12.2	17.3	3.9	8.6	9.8	11.0

Source: ABS (2004:12). Adapted from existing tables.



According to more recent data made available by the Department of Corrective Services there were 1255 Indigenous people in secure and open custody as at 30 September 2004, which constituted 24.8% of all prisoners in Queensland. Indigenous males comprised 23.7% of the male prison population, and Indigenous women comprised 28% of the total female prison population (Department of Corrective Services 2004:5).

Table 4.13 shows Indigenous rates of incarceration in different Australian jurisdictions over the period 1994 to 2004. The historical data shows a long term increase in Indigenous imprisonment in Queensland from 1994 to 2002 and then a decline since then.

Table 4.13 Indigenous Adult Imprisonment. Rate per 100,000 adult Population as at 30 June 1994 to 2004.

Year	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS
1994	Na	1024	908.2	1834.4	2139.4	319.6	1153.5	Na	1250.6
1995	1320.7	911.7	1024.8	2008.3	2175.2	169.0	1163.4	440.3	1307.3
1996	1399.4	768.5	1275.1	1978.9	2241.5	330.7	1197.0	213.1	1405.9
1997	1448.3	906.5	1456.9	2015.3	2193.2	392.9	1423.6	567.0	1507.7
1998	1543.3	848.3	1565.9	1783.0	2164.6	316.2	1453.1	646.8	1546.0
1999	1756.5	810.9	1644.6	1841.9	2893.5	395.8	1464.8	384.6	1737.5
2000	1683.3	888.3	1523.0	1578.2	2737.8	415.4	1157.3	834.9	1614.2
2001	1768.0	946.0	1628.0	1572.0	2857.8	413.3	1338.7	896.1	1711.9
2002	1938.5	978.9	1638.6	1614.2	2264.8	617.4	1317.6	1084.1	1689.2
2003	1970.4	1029.3	1608.3	1573.8	2573.8	524.9	1608.5	668.9	1766.5
2004	2012.2	1068.8	1572.2	1623.7	3114.4	597.2	1589.4	1094.7	1851.9

Source: ABS (2004:32).

Figure 4.13 shows the data in the previous Table 4.13 for Queensland and Australia. The Queensland rate of Indigenous imprisonment rose quickly during the 1990s and

then closely parallelled the national rate between 1999 and 2002. Since 2001 the rate has steadied and then declined slightly.

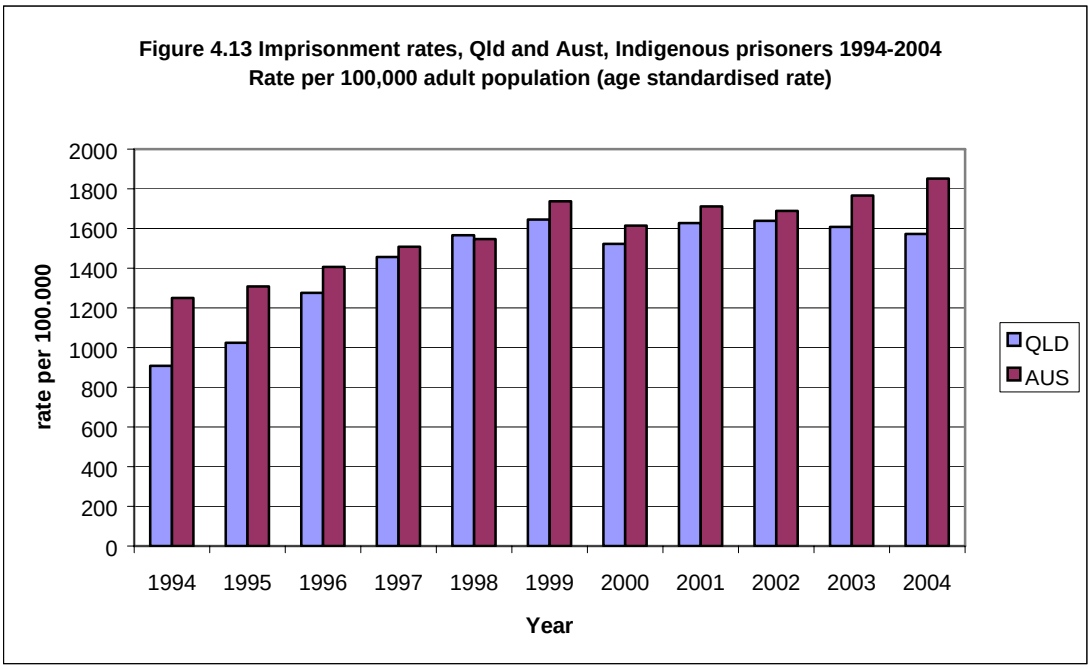


Table 4.14 shows recent data made available by the Department of Corrective Services on admissions over the last 11 years. The table includes sentenced and non-sentenced admissions to prison.

Table 4.14 Number of Admissions to Prison 1994-95 to 2004-05

Year	Indigenous	Non Indigenous
1994/95	1863	4606
1995/96	2047	5216
1996/97	2302	5933
1997/98	2712	6731
1998/99	3168	7990
1999/00	3056	8239
2000/01	2171	6015
2001/02	1902	5213
2002/03	1779	5177
2003/04	1720	4895
2004/05	1950	5306

Source: Department of Corrective Services. Correctional Information System (CIS).

There was a decline in Indigenous admissions after 1999-2000. This decline has been attributed to Government efforts at reducing the number of fine defaulters in prison which started taking effect in late 2000.

The upward spike in Indigenous admissions in 2004-05 needs further investigation.

Queensland has a rate of Indigenous over-representation in adult prison which is among the lowest in the nation. In terms of the Justice Agreement, there are positive signs that a steady increase in the rate of Indigenous imprisonment in Queensland has been halted and there has been a decline in the rate since 2002 until the most recent prison census data (2004).

Admission data also reflects a decline in Indigenous numbers from a high point in 1999-2000. However, there has been an upward spike in 2004-05 over the previous three years.

4.3.2 Prisoners on Remand

Table 4.15 provides data on the length of time unsentenced prisoners are held on remand.[22] The data is not available by Indigenous status for the national comparison.

Table 4.15 Adult Prisoners. Unsentenced at 30 June 2004

Time on Remand Mean Number of Months									
	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS
	5.1	5.2	7.0	3.8	3.7	2.0	3.9	2.2	5.2
Median Number of Months									
	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS
	2.9	2.6	3.7	1.8	2.0	1.4	2.2	1.3	2.8
90th Percentile (Months)									
	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUS
	12.4	12.9	17.0	9.7	9.7	4.9	9.1	5.4	12.5

Source: ABS (2004:15).

Unsentenced prisoners in Queensland spend longer periods of time incarcerated than in any other state or territory in Australia. One in ten remandees spent more than 17 months in prison in Queensland, compared to a national figure of 12.5 months. On average a remandee will spend 7 months in prison in Queensland which is more than 25% longer than the national average of 5.2 months.

There is no readily available historical data which shows Indigenous remand populations. [23] Table 4.16 shows the percentage of prisoners on remand from 30 June 1994 to 30 June 2004. For both Queensland and Australia there has been a steady

[22] ABS use the category of 'unsentenced prisoners' of whom the vast majority are remandees, but also include a small number of deportees and those unfit to plead. Although the data applies to unsentenced prisoners, the ABS refer to 'time on remand' (ABS 2004:15).

[23] The ABS publishes census data and for several years has not published jurisdictional data showing Indigenous and legal status.

increase over the period, with Queensland having a slightly higher remand population in 2004 than the national figure (22.2% compared to 20.4%).

Table 4.16 Adult Prisoners. Unsentenced at 30 June 2004

Year	Prisoners	
	Percentage on Remand	
	Queensland	Australia
	%	%
1994	13.1	11.5
1995	11.6	11.5
1996	12.5	12.7
1997	11.8	13.4
1998	12.5	14.0
1999	13.8	14.9
2000	15.6	17.4
2001	20.1	19.3
2002	20.5	19.6
2003	20.8	20.5
2004	22.2	20.4

Source: ABS (2004:33, 35).

Limited national historical data on the Indigenous unsentenced population is shown in Table 4.17.

Table 4.17 Indigenous Unsentenced Population

	Queensland				Australia			
	Indigenous		Non-Indigenous		Indigenous		Non-Indigenous	
	No	%	No	%	No	%	No	%
1994	56	10.1	270	13.9	300	14.6	1646	11.6
1995	53	17.6	273	12.2	316	15.2	1664	11.5
1996	81	10.0	352	12.9	406	13.6	1885	12.6
1997	79	8.4	374	12.9	439	12.3	2121	13.7
1998	134	13.0	424	12.4	527	14.1	2261	14.0
1999	134	12.1	515	14.3	601	14.0	2605	15.1
2004	255	21.3	895	23.0	1023	20.3	3772	20.0

Source: ABS Prison Census. 2004 data supplied by Criminal Justice Research based on ABS supplementary tables.
Note: data for 2000-2003 is not published.

Table 4.17 shows that the proportion of Indigenous prisoners who are unsentenced in Queensland is slightly lower than the percentage of non-Indigenous prisoners.

Some data was made available by the Department of Corrective Services on sentenced and unsentenced prisoners for 2003-04 and 2004-05. Unsentenced prisoners are predominately remandees but also include a small number of persons in categories such as awaiting deportation or extradition.

Table 4.18 Sentenced and Unsentenced Prisoner Admissions

	Indigenous		Non-Indigenous		Total	
	No	**%**	**No**	**%**	**No**	**%**
Sentenced Admission						
2003-04	1376	28.8	3399	71.2	4775	100.0
2004-05	1534	29.3	3705	70.7	5239	100.0
Unsentenced						
2003-04	771	22.8	2603	77.2	3374	100.0
2004-05	909	25.1	2713	74.9	3622	100.0

On the basis of admissions data, Indigenous prisoners comprise a higher proportion of sentenced prisoners (29.3% in 2004-05) than they do of unsentenced (or remand) prisoners (25.1% in 2004-05).

However, Table 4.18 also shows that some 37% of all Indigenous prisoner admissions in 2004-05 were of unsentenced Indigenous people. Strategies to reduce Indigenous custody rates will need to focus on both sentenced and unsentenced prisoner populations.

4.3.3 Sentence Length

Table 4.19 shows historical data on two measures of sentence length for prisoners: the percentage of prisoners serving aggregate sentences of 10 years or greater, and the median length of sentences in years.

Table 4.19 Adult Prisoners. Sentenced

Year	**Aggregate Sentence Length**			
	10 Yrs / Over		Median Yrs	
	Queensland	Australia	Queensland	Australia
	%	%		
1994	13.5	9.7	4.0	3.0
1995	13.3	10.1	4.0	3.0
1996	12.8	10.4	3.6	3.0
1997	13.2	10.4	3.6	3.0
1998	13.8	11.1	4.0	3.0
1999	13.6	11.5	3.8	3.0
2000	13.7	11.9	4.0	3.3
2001	14.0	12.2	4.0	3.3
2002	13.6	12.5	3.6	3.3
2003	12.6	12.6	3.5	3.3
2004	12.4	12.7	3.5	3.3

Source: ABS (2004:33, 35).

In general the proportion of prisoners in Queensland serving long sentences has declined slightly over the period 1994 – 2004, and the median length of sentence has reduced from 4 years to 3.5 years.
Table 4.20 shows mean and median aggregate sentence lengths for Indigenous prisoners in Queensland and Australia.

Table 4.20 Aggregate sentence length (months) for Indigenous sentenced prisoners, Queensland and Australia

	Queensland		Australia	
	Mean	**Median**	**Mean**	**Median**
1994	44	25.2	38.6	21.3
1995	46.6	30.2	40.5	22.8
1996	45.3	26	41.4	24
1997	43.5	24	40.4	22
1998	49.9	36	43.5	24
1999	46	27.4	40.9	21.2
2000	49.4	36	45.2	24
2001	50.7	36	45.5	24.3
2002	51.3	32.4	47.3	25.1
2003	50.8	31.8	47.2	24
2004	49.6	32.3	45.8	24

Source: ABS Prison Census. Data supplied by Criminal Justice Research.

Note: From 2003 onwards community custody is included.

Average sentence lengths for Indigenous prisoners in Queensland increased during the 1990s, but appear to be consistent at around 50 months since 2000. The median sentence length has been relatively stable since the mid 1990s at 24 months.

4.3.4 Most Serious Offence of Prisoners

Data showing the most serious offence of prisoners as at 30 September 2004 is shown below in Table 4.21.

Table 4.21 Most serious offence of prisoners, as at 30 September 2004. Queensland

Offence	Non- Indigenous		Indigenous	
	No	**%**	**No**	**%**
Homicide	494	12.3	110	8.6
Assault	566	14.2	458	35.8
Sexual Assault	541	13.6	153	12.0
Other against person	40	1.0	9	0.7
Robbery Extortion	466	11.7	114	8.9
Theft	909	22.8	213	16.7
Property Damage	61	1.5	21	1.6
Disorderly Conduct	82	2.0	81	6.3
Drug Offences	420	10.5	14	1.0
Motor Vehicle	158	4.0	50	3.9
Other	217	5.4	52	4.0
Unknown	32	0.8	3	0.2
TOTAL	**3986**	**100**	**1278**	**100**

Source: Department of Corrective Services 2004.

Table 4.21 shows that 35.8% of Indigenous prisoners had assault as their most serious offence. This was 2.5 times the proportion for non-Indigenous prisoners. More than two thirds of the assault convictions for Indigenous people were for aggravated/common assault (Department of Corrective Services 2004:9).

The second major category of offence for Indigenous prisoners is theft. Some 16.7% of Indigenous prisoners had this as their most serious offence. Nearly half of these offences involved burglary (Department of Corrective Services 2004:9).

It is also worth noting that the category of 'disorderly conduct' includes breaches of parole, bail, home detention and leave of absence orders. Some 94% of Indigenous offenders in the category of 'disorderly conduct' involved a breach of this type.

Finally drug offences make up a comparatively small proportion of the reasons for Indigenous imprisonment. Only 1% of Indigenous prisoners were convicted of this offence, compared to 10.5% of non-Indigenous prisoners.

Data on the use of imprisonment nationally shows that Queensland's incarceration rates for property offences and offences against the person are above the national average (Queensland Government 2005:15). The more extensive use of imprisonment for these particular offences has serious implications for Indigenous offenders given these are offence categories for which Indigenous offenders are most over-represented.

4.3.5 Location of Prisoners

Indigenous prisoners make up the majority of prisoners held at Lotus Glen and Townsville men's and women's prison. More than half of all male Indigenous prisoners are held in Lotus Glen, Townsville and Rockhampton. Conversely, more than half of all Indigenous women are held in south east Queensland at Brisbane Women's and Numinbah Correctional Centres.

Prisoners in Queensland are housed in secure and open custody, community custody and Work Outreach Camps (WORC). While Indigenous prisoners comprise 24% of those in secure and open custody, their proportion in community custody and WORC is much smaller.

- Indigenous males comprise 14% of men in community custody and 3% of the WORC program
- Indigenous women comprise 4% of female prisoners in community custody (Department of Corrective Services 2004:6).

The Department of Corrective Services suggests that reasons for the relatively low numbers of Indigenous people in community custody can be explained by way of:

- The seriousness of their offences which limits eligibility to community custody
- Indigenous people may choose not to go to community custody but prefer to be housed with other Indigenous offenders, or
- Indigenous people may choose not to go to community custody because they feel unsure of their ability to successfully complete their sentence in an environment of lower level supervision (Department of Corrective Services 2004:6).

The operation of the WORC program was restructured in April 2005 with WORC sites in western communities becoming permanent open custody centres and linked to specific correctional centres. Department of Corrective Services data indicates an increase in the number of Indigenous prisoners transferred to WORC programs in the three months after the restructure.

It is clear that Indigenous prisoners have not been accessing more open forms of custody. New policy developments in relation to WORC programs are expected to improve this situation. However, they need to be closely monitored to ensure that access for Indigenous prisoners improves significantly.

4.4 COMMUNITY CORRECTIONS

As at 30 September 2004 there were 1,971 Indigenous people being supervised on non-custodial community based orders. This constituted 15.9% of the total. Indigenous males comprised 15.7% of all males on community-based orders and Indigenous women 18.4% of all women (Department of Corrective Services 2004:5).

The proportion of Indigenous offenders on community-based orders is substantially lower than the proportion in prison custody (24%). The Department of Corrective Services suggests there are several reasons for this difference.

- It may be due to the seriousness of the offence or the prior offending history which results in a custodial order
- It may result from the inability of the Department to supervise certain orders (such as Intensive Correction Orders) in remote communities (Department of Corrective Services 2004:8).

It is noted in chapter 5.6 that the *Strengthening Community Safety through Managing Growth in Prison Numbers Project* will introduce a new model for community corrections with a new capacity to deliver services in the Cape and Gulf regions. Proposed amendments to the *Penalties and Sentences Act 1992* will provide for court ordered parole release for offenders sentenced to imprisonment for up to three years – it is expected that this will increase the number of offenders released to community supervision.

4.4.1 Most Serious Offence for Offenders on Community Based Orders

Table 4.22 shows the most serious offence for offenders on community-based orders as at 30 September 2004.

Table 4.22 Most serious offence of offenders on community based orders, as at 30 September 2004

Offence	Non-Indigenous		Indigenous	
	No	**%**	**No**	**%**
Homicide	168	1.8	38	1.9
Assault	1473	15.8	636	32.3
Sexual Assault	287	3.0	38	1.6
Other against person	117	1.2	9	0.5
Robbery Extortion	287	3.0	36	1.8
Theft	2727	29.3	448	22.7
Property Damage	294	3.2	104	5.3
Disorderly Conduct	777	8.4	291	14.8
Drug Offences	929	10.0	43	2.2
Motor Vehicle	1820	19.6	271	13.7
Other	369	4.0	51	2.6
Unknown	49	0.5	6	0.3
TOTAL	**9297**	**100**	**1971**	**100**

Source: Department of Corrective Services 2004.

Table 4.22 shows that the most common offences for which Indigenous offenders were placed on community based orders were assault, theft, disorderly conduct and motor vehicle offences.

Some 32.3% of Indigenous offenders placed on community-based orders had assault as their most serious offence. This was twice the proportion for non-Indigenous prisoners. Some 84.7 % of the assault convictions for Indigenous people were for aggravated/common assault (Department of Corrective Services 2004:10).

The second major category of offence for Indigenous offenders placed on community-based orders is theft (22.7%).

It is noteworthy that the third most prevalent category for Indigenous offenders on community-based orders was ‘disorderly conduct’. Within this category some 77.3% of Indigenous offenders had disorderly conduct matters relating to breach of parole, bail and other orders.

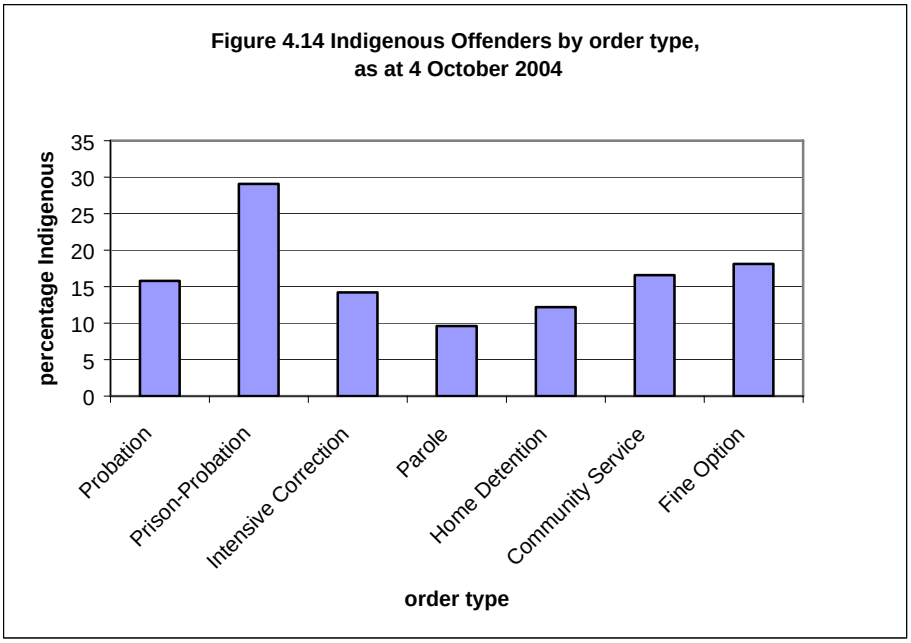
Finally drug offences make up a comparatively small proportion of the reasons for Indigenous offenders being placed on community based orders. Only 2.2% of Indigenous offenders were convicted of this offence, compared to 10% of non-Indigenous offenders.

4.4.2 Community Supervision Orders

Table 4.23 and Figure 4.14 shows offenders on community supervision orders by the type of order as at 4 October 2004. There were 2147 Indigenous offenders under community supervision by the Department of Corrective Services which was 16.3% of the total.

Table 4.23 Community Supervision. Offenders by order type. Queensland as at 4 October 2004

Order Type	**Queensland**		
	Total No	**Indigenous No**	**Indigenous %**
Probation	7089	1122	15.8
Prison-Probation	570	166	29.1
Intensive Correction	555	79	14.2
Parole	954	92	9.6
Home Detention	90	11	12.2
Community Service	1989	330	16.6
Fine Option	1916	347	18.1
Total	13163	2147	16.3



It is noteworthy that Indigenous offenders comprise a small proportion of people on parole (9.6%) and home detention (12.2%).[24] The proportion on parole is low (9.6%) given that Indigenous people comprised 24% of the prison population, and one might reasonably expect a similar percentage to be released on parole. Conversely, Indigenous offenders comprise a large proportion of offenders where the court has ordered a period of probation to follow a prison sentence (29.1%).

[24] The Department of Corrective Services (2004:15) erroneously refers to Indigenous people comprising 1.2% of home detention orders. There are other errors or omissions in Table 7 of the document, which was a briefing note to the Director General and the Law and Justice CEO Committee.

There are important regional differences in the use of supervision orders and these are shown in Table 4.24.

Table 4.24 Community Supervision. Offenders by region and order type. As at 4 October 2004

Order Type	Central			Metropolitan			Northern			Southern		
	Total No	Ind No	Ind %	Total No	Ind No	Ind %	Total No	Ind No	Ind %	Total No	Ind No	Ind %
Probation	1427	131	9.2	1941	158	8.1	1409	592	42	2312	241	10.4
Prison-Probation	93	11	11.8	128	10	7.8	186	110	59.1	163	35	21.5
Intensive Correction	136	13	9.6	175	12	6.9	59	30	50.8	185	24	13
Parole	123	8	6.5	358	21	5.9	137	42	30.7	336	21	6.3
Home Detention	9	0	0.0	32	4	12.5	20	7	35	29	0	0
Community Service	410	32	7.8	583	28	4.8	387	195	50.4	609	75	12.3
Fine Option	569	53	9.3	468	27	5.8	508	239	47	371	28	7.5
Total	**2767**	**248**	**9.0**	**3685**	**260**	**7.1**	**2706**	**1215**	**44.9**	**4005**	**424**	**10.6**

Source: Department of Corrective Services 2004.

Table 4.24 shows there were no Indigenous offenders on home detention in the Southern and Central Regions. There are a large proportion of Indigenous offenders on community supervision in the northern region (40%). However this reflects their population in that part of the State (Department of Corrective Services 2004:15).

4.4.3 Completion of Community Supervision Orders

Data was also made available in relation to the successful completion of community supervision orders.

Table 4.25 Community supervision orders successfully completed, 2003-04

Order Type	Non-Indigenous		Indigenous	
	No. orders completed	% successfully completed	No. orders completed	% successfully completed
Supervision	5688	75.7	1229	58.3
Restricted Movement	190	80.0	34	82.4
Reparation	7746	77.7	1449	68.3
Total	**13,624**	**76.9**	**2712**	**63.9**

Source: Department of Corrective Services 2004.
Notes: Restricted Movement: Home Detention. **Reparation:** Fine Option, Sper Fine Option, Community Service, Commonwealth Interstate Community Service. **Supervision:** Probation, Prison/Probation, Parole, Qld Parole registered from Interstate, Qld Commonwealth Recognizance, Qld Commonwealth licence, Interstate Probation Orders, Interstate Parole Orders, Interstate Suspension Order (NSW), Conditional Release Order, Intensive Correctional Order, Intensive Drug Rehabilitation Order.

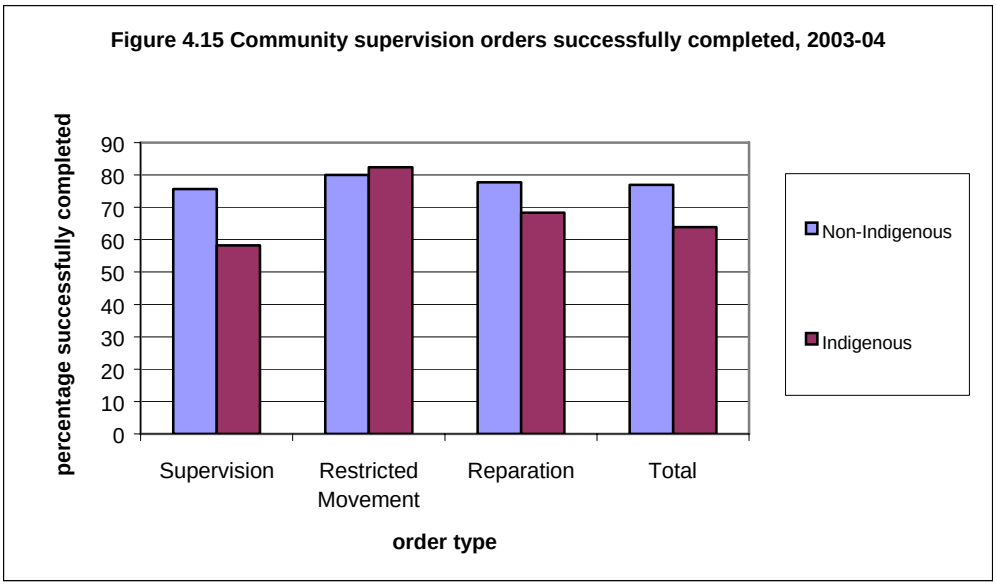


Table 4.25 and Figure 4.15 show the successful completion of orders by Indigenous and non-Indigenous offenders. Generally Indigenous offenders are some 13% less likely to successfully complete community supervision orders than non-Indigenous offenders. This lower success rate is most pronounced with supervision orders such as probation, parole and other release or intensive orders (75.7% compared to 58.3%). Although home detention is not frequently used with Indigenous offenders, it appears that the successful completion of these orders is higher among Indigenous offenders (82.4%) than non-Indigenous offenders (80%).

Increased capacity by the Department of Corrective Services for community supervision in remote communities may assist in increasing the number of Indigenous offenders on community based orders and correspondingly reduce the imprisonment rate. This needs to be monitored.

The data suggests that Indigenous offenders are not getting the benefit of community supervision orders such as parole or home detention. The reasons for this require further investigation. If eligibility criteria systematically disadvantage Indigenous offenders then the criteria needs to be addressed.

Successful completion rates vary for Indigenous offenders depending on the nature of the order. While it is important to understand why some types of orders have lower successful completions, we should also be encouraging the utilisation of those where success is more likely to occur (such as home detention and reparation).

4.5 ADULT AND JUVENILE RECIDIVISM

4.5.1 Juveniles

We know there is extensive contact between Indigenous youth and the juvenile justice system. A recent study in South Australia found that 63.1% of all Indigenous male youth will have been apprehended by police by the time they are 17 years. More than one in four Indigenous girls will also be apprehended. Overall, the rate of apprehension among Indigenous young people was nearly three times the non-Indigenous rate (Skrypiec and Wundersitz 2005). The same study also showed that the intervention occurred from an early age – by the age of 15 years nearly one in three Indigenous young people had been apprehended by police.

A Queensland study (Griffith University) which has not been released yet is expected to show that 40% of Queensland Indigenous males have been to court by the time they are 17 years old (Criminal Justice Research 2005:2).

Research for the Crime and Misconduct Commission by Lynch, Buckman and Krenske (2003) considered recidivism as measured by the extent to which juveniles on supervised orders in 1994-95 had progressed to the adult correctional system by September 2002. The research indicated that the rate of recidivism was greater among those subject to multiple risk factors (male, Indigenous, subject to care and protection order). The findings were:

- By September 2002, 79 per cent of those juveniles on supervised orders in 1994–95 had progressed to the adult corrections system and 49 per cent had been subject to at least one term of imprisonment.
- By September 2002, 89 per cent of the male Indigenous juveniles on supervised orders in 1994–95 had progressed to the adult corrections system, with 71 per cent having served at least one prison term.
- By September 2002, 91 per cent of the juveniles who had been subject to a care and protection order, as well as a supervised justice order, had progressed to the adult corrections system with 67 per cent having served at least one term of imprisonment.
- Over time, the probability of those juveniles on supervised orders in 1994–95 who are subject to multiple risks factors (e.g. male, Indigenous, care and protection order) progressing to the adult corrections system will closely approach 100 per cent.

Earlier Queensland research on youth recidivism as measured by re-appearance in court as a juvenile had shown that Indigenous male youth were the most likely group to re-appear and non-Indigenous females the least likely (Juvenile Justice Branch 1998:iii). Indigenous young males had on average more prior proven offences than any other group identified in the study. Generally courts did not impose custodial orders until around the sixth appearance of a young offender.

Research has also shown that Indigenous young people on supervised orders are younger than their non-Indigenous counterparts, with Indigenous young people accounting for 56% of males and 55% of females under 15 years of age.

For Indigenous young people on orders at 30 June 2004, 17% of males and 23% of females were under 15 years of age. In comparison, only 10% of non-Indigenous males and 16% of non-Indigenous females were under 15 years of age. The data shows that Indigenous young people are more entrenched in the juvenile justice system at earlier age, and this is also reflected in detention figures (see Table 4.6)

Table 4.26 shows the percentage of Indigenous and non-Indigenous young people who were admitted to detention in a twelve month period and who had been previously in detention.

Table 4.26 Percentage of Young People Admitted to Detention with a Previous Admission to Juvenile Detention, Indigenous and non-Indigenous, 1994-95 to 2003-04

	Remanded then sentenced		Remanded		Sentenced		Total	
Year	Indigenous %	Non-Indigenous %	Indigenous %	Non-Indigenous %	Indigenous %	Non-Indigenous %	Indigenous %	Non-Indigenous %
1994-1995	80.0	78.3	56.4	40.2	85.0	64.4	64.25	49.2
1995-1996	81.6	78.0	61.5	41.1	73.3	63.2	66.58	48.52
1996-1997	73.1	88.5	62.5	48.5	70.6	60	65.42	57.02
1997-1998	84.5	77.9	54.7	45.6	75.7	52.2	62.47	52.44
1998-1999	84.2	76.8	56.4	46.5	80.0	50.0	62.75	50.86
1999-2000	80.6	92.5	63.9	56.6	72.9	60.0	67.28	60.98
2000-2001	93.3	77.8	65.5	55.0	89.3	66.7	71.77	57.81
2001-2002	90.6	84.0	66.1	53.0	78.3	73.9	70.84	56.92
2002-2003	93.6	88.2	71.8	59.1	83.3	42.9	74.51	61.03
2003-2004	95.7	91.7	60.5	57.7	69.6	70.6	64.83	59.53

Source: Data Supplied by Department of Communities.

Table 4.26 shows that the percentage of Indigenous young people with prior admissions to detention is consistently higher than non-Indigenous young people. Further, it is consistently higher irrespective of whether the current reason for admission is remand or sentenced.

On average over the 10 year period, 67.1% of Indigenous young people who were currently in detention had been previously in detention, compared to 55.4% of non-Indigenous youth.

4.5.2 Adults

There has been less research in Australia on recidivism among Indigenous adults than among juveniles. One measure for recidivism is prisoners with known prior adult imprisonment. Data for this measure is shown in Table 4.27.

Table 4.27 Prisoners, with known prior adult imprisonment under sentence, 30 June 2000 - 30 June 2004. Queensland and Australia

Year	Queensland		Australia	
	Indigenous %	Non-Indigenous %	Indigenous %	Non-Indigenous %
2000	79.4	60.9	76.2	52.1
2001	77.9	62.6	76.3	54.5
2002	76.8	61.3	77.6	54.1
2003	81.5	60.8	77.0	52.8
2004	80.3	59.9	76.8	53.1

Source: SCRGSP (2005) Tables 9A.2.4 to 9A.2.8 Accessed 10/8/05. <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/index.html>.

Table 4.27 shows that Indigenous prisoners are consistently more likely to have an experience of prior imprisonment, both in Queensland and nationally. In Queensland the data shows that Indigenous prisoners are between 15-20% more likely to have been previously imprisoned than non-Indigenous prisoners.

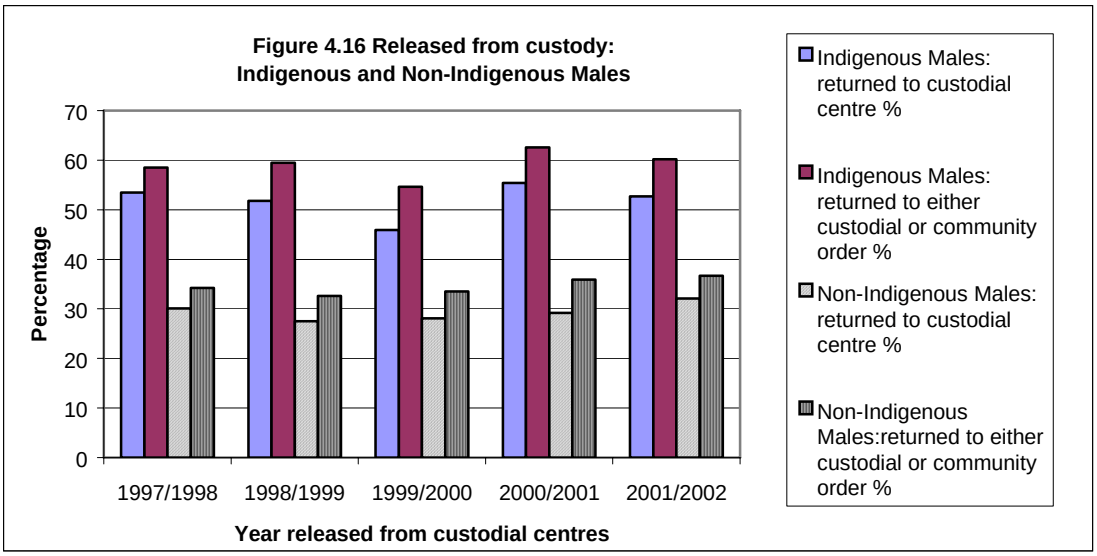
Another measure of repeat offending is the proportion of those who are released from prison custody and who are then returned either to prison or placed on a community corrections order within two years of their initial release. A related measure is the proportion of those offenders released from a community corrections order who are then either placed on a community corrections order again or placed in custody within two years of their initial release from a community order.

Table 4.28 shows the percentage of Indigenous and non-Indigenous males returned to either custody or placed on community corrections orders after being released from prison. The same data is presented as a graph in Figure 4.16.

Table 4.28 Released from Custody and Returned to Custody and Community Orders. Indigenous and non-Indigenous Males

	Indigenous Males		Non-Indigenous Males	
Year Released from Custodial Centre	Returned to custodial centre %	Returned to either custodial or community order %	Returned to custodial centre %	Returned to either custodial or community order %
1997/1998	53.5	58.5	30.1	34.2
1998/1999	51.8	59.5	27.5	32.6
1999/2000	45.9	54.6	28.1	33.5
2000/2001	55.4	62.6	29.2	35.9
2001/2002	52.7	60.2	32.1	36.7

Source: Department of Corrective Services, Correctional Information System (CIS), extraction date: 27 May 2005.



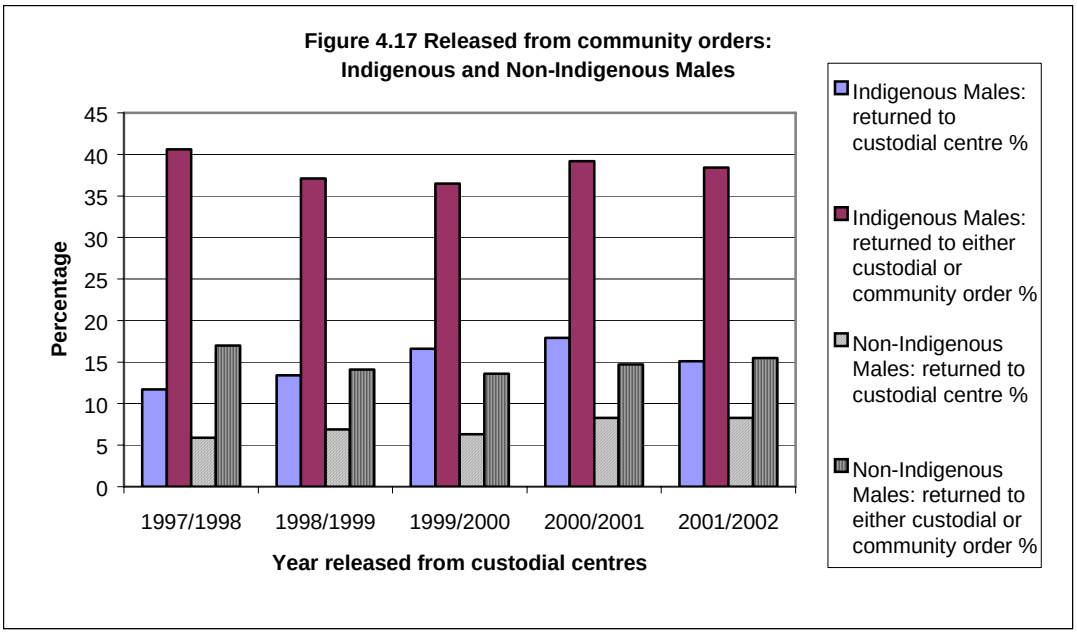
Over the five year period there has been very little change in the proportion of Indigenous male offenders who return to prison after being previously released from a custodial centre. For those released in 2001-02, some 52.7% returned to prison custody. The proportion of Indigenous male offenders who return to either community corrections or prison has changed little, rising slightly over the period from 58.5% to 60.2%. The proportion of Indigenous males released from prison and returned to either custody or community orders has remained constant at between 20 – 25% higher than the equivalent non-Indigenous group.

Table 4.29 shows the percentage of Indigenous and non-Indigenous males returned to either custody or placed on community corrections orders after being released from a community corrections orders. The same data is presented as a graph in Figure 4.17.

Table 4.29 Released from Community Orders and Returned to Custody and Community Orders. Indigenous and non-Indigenous Males

	Indigenous Males		**Non-Indigenous Males**	
Year Released from Community Orders	Returned to custodial centre %	Returned to either custodial or community order %	Returned to custodial centre %	Returned to either custodial or community order %
1997/1998	11.7	40.6	5.9	17.0
1998/1999	13.4	37.1	6.9	14.1
1999/2000	16.6	36.5	6.3	13.6
2000/2001	17.9	39.2	8.3	14.7
2001/2002	15.1	38.4	8.3	15.5

Source: Department of Corrective Services, Correctional Information System (CIS), extraction date: 27 May 2005.



Around twice the proportion of Indigenous males are returned to a custodial centre after release from community order, compared to non-Indigenous males. The proportion of Indigenous males returning to *either* a custodial order or a community order is nearly three times greater than the non-Indigenous proportion.

Table 4.30 Released from Custody and Returned to Custody and Community Orders. Indigenous and Non-Indigenous Females

	Indigenous Females		**Non-Indigenous Females**	
Year Released from Custodial Centres	Returned to custodial centre %	Returned to either custodial or community order %	Returned to custodial centre %	Returned to either custodial or community order %
1997/1998	38.9	47.2	22.8	30.1
1998/1999	40.0	42.5	16.5	24.7
1999/2000	32.1	38.2	21.2	31.2
2000/2001	48.1	56.8	28.7	39.3
2001/2002	42.3	48.8	22.0	33.2

Source: Department of Corrective Services, Correctional Information System (CIS), extraction date: 27 May 2005.

Table 4.30 and Figure 4.18 show that a much larger proportion of Indigenous women are returned to either a custodial centre or placed on a community order than is the case for non-Indigenous women. In 2001-02 almost half (48.8%) of Indigenous women were back in custody or placed on a community order within two years after being released from custody, compared to one third of on-Indigenous women (33.2%).

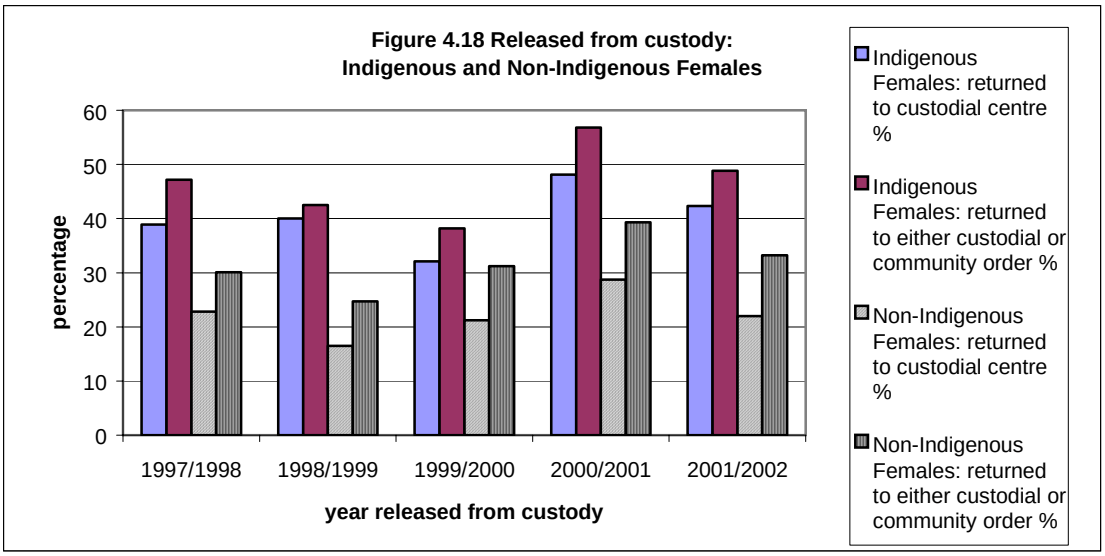


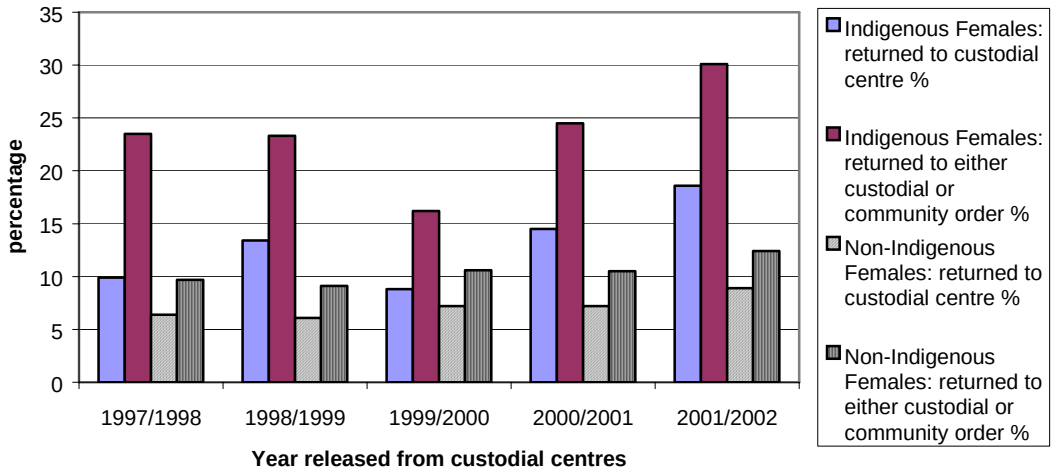
Table 4.31 and Figure 4.19 below show that after completing a community order, a much larger proportion of Indigenous women are returned to either a custodial centre or placed on a community order than is the case for non-Indigenous women. In 2001-02, some 30.1% of Indigenous women were back in custody or on a community order within two years after completing a community order compared to 12.4% of non-Indigenous women.

Table 4.31 Released from Community Orders and Returned to Custody and Community Orders. Indigenous and non-Indigenous Females

	Indigenous Females		**Non-Indigenous Females**	
Year Released from Community Order	Returned to custodial centre %	Returned to either custodial or community order %	Returned to custodial centre %	Returned to either custodial or community order %
1997/1998	9.9	23.5	6.4	9.7
1998/1999	13.4	23.3	6.1	9.1
1999/2000	8.8	16.2	7.2	10.6
2000/2001	14.5	24.5	7.2	10.5
2001/2002	18.6	30.1	8.9	12.4

Source: Department of Corrective Services, Correctional Information System (CIS), extraction date: 27 May 2005.

Figure 4.19 Released from community orders: Indigenous and Non-Indigenous Females



4.5.3 Age and Recidivism Among Adult Offenders

The age of Indigenous adult prisoners and offenders on community-based orders is much younger than the non-Indigenous prisoner population, and this largely reflects the different age structure of Indigenous society.

- 57.7% of Indigenous male prisoners are under the age of 30 years compared to 39.2% of the non-Indigenous group.
- 51% of Indigenous women prisoners are under the age of 30 years compared to 27.5% of the non-Indigenous group (Department of Corrective Services 2004:12).

The figures for Indigenous males and females on community based orders are also younger than their non-Indigenous counterparts, but the difference is not as pronounced.

The measures we use for re-offending (recidivism) are not age sensitive. The higher levels of re-offending by Indigenous people (as measured by return to custody or community base order) could be usefully analysed taking into account age standardised rates. We might expect that re-offending decreases in the adult offender population with age and this can be explained by a number of factors including maturation, opportunity and longer term effects of rehabilitative programs.

Two measures of recidivism have been used: the proportion of those who are imprisoned and have previously been imprisoned, and the proportion of those who have been released from either prison or completed a community corrections order and are subsequently returned to custody or placed again on a community corrections orders within two years of their initial release.

Whatever measure is used, Indigenous offenders are more likely to have been previously imprisoned, are more likely to be returned to custody and are more likely to be placed on community corrections orders than non-Indigenous offenders. This holds true for both Indigenous males and females. There has been little improvement in the situation over the five years for which data is available with the proportion of Indigenous people who have been previously imprisoned or are returned to custody or to a community corrections order remaining relatively stable.

5. SPECIFIC OUTCOME AREAS OF THE JUSTICE AGREEMENT

This chapter provides analysis of government response to the twenty outcome areas identified in the Justice Agreement. In some cases government responses involve key projects that cover a range of outcome areas, including community justice groups, the Murri Court, drug diversion and Indigenous policing initiatives. These are discussed in the following chapters in more detail.

5.1 EFFECTIVE EARLY INTERVENTION FOR INDIGENOUS YOUNG PEOPLE

The first outcome area relates to effective early intervention for Indigenous young people at risk of criminal justice intervention. The responsible agencies are DATSIP, Department of Communities,[25] Department of Child Safety, and Queensland Police Service.

The primary responses to the outcome area include programs such as community justice groups, Youth Crime Prevention, the Youth and Family Support Service and PCYC. Community justice groups are discussed later in this evaluation. Overall the Department of Communities noted that it had invested $8.5 million in 2005-06 on prevention and early intervention initiatives.

The Youth Crime Prevention and Graffiti Solutions projects have been operating for some time, and are referred to in Justice Agreement Progress Reports from January 2002. It is difficult to determine the specific impact on Indigenous offending. There is no information on funding for Indigenous-specific crime prevention projects, or on mainstream projects that might have Indigenous young people as a key target group. There is reference to funding of $239,000 recurrent over three years (2004-2006) to a Brisbane based Indigenous community organisation to work with Indigenous young people at risk of offending or re-offending. In general terms it is reasonable to expect a positive benefit from these projects, however, it is difficult to gauge their specific effect on Indigenous offending at a local level.

The Department of Communities also noted in Progress Reports from 2002, the employment of 15 Aboriginal and Torres Strait Islander Family and Community Workers to develop local strategies to address over-representation in the ‘statutory system’. No further information has been made available.

The major police initiative in this area has been the expansion of PCYC facilities. Yarrabah PCYC was opened prior to the Justice Agreement. However centres at Mornington and Palm Island are more recent. The expansion was also supported by the Cape York Justice Study. QPS have also assisted in the establishment of an activity centre at Wujal Wujal. Given the literature linking the provision of leisure and

[25] The Department of Families at the time of signing the Justice Agreement, which included both juvenile justice and child protection.

sporting activities with effective crime prevention,[26] it is reasonable to expect that the expansion of PCYC and associated support in Indigenous communities has had a positive impact on reducing offending levels. Newspaper reports indicate a drop in youth crime in 2004 in Wujal Wujal and Hope Vale of nearly 70% (*The Cairns Post*, 25 April 205, p.1).

However, it is important to note that research indicates the importance of integrating sport and physical activity programs with health, welfare and other support services (Morris et al 2003). It is also important to acknowledge that the PCYC approach is expensive at $2.5 million per centre, plus $350,000 for a manager's residence.

The proposal by Bird (2004) to develop a multi-agency approach to support Community-based Officers in Cape York communities in the development of sustainable youth activity 'platforms' is important. It is an attempt to overcome the cost of PCYCs, as well as the lack of coordination between government agencies and other parties in developing sustainable sport, recreation and social support activities.

It is reasonable to expect a positive benefit from general crime prevention programs. However, it is difficult to gauge their specific effect on Indigenous offending at a local level. It is reasonable to expect that the expansion of PCYC and associated support in Indigenous communities has had a positive impact on reducing offending levels given the literature linking the provision of leisure and sporting activities with effective crime prevention. However it is important that such initiatives are integrated with social support mechanisms. It is also important to recognise that the PCYC approach is expensive to establish in a community, although the longer-term benefits will offset the cost. The multi-agency Community-Based Officers may provide a more sustainable alternative.

There has also been the development of two crime prevention guides for Aboriginal (*Yathilda*) and for Torres Strait Islander (*Kainedbiipitli*) communities. The Aboriginal crime prevention guide predated the Justice Agreement. However, crime prevention was not given the focus it needs in the original Justice Agreement, particularly given that strategies to address violence in Indigenous communities has been important at both State and Federal level over the last few years.

5.2 AVAILABILITY AND USE OF APPROPRIATE ALTERNATIVES TO COURT

This outcome area relates to the availability and use of alternatives to court (such as conferencing, caution, summons, mediation). The responsible agencies are Department of Communities, Queensland Police Service, DJAG and DATSIP.

[26] The AIC identified and surveyed over 600 programs focusing on sport and physical activity. The research evidence suggests that sport and physical activity programs can provide a useful vehicle through which personal and social development may occur and positively impact on antisocial behaviour. Providing an activity may be more important than the type of activity provided as a mechanism for diverting youth away from antisocial behaviour (Morris et al 2003).

Responses to this outcome area include the expansion of youth justice conferencing, the QATSIP trial and community police, and homelessness projects. These issues are dealt with elsewhere in this report.

DJAG refer to the role of the Dispute Resolution Branch in maintaining Indigenous mediators and in providing mediation training. One issue to emerge very strongly in community consultations for this evaluation was the mediation role taken on by CJGs, and their lack of training in this area. Where there had been training (eg in Mount Isa for community justice groups in that area), there were financial issues in community justice group members being able to attend training. It was also noted by magistrates that limitations on funding meant that mediation was largely limited to the cities, particularly Brisbane.

In responding to this outcome area, the QPS refer in Progress Reports to their 'use of attendance notices and summonses where appropriate and cautions including use of Indigenous Elders/respected persons wherever available and appropriate'. The data presented in this evaluation shows that Indigenous adults and young people are less likely than non-Indigenous groups to be dealt with by way of attendance notices, summons or cautions. It has not been possible to determine the extent to which Indigenous Elders/respected persons are utilised. Magistrates raised the concern that in some areas (Townsville was one area mentioned) police are proceeding by way of arrest then release on bail, rather than using attendance notices for minor offences such as offensive language.

The expansion of mediation training for CGJs members, and support for their attendance at training is a priority. Effective use of mediation could significantly reduce court matters, particularly arising from family disputes.

A stronger management of police processing for minor offenders is required to ensure that attendance notices are used rather than arrest. The Operational Performance Reviews provide a method to ensure this outcome.

5.3 EFFECTIVE DIVERSIONARY STRATEGIES

This outcome area relates to effective diversionary strategies for Aboriginal and Torres Strait Islander people, such as bail and drug diversion. The responsible agencies are Department of Communities, QPS, and DATSIP.

The DATSIP response to this outcome area relates to the development of AMPs and the Diversion from Custody Program, and the QPS response relates to the drug diversion program. These are all discussed in more detail later in this evaluation. It can be noted here that:

- the Drug Diversion Assessment Program is not specifically related to Indigenous people;
- the AMPs are not 'diversionary', indeed one outcome has been greater criminalisation.

The Department of Communities response to this outcome area is its conditional bail and bail support programs. The Department states in its submission that the programs have 'contributed significantly to reducing the number of young people remanded in custody'.

Conditional Bail Program

The Conditional Bail program was established to ensure that young people who might otherwise be remanded in custody are able to stay in the community until their court matter is finalised.

The target group of the Conditional Bail Program comprises young people who are highly likely to fail to comply with bail conditions without substantial intervention. They are likely to have a number of the following characteristics:

- Have been charged with an indictable offence and refused watchhouse bail;
- Have breached conditions of bail in the past;
- Have been refused bail on current charges by a Childrens Court Magistrate;
- Have previously been refused bail on other matters;
- A history of failure to appear in court;
- A history of recidivism;
- A history of breach of juvenile justice orders; and/or
- Are at risk of being remanded in custody pending the preparation of a pre-sentence report.

Under the program young people are helped to ensure they successfully meet their bail obligations. Conditional Bail programs are aimed to reduce the likelihood of young people offending while on bail by engaging them in constructive social, educational and vocational activities. It provides up to 32 hours per week of youth worker supervision and support and up to $100 per week in program costs.

According to an unpublished 1999 evaluation:

- Almost three quarters of those accepted onto the program successfully completed their orders.
- Of the successful completions, nearly 20% had made sufficient progress to be released by the court on their own bail undertaking.
- The program reduced the number of admissions to detention by about 20% (Queensland Government 2005:18).

In 2003/04 252 young people participated in the Conditional Bail program, which was a 32.6% increase over the previous year. Some 62.9% successfully completed the program (Queensland Government 2005:18).

The Department of Communities Progress Report notes that:

> From 1 July 2003 to 30 June 2004 the participation rate of Aboriginal and Torres Strait Islander has increased to 52%, and the successful completion rate has also risen to 65% representing a 9% increase from the previous year. The number of young people granted bail by the courts with the condition that they

participate in a program provided by the Department has steadily increased on average by 5.5% annually since commencement in 1994.

Data supplied by the Department of Communities shows that over the last five years (1/7/00 to 27/5/05) some 1230 young people were on the conditional bail program, and 51.3% of these were Indigenous young people. In the Far North Queensland and North Queensland regions, 82% and 70% of participants were Indigenous.

Bail Support Service

In 2001 the Bail Support Service was established to provide courts with supported accommodation options for young people who would be otherwise remanded in custody due to the lack of suitable accommodation. Part of the program is to specifically provide support for Indigenous young people through culturally appropriate placements (Queensland Government 2005:19).

A number of brokerage and community placement support services initiatives have been developed to support young people on bail. The Bail Support Service initiative seeks to:

- reduce the number of young people held in detention on remand;
- facilitate culturally appropriate placements and intervention to Indigenous young people placed in detention on remand; and
- provide courts with viable supported accommodation options to remanding young people in custody.

Bail Advocacy

For some reason the Department of Corrective Services was not included in this outcome area in the Justice Agreement. The proposed bail advocacy strategy as part of the *Managing the Growth in Prison Numbers Project* is relevant here. The proposed program aims to reduce the remand population through the use of supported accommodation and community support services.

It appears that although the juvenile conditional bail and bail support programs are functioning well with good levels of Indigenous participation and completion, they need to be expanded to deal effectively with the size of the Indigenous remand population. As noted earlier in this evaluation, the remand population of Indigenous young people is at a crisis level. Although the remand population would most probably be higher without these initiatives, it is worth considering:

- whether there has been a 'net-widening effect' with the program covering young people who would perhaps not have been remanded in custody, irrespective of the programs
- the reasons for remand of Indigenous young people, and
- why the current Indigenous remand population were unable or ineligible to access either program.

The proposed Department of Corrective Services bail advocacy strategy may also reduce the Indigenous remand population if implemented with adequate attention to resourcing remote areas.

5.4 UNDERSTANDING BY INDIGENOUS PEOPLE OF RIGHTS

The fourth outcome area relates to understanding by Indigenous people of legal rights, legal procedures and possible forms of support. The responsible agencies are Department of Communities, QPS, DJAG, DATSIP, and Department of Corrective Services.

Justice agencies offer a range of different Indigenous-specific services which function in either an educative or liaison role. The Department of Communities has an Indigenous Court Resource Worker at the Brisbane Childrens Court to facilitate young people and their families' understanding of the court process. This appointment is specific to Brisbane and does not deal with the volume of Indigenous young people appearing in the childrens courts in other locations. According to the Department no other court would have enough work for a fulltime role. Two Indigenous youth workers in Cairns are being trained to take on a similar role on a part-time basis.

The QPS have 115 Indigenous Police Liaison Officers (PLOs), 10 permanent police and staff members of the Cultural Advisory Unit, Office of the Commissioner, and nine full-time and 23 part-time Cross-Cultural Liaison Officers (police officers) located in the police regions. PLOs are discussed later in this evaluation.

DJAG response to this outcome area is primarily the implementation of magistrates courts through the use of two or more Justices of the Peace in remote Aboriginal and Torres Strait Islander communities. There are currently 172 Aboriginal and Torres Strait Islanders appointed as JPs (Magistrates Court). Magistrates courts constituted by local JPs (Magistrates Court) have now been established in 14 communities. The Justices of the Peace Branch has three full-time training officers conducting training in 17 remote communities.

Local JPs (Magistrates Court) have the potential to fulfil important justice functions at the community level, particularly as they are community driven. However, data was not available for this evaluation relating to the JP (Magistrates Courts) in terms of the number or type of matters they dealt with, or the penalties they imposed. Anecdotal evidence (particularly from magistrates on the Cape York circuit) suggests harsher sentences than the usual magistrates court and particularly in relation to liquor offences. Community visits for the evaluation also showed a lack of awareness that JP (Magistrates Courts) could hear matters beyond those covered by local by-laws. Generally there appeared to be an overlap of membership between the local CJG and the membership of the JP (Magistrates Courts).

The Department of Corrective Services responded to this outcome area with reference to:

- The Murri Chaplains' Group visiting correctional centres, throughout Queensland.

- The employment of Aboriginal and Torres Strait Islander Counsellors and/or Family Support Officers at secure corrective services facilities to provide welfare services and conduct programs for Indigenous people.
- A trial free prisoner telephone access Legal Aid Service.

Previous Department of Corrective Services progress reports had referred to Indigenous official visitors being appointed to all facilities with a significant proportion of Indigenous prisoners.

The difficulty with many of the responses from different agencies is to determine the extent to which they actually address the desired outcome area. Do, for example, PLOs, Indigenous JPs or Murri Chaplains help Indigenous people understand their legal rights? The DATSIP response to the issue is to refer to the role of the community justice groups. As discussed in Chapter 6, given the pressures and limited resources of the CJGs it is disingenuous to argue that the CJGs are currently in a position to effectively assist Indigenous people to understand and assert their legal rights.

The DJAG *Indigenous Justice Strategy* makes a commitment to evaluate the outcomes of the JP (Magistrates Courts), with respect to recidivism, culturally appropriate processes and other community justice issues. Such an evaluation is imperative and should be conducted by an independent evaluator.

5.5 EFFECTIVE LEGAL ASSISTANCE

This outcome area relates to effective legal assistance. The responsible agency is DJAG. Since 2001, Legal Aid Queensland (LAQ) has been providing the Cape and Gulf Outreach Service to remote Indigenous communities. Solicitors provide representation for criminal injuries compensation, as well as advice on a range of legal matters.

Consultations for the evaluation revealed serious concern among magistrates over the adequacy of legal representation arising from the tendering and amalgamation process for Aboriginal and Torres Strait Islander Legal Services (ATSILS). Although the situation has arisen as a result of Commonwealth policy, the impact directly determines whether Indigenous people have equality of access to justice – particularly in remote communities. Deterioration in access to justice is likely to negatively impact on Indigenous over-representation in the criminal justice system.

Any decline in ATSIL's ability to represent Indigenous clients is also likely to increase demand for LAQ resources. Magistrates noted that the changes were already having a 'huge impact' in the rise of unrepresented clients both in remote and urban areas. As one magistrate put it, 'It was a basic service before, now it will be worse'. Issues included:

- Means testing: if an Indigenous person in a remote community does not satisfy the means test there will be no-one to represent them before the court.

- Public order offences will not be covered unless the defendant is likely to receive a sentence of imprisonment.

- There has been a reduction in the number of solicitors and field officers.

- There has been an increase in unrepresented Indigenous people before the courts.

DJAG need to put in place a process for monitoring the frequency of Indigenous people appearing unrepresented in the courts, particularly in remote areas.

5.6 AVAILABILITY AND USE OF APPROPRIATE COMMUNITY-BASED SENTENCING OPTIONS

This outcome area relates to the availability and use of community-based sentencing options. The responsible agencies are Department of Communities, DJAG and Department of Corrective Services.

In response to this outcome area, the Department of Communities noted the availability from July 2003 of a new intensive supervision order (ISO) for young offenders aged 10-12 years which is aimed at diverting young offenders with three or more prior convictions from becoming recidivist offenders. However, evidence suggests the ISOs are rarely used and have had no significant impact in relation to Indigenous incarceration rates. Over almost two years (1/7/03 and 31/4/05), six young people were on ISOs, of whom four were Indigenous.

DJAG noted that CJGs have been an important source of information for the magistrates and higher courts, providing 626 submissions to the lower courts between 1 July 2004 and 9 March 2005, and 67 submissions to the higher courts during 2004.

DJAG also notes that the SPER system for fine repayments has improved the payment of fines by Indigenous people through Centrelink payments and also from CDEP (via Indigenous Councils).

The Problem with Community-Based Options is Availability

The data made available from the Department of Corrective Services shows that Indigenous offenders are less represented on community corrections than they are in the prison population. One reason for this is the widely acknowledged difficulty of providing effective supervision for community corrections in remote communities.

There was widespread concern about the lack of sentencing alternatives in remote areas. This issue affected both adults and juveniles, but was universally seen to be more of a problem with juveniles. It some places there was no supervision of juvenile orders, and court ordered conditions could not be met. Police, magistrates and community members commented that the absence of departmental supervision and the provision of programs meant that non-custodial sentencing options were not seen to be effective. There was also a perception of both the Department of Communities and the Department of Child Safety using junior inexperienced personnel, and further a lack of consistency in the use of staff who attended on circuit.

When magistrates conduct the circuit courts in Cape York there are two simultaneous circuits visiting the communities. It was noted by several magistrates that there is only one Department of Communities officer who attends the circuit and they go to which ever court has the most children's files. This means at least one court does not have a Department of Communities representative. For example, if the two magistrates on circuit are simultaneously in Lockhart River and Aurukun, then the Department of Communities would more than likely go to Aurukun where there were more files than Lockhart River. The magistrate in Lockhart River, for example, might want to consider ordering a youth justice conference, but does not have the information on whether one has been previously held or whether there was capacity to conduct a conference in the community.[27] It is widely acknowledged that the level of supervision by both the Department of Corrective Services and the Department of Communities is problematic.

On the Cape circuit the Department of Corrective Services officer arrives the day before court (that is, once a month). There is no access to regular programs, and programs are run on an ad hoc basis when there are numbers. In terms of sentencing there may be pressure to sentence someone to 12 months probation instead of nine months simply so they can access a program. The Department of Corrective Services has acknowledged this problem of the inability to supervise in certain areas.

> It is long standing practice to advise courts that Intensive Corrections Orders (ICOs) are not available in remote communities because they cannot be properly supervised. Following complaints, the Mount Isa Area Office recently agreed to implement trial ICO supervision in Doomadgee and Mornington Island two days per month making it impossible to immediately follow up on non-compliance. Offenders had minimal contact with their supervising officers for counselling and extremely limited access to programs. Almost 100% of the offenders failed to complete their orders with most receiving a custodial sentence (Department of Corrective Services nd :1).

The problem with the lack of ability to offer supervision for juveniles was not just related to Cape York, it was also mentioned in relation to areas relatively close to major centres such as Palm Island.

Magistrates working in the childrens court noted the lack of programs for young people. While the options that are available are satisfactory, their effective utilisation is difficult. There are inadequate services and support to ensure the viability of orders. Suspended sentences, probation and parole require suitable programs and intensive support.

There was also a lack of resources for conferencing. Magistrates were prepared to extensively use conferencing but the backlog because of resourcing issues has meant a restriction on effective use. It was also noted that more Indigenous Conference convenors were required.

[27] The Department of Communities advises that juvenile justice staff now attend both circuits.

The New Department of Corrective Services Response

The Department of Corrective Services note that the current *Strengthening Community Safety through Managing Growth in Prisoner Numbers* project aims to improve advice to courts so that low risk offenders can be diverted from custody and appropriately supervised in the community. The Department is preparing a business plan to improve the provision of community corrections supervision to all areas of Queensland. The aim is to create a sustainable community corrections presence in rural and remote Indigenous communities. The plan is to use a number of nodal points or hubs to provide increased service to the Gulf and Cape communities so there are visits every two weeks. There will be a permanent presence of supervision and program staff at Thursday Island, Weipa, Cooktown, Normanton and Mornington Island. Each of these new locations will have the equivalent of four full time employees.

The new model has been designed to provide the necessary supervision levels to allow for the expanded use of ICOs in all Indigenous communities, and will include the capacity to provide twice weekly supervision. The expected result is increased diversion of Indigenous offenders from prison. The new model will also enhance the service delivery of Indigenous programs to all Indigenous communities.

There has been a significant failure to meet this outcome area in a meaningful way. Both Department of Corrective Services and Department of Communities have or are intending to initiate better service delivery models (through the expansion of Youth Justice Service Centres, and the proposed changes through the *Strengthening Community Safety through Managing Growth in Prisoner Numbers* project). This should lead to a greater capacity to supervise offenders in the community. As acknowledged by the Department of Corrective Services, greater use can also be made of properly resourced CJGs to assist in local supervision, this should also apply to use by the Department of Communities.

As part of the expanding services, some of the new Department of Communities positions are Indigenous identified. It is unclear whether any of the new Department of Corrective Services positions are identified, although there was suggestion of traineeships.

5.7 CUSTODIAL SAFETY AND SECURITY

This outcome area relates to safety and security for Indigenous people in custody. The responsible agencies are Department of Communities, QPS, DJAG, Department of Corrective Services and DATSIP.

One way of assisting with custodial health and safety is through cell visitor schemes. DATSIP provides funding for cell visitor schemes in Mt Isa, Cairns, Townsville, Rockhampton, Brisbane and Mackay. The QPS also note 20 cell visitor schemes operating throughout Queensland. QPS also note the implementation of relevant recommendations from the Royal Commission into Aboriginal Deaths in Custody in relation to custodial health and safety.

The Department of Corrective Services note that cross-cultural awareness is incorporated into staff induction and training processes and procedures by the Training and Development Centre. Staff accountability is achieved through enforcement of the Code of Conduct and referral of misconduct complaints to the Crime and Misconduct Commission. The appointment of the Chief Inspector will improve accountability and minimise the opportunity for staff to behave inappropriately without sanction.

According to the Department of Corrective Services, all prisoners have access to health and medical treatment at least equivalent to the standard widely available in the community. Mental health issues are dealt with by psychiatrists provided by Queensland Health. In centres with a high Indigenous offender population, the psychiatrists have extensive training and experience in treating Aboriginal and Torres Strait Islander patients. The Department of Corrective Services does not keep data on the utilisation of health services by Indigenous prisoners. 'While poor health status would indicate higher utilisation this may be offset by cultural reluctance to present. Utilisation may thus be lower for more rural / traditional Indigenous prisoners' (Department of Corrective Services 2005:1). There was a perceived need to increase awareness of the availability of medical services for Indigenous prisoners.

The Department of Communities note that the Brisbane Youth Detention Centre (BYDC), Wacol and the Cleveland Youth Detention Centre (CYDC), Townsville have a Secure Care Program, which takes a risk management approach to the care, supervision and rehabilitation of young people in detention. The suicide risk alert framework has been integrated into detention centre practice and procedures with training in relation to this framework compulsory for staff entering the detention centre workforce.

DJAG note the *Coroners Act 2003* and the appointment of the first State Coroner, Mr Michael Barnes. There is a requirement that all deaths in custody be investigated by the State Coroner.

It is important that relevant state authorities continue to monitor deaths in custody. Although Indigenous deaths in custody from unnatural causes are similar to non-Indigenous death rates, the high rate of incarceration of Indigenous people increases the risk of dying in custody. The Australia Institute of Criminology no longer monitors deaths in custody, although there is some reporting via the Productivity Commission process (SCROGSP 2005a). A decrease in Indigenous deaths in custody is a strategic outcome of the *PQ* process.

5.8 EFFECTIVE REHABILITATION AND COMMUNITY REINTEGRATION

This outcome area relates to effective rehabilitation and community reintegration for Indigenous offenders, including programs within centres and post-release support. The responsible agencies are the Department of Communities and Department of Corrective Services.

The Department of Communities have Queensland Health provide mental health, alcohol, tobacco and other drug services and oral health, sexual health and pathology services in juvenile detention centres. Education Queensland and the Department of Employment and Training provide educational, vocational, self-development, cultural and recreational programs.

The Indigenous Programs Support Officers employed at both youth detention centres liaise with Indigenous community organisations for the provision of 'culturally appropriate programs and services', although there was no specification of what those programs are. The Toowoomba, Logan, Inala, Cherbourg and Brisbane Elders visit at the Brisbane Youth Detention Centre. Cleveland Youth Detention Centre has the Mackay Justice Group and the Men's Group from Townsville that visit the young people.

Both Brisbane Youth Detention Centre and Cleveland Youth Detention Centre have Indigenous Transition Officers who assist with post-release needs such as Centrelink payments, opening bank accounts, assisting with job applications and preparing resumes, locating accommodation, etc.

The Department of Corrective Services utilise the Offender Risk/Needs Inventory (ORNI). The Department states that the ORNI has been revised and evaluated as appropriate for assessing Indigenous offenders. There had been previous concerns raised about whether ORNI unfairly discriminated against Indigenous inmates.

The Department of Corrective Services states that, in partnership with the Department of Employment and Training, it provides accredited vocational education and training and literacy and numeracy education opportunities to Indigenous prisoners in all Queensland correctional centres. Culturally appropriate training needs of Indigenous offenders are determined at the centres by the Indigenous Cultural Development Officers in consultation with the prisoner's community. Department of Corrective Services data indicates that 17% of enrolments for vocational education and training and literacy education were from Indigenous prisoners (Department of Corrective Services 2005:2). This percentage is lower than the proportion of Indigenous people in gaol (23% at 30 June 2004). Completion rates for all vocational education and training courses are 80%, and it appears this does not vary significantly with Indigenous prisoners. At Lotus Glen where there is a higher proportion of Indigenous prisoners, the completion rate is 78% (Department of Corrective Services 2005:2).

The Department delivers a number of programs targeted to Indigenous offenders including:

- The Ending Offending program with the aim of assisting Aboriginal offenders to modify their drinking and offending behaviour. It is delivered in six two hour sessions.

- The Ending Family Violence program that targets Aboriginal and Torres Strait Islander offenders convicted of violent offences within their family and/or community. It is a cognitive behavioural program delivered in ten two-hour sessions.

- The Indigenous Sex Offender Program is a culturally appropriate program specifically developed for delivery to Indigenous offenders convicted of sex offences. The program is based on cognitive-behavioural principles and has a strong relapse prevention focus. However it adopts Indigenous cultural concepts as a way for Indigenous sex offenders to address their sexual offending. The program is six to nine months with four modules which are completed in three sessions per week.

Wherever possible these programs are facilitated by persons of Aboriginal and/or Torres Strait Islander heritage. The approximate number of programs delivered across Queensland during the last twelve months was:

- The Ending Offending program = 68
- The Ending Family Violence program = 20
- The Indigenous Sex Offender Program = 1

(Source: Department of Corrective Services 2005:8).

The Department states that Indigenous offenders also have access to all other programs to contribute to their rehabilitation and reintegration. In particular, the Post Release Employment Assistance Program which has been expanded across Queensland and the Transitions Program which connects offenders with services they will require on release in order to make the reintegration process as smooth as possible.

There was no information provided on effectiveness of programs or post-release for Indigenous offenders. The Department of Corrective Services has advised that there is a current initiative to revise or replace the major rehabilitation programs.

> This project will see a replacement for the Anger Management, Cognitive Skills, Substance Abuse and Violence Intervention Programs; the revision of the current suite of Sex Offender Programs; the revision and possible extension of the Transition Program; and the development of preparation programs with responsivity issues to consider, including motivation and potential cultural impediments (Department of Corrective Services 2005:10).

This approach will be problematic for Indigenous participation and success in programs, unless the starting point for the development and adoption of programs is the specific needs of Indigenous people. There is widespread acknowledgment that many programs do not have the capacity to engage Indigenous offenders. It is necessary for the Department of Corrective Services to maintain its stated commitment[28] to developing culturally appropriate rehabilitation programs including Ending Offending, Ending Family Violence and the Indigenous Sex Offenders Program. There was a widespread view that these programs are more suitable because they are less reliant on literacy skills and have the capacity to engage Indigenous offenders.

[28] See, for example, Department of Corrective Services (nd) *Improved Services to Indigenous people and Communities*, draft, unpublished.

Research suggests that effective post-release support can have a positive impact on reducing re-offending. There was no information provided on effectiveness of programs or post-release for Indigenous adult or young offenders. A range of indicators are important including participation rates, completion rates and effects on re-integration and re-offending.
There is widespread acknowledgment that many mainstream programs do not have the capacity to engage Indigenous offenders. It is necessary for the Department of Corrective Services to maintain it stated commitment to developing culturally appropriate rehabilitation programs including Ending Offending, Ending Family Violence and the Indigenous Sex Offenders Program.

5.9 INCREASED EMPLOYMENT IN JUSTICE-RELATED AGENCIES

This outcome area relates to increasing employment of Indigenous people in justice-related agencies. The responsible agencies are Department of Communities, QPS, DJAG, DATSIP and Department of Corrective Services.

DATSIP note that Aboriginal and Torres Strait Islander peoples comprise at least 28% of the total number of staff of the Department.

The Department of Communities note that Aboriginal and Torres Strait Islander people comprise 5.6% of staff employed in the Department. The fourteen Youth Justice Service Centres located across the State have identified Indigenous positions. Indigenous staff are appointed to a number of positions, including caseworkers, youth workers and administration staff. At February 2005, Aboriginal and Torres Strait Islander staff represent 20% of the Cleveland Youth Detention Centre staff and 15% at the Brisbane Youth Detention Centre. This includes youth workers, caseworkers, programs staff and administrative staff. In addition the Department of Communities noted nine new senior identified positions in the Department, three at AO8 level and six at AO6 level.

QPS note that Indigenous employees are 1.8% of police and 3.7% of staff members (including PLOs). Programs such as the PLO scheme, the QATSIP program and the Aboriginal and Torres Strait Islander Justice Entry Program provide direct employment opportunities, and the community police training programs and projects, the development and delivery of certificate level courses and other smaller training programs provide development opportunities for existing employees.

The Department of Corrective Services currently have 4.5% employees who are Indigenous.

DJAG states that it ‘provides employment opportunities to Indigenous people through general recruitment, identified positions, cadetships, traineeships and temporary placements’. No percentages or numbers of Indigenous people employed in the Department were supplied.

5.10 IMPROVED CULTURAL AWARENESS

This outcome area relates to improved cultural awareness by all justice agency employees. The responsible agencies are Department of Communities, QPS, DJAG, DATSIP, and Department of Corrective Services.

The Department of Communities, Department of Corrective Services and DATSIP simply note that cultural awareness training is available to all staff. In the Department of Communities it is compulsory for all detention centre staff who have direct client contact. This response is inadequate. Relevant and compulsory cultural awareness training should be available to all staff. The training should be related to their work and the day-to-day situations they face.

Similarly, the Department of Corrective Services has Aboriginal and Torres Strait Islander Cultural Awareness training for custodial officer recruits in three modules of the Entry Level Training Program. Community correctional officers are provided with cultural awareness training in one session during their Entry Level Training Program. On criticism of training was its over-emphasis on risk management, and the fact that it was limited (lasting approximately two hours). Many non-Indigenous staff stated they would prefer more and better quality training.

DJAG note that cultural awareness training is available in the Department and that Legal Aid Queensland (LAQ) has ongoing cultural awareness training for the Commission's staff. The purpose of the LAQ training is to 'increase professional development of LAQ staff by being more culturally aware and sensitive. This in turn would enable increased access for Aboriginal and Torres Strait Islander people, particularly women, through the LAQ system.' The LAQ training is regionally oriented.

The QPS provided the most detail in relation to their cultural awareness training. Cultural awareness training for the QPS is being developed to cover three stages:

- The first stage of the cultural awareness training, the development of three generic Competency Acquisition Program units to provide a basic understanding of Aboriginal and Torres Strait Islander issues including history and culture, has been completed and is awaiting approval.
- The second stage of the cultural awareness training, the development of a generic package for delivery at regional/district levels, is currently being developed. This will contain generic cultural information, which is applicable to the entire region/district and may be delivered by a CD–Rom. This training will be supplemented by a workshop on arrival within a district to build on the information contained in the CD-Rom.
- The third stage is a community 'on-the-job' training package for delivery on arrival in an individual community. It will be based on the specifics of each community, its unique needs and possibly planned projects utilising the skills and information learnt from the first stage.

The QPS also note that an anti-racism policy is contained in Section 13.30 'Racial and religious vilification – Anti-Discrimination Act' of the QPS Operational Procedures Manual.

Magistrates noted they have an Indigenous Issues Committee. There is a yearly magistrate's conference and there is a component of Indigenous awareness training at least every second year at the conference. However, many magistrates noted that they did not receive cross- training. Longer serving magistrates noted they had not seen any cross cultural training offered in at least the last four years.

There have been improvements in cultural awareness training. However, much more could be done, particularly in developing Indigenous cultural awareness programs which are more specific to the needs of particular justice agency workers. The QPS model is the most developed in this regard. Cross cultural training should be compulsory for all justice agencies' staff and managers, and made relevant to their work and the day-to-day situations they face. Judicial officers should have cross cultural awareness training at the time of their appointment and have ongoing cross cultural education courses made available.

5.11 EFFECTIVE COMMUNICATION

This outcome area relates to effective communication between all people involved in Aboriginal and Torres Strait Islander criminal justice matters (eg, improved communication, training, liaison, networking and advisory). The responsible agencies are Department of Communities, QPS, DJAG, DATSIP, and Department of Corrective Services.

DATSIP noted that it 'networks with all key stakeholders to ensure communities receive up-to-date information on all necessary services/policies/procedures in relation to justice matters'. It also noted the CJG Coordinators conference held in December 2004.

The Department of Communities referred to its MOU with police concerning detention of children in watchhouses, and the development of video conferencing to enable families in remote areas to maintain contact with young people in detention. Data supplied by the Department of Communities shows the MOU has been effective in minimising the detention of children in police watchhouses.

DJAG refer to their booklet *Aboriginal English in the Courts* which is aimed at improving communications with speakers of Aboriginal English.

The Department of Corrective Services states that it 'ensures key stakeholder consultation and contact occurs in local and remote areas throughout the State on a regular basis as well as at the broader levels of development and evaluation of programs, legislation revision, and the Department's recent Business Model Review'.

The QPS refer to their Indigenous Community/Police Consultative Groups (ICPCGs) and the Indigenous and Police Service Review and Reference Group. The role of the Review and Reference Group is to review and monitor the implementation of

recommendations to the Commissioner regarding the effectiveness of legislation, training, policy and procedures, and identify the need for change relating to the interaction between Aboriginal and Torres Strait Islander people and the Queensland Police Service. The Review and Reference Group also acts as a reference group to the Queensland Police Service on issues relating to cultural diversity and to contribute to the promotion and maintenance of harmonious relations between police and Indigenous communities.

An initiative of the magistrates court in Townsville has been the establishment of stakeholders groups in the areas of juvenile justice, child protection and the general magistrates court. All of these stakeholder groups involve representatives from Indigenous groups including the CJG and the local ATSILS, as well as Departmental representatives.

It is also worth noting that many magistrates were not aware of the Justice Agreement. Both magistrates and judges noted that judicial officers were never brought into the process of the Justice Agreement. A sizeable section of the magistrates interviewed for the evaluation were not aware of the Justice Agreement.

Many of the initiatives designed to improve communications are important. Perhaps, less clear (except for QPS and court initiatives) are the processes for gaining input from the broader Indigenous communities. It is also important that the judicial officers are seen as an integral part of the Justice Agreement and its strategies and outcomes.

5.12 IMPROVED ACCESS TO JUSTICE

This outcome area relates to improved access to justice for Indigenous people (eg, CJGs, Indigenous JPs, Murri Court). The responsible agencies are QPS, DJAG and DATSIP. Initiatives related to CJGs and the Murri Court are discussed in the following Chapter.

The Indigenous JPs (Magistrates Court) initiative is referred to by DJAG under this outcome area, and some of the issues arising from the evaluation have already been referred to in section 5.4 above.

The QPS response to this outcome area covers two points: the SCAN teams and the building of new police stations. The QPS note that there have been over 100 child protection investigations of families presented to the Cape/Torres Suspected Child Abuse and Neglect (SCAN) Team. The Cape York/Torres SCAN Team meets on a regular weekly basis to ensure a timely response to investigations.

There are three DOGIT mainland communities without police stations (Hopevale, Wujal Wujal and Mapoon). Negotiations have been finalised in Hopevale with a completion of the police station scheduled by the end of 2005. Negotiations with the other communities are continuing.

A critical access to justice issue is the availability of interpreters. Although this was not raised in any of the government responses to the Justice Agreement, it was raised as an issue by some judicial officers working in the Cape York area. Representations have been made to government over many years concerning the need for accredited interpreters. There are still no accredited interpreters in any of the Cape languages.

5.13 APPROPRIATE CRIMINAL JUSTICE POLICIES

This outcome area relates to criminal justice policies, procedures and practices that are appropriate for Aboriginal and Torres Strait Islander people (eg, Indigenous units, Indigenous specific programs). The responsible agencies are Department of Communities, QPS, Department of Corrective Services, and DJAG.

The Department of Communities refers to three *general* policies or initiatives to respond to this outcome area: the expansion of Youth Justice Service Centres, the expansion of Youth Justice Conferencing and the introduction of Intensive Supervision Orders.

In response to the outcome area, DJAG refer to Murri Courts and to an agreement between the Office of Public Prosecutions and the communities of Thursday Island, Aurukun and Kowanyama to provide information and support to victims of personal violence. More recently the Department has released the *Indigenous Justice Strategy* (2005 – 2006).

The Department of Corrective Services states that it is 'required by legislation to consider the culturally specific needs of Aboriginal and Torres Strait Islander offenders, as part of its overall purpose as well as in relation to specific matters under the *Corrective Services Act 2000.* Enhanced accountability across the Department for Aboriginal and Torres Strait Islander offenders with the recent Business Model Review ensures that all staff will consider the needs of/impact on Aboriginal and Torres Strait Islander offenders of policies, procedures and practices as part of the process.' The Department's response reflects the changes since the abolition of the Aboriginal and Torres Strait Islander Unit.

The QPS response to this outcome area includes consultation through Aboriginal and Torres Strait Islander / Police Review and Reference Group, Indigenous Community / Police Consultative Groups (ICPCGs), and the work of the Cultural Advisory Unit within the Office of the Commissioner.

The QPS also referred to the implementation of *Strategic Directions for Aboriginal and Torres Strait Islander Peoples and Communities* policy. The goal of this policy is to ensure professional and equitable policing services are provided to Indigenous people through consultation, advice, coordination and support. The six major strategies are summarised as: equitable service delivery, provision of specialist support, effective communication, appropriate use of police discretion, including use of alternatives to arrest, and safety in custody, appropriate education and training for police, and equitable human resource management strategies. Also of relevance is the Client Service Charter (2002).

In relation to effective programs the QPS referred to the Indigenous Licensing Program which provides 'on site' written/oral 'learner's licence' testing programs in a culturally acceptable and user friendly/understandable question and answer format. It then provides for the practical testing of the applicant in their local area or community which reduces the cost of accessing this facility. The Indigenous driver licensing project aims to reduce incarceration arising through driver licensing offences and is supported by other agencies including DJAG and DATSIP.

From the period 1 July 2004 to 31 December 2004 the Indigenous Licensing Program was conducted in the areas of Hopevale, Iama (Yam) Island, Lockhart River, Bamaga, Wujal Wujal, Woorabinda, Mornington Island and Beenleigh. Participants were successful in the following categories: Learner's Licence 126 (all C class). Practical driving tests C Class 39, Light Rigid 14, Medium Rigid 26, Heavy Rigid 31.

Of the criminal justice system policies referred to in this section, two in particular should be emphasised: the expansion of youth justice conferencing and the Indigenous Licensing Program. They are examples which address issues of Indigenous participation (conferencing) and attempt to overcome an area of offending through adapting policy and procedure to meet Indigenous needs (license testing).

In the broader context of the *development* of appropriate policies, it appears that QPS is the only agency with *both* an Indigenous policy and a clear process for community consultation and negotiation.

5.14 INCREASED PARTICIPATION

This outcome area relates to increased participation by Aboriginal and Torres Strait Islander people in the administration of justice including developing own solutions (eg, CJGs, elders, Murri Court). The responsible agencies are QPS, DJAG, DATSIP, and Department of Corrective Services.

Most agencies repeated responses to earlier outcome areas of the Justice Agreement. The DATSIP response included CJGs, AMPs, government 'champions' and government-community partnerships such as 'the Torres Strait Justice Negotiation Table'. The QPS response included the PLOs, QATSIP and use of elders in cautioning and the provision of advice to CJGs. The Department of Corrective Services response referred to the *Strengthening Community Safety through Managing the Growth of Prisoner Numbers* project recommendations in relation to the local operations of community corrections which will include the recruitment of local (ATSI) people.

DJAG refers to previously mentioned initiatives such as the community outreach program by the Director of Public Prosecutions and the Murri Court. In addition there is reference to tribunals (Land and Resources, Guardianship and Administration, and Children Services) which either have Indigenous members, provide for community education or Indigenous expert advice.

5.15 EFFECTIVE OPERATION OF INDIGENOUS SERVICES

This outcome area relates to effective operation of Aboriginal and Torres Strait Islander criminal justice services (eg, PLOs, JPs, community police, Department of Corrective Services outstations). The responsible agencies are Department of Communities, QPS, DJAG, and Department of Corrective Services.

Most agencies repeated responses to earlier outcome areas of the Justice Agreement. DJAG referred to the Indigenous JPs (Magistrates Courts). The QPS referred to community police and QATSIP, but also noted that an Aboriginal and Torres Strait Islander Recruitment and Career Development Strategy is in place, and a Career Planning and Mentoring Program is available to Indigenous employees.

The Department of Communities noted that 'Pre and post court interviews are conducted with young people attending court, their families and other key stakeholders in a young person's life by Youth Justice Service Centres and the Department of Communities specialist youth justice Court Services staff'. The response does not specifically refer to Indigenous young people.

The Department of Corrective Services stated that it 'facilitates access of appropriate Aboriginal and Torres Islander services to corrective facilities', presumably referring to the attendance of CJGs and other services. The Department also noted that 'with the strengthening of the Work Outreach Camp project (WORC) currently underway, there are further opportunities for the Department to work with local people in the delivery of community projects'. This needs considerable work given the low numbers of Indigenous people participating in WORC.

There was also concern expressed both within the Department of Corrective Services and outside, including among magistrates, that the Department had formerly funded a number of outstations in remote communities (such as Baas Yard) but the funding had ceased. The Departmental response is that WORC provides a better model than the finding of outstations because it enables greater Departmental responsibility for the activities and greater availability.

5.16 GREATER RECOGNITION OF CUSTOMARY PRACTICES

This outcome area relates to greater recognition of Aboriginal and Torres Strait Islander customary law and practice. The responsible agencies are Department of Communities, QPS, DJAG, and DATSIP.

The response to this outcome area from the relevant agencies relies on previously identified changes in juvenile and adult jurisdictions including involvement of elders, respected persons, and CJGs in various parts of the process including cautioning, conferencing and sentencing. The Murri Court is also an avenue for meeting this outcome area.

DATSIP note that 'the CEO Law and Justice Committee commenced a review of existing non-custodial correction processes such as probation, bail, community

service orders, fine option orders and deferred sentencing, and examined options for restorative justice processes including circle sentencing, customary practices and other diversionary initiatives for consideration'. It is unknown what the outcome of the review has been, or whether it has been completed.

Given the importance of the ongoing nature of the problems associated with the recognition of customary law, it is worth monitoring what is occurring in Western Australia where the State's Law Reform Commission has been involved in a comprehensive review of the issue.

Queensland is the only State with a large Indigenous population living on traditional lands that has not initiated in recent years an inquiry into the recognition of customary law. The Murri court, JPs (Magistrates Courts) and CJGs go some way to providing for Indigenous input into sentencing. However, this is not equivalent to understanding the demands for the recognition of customary law. Nor does it appear that community by-laws have ever provided a satisfactory response to the issue.

5.17 EFFECTIVE INDIGNEOUS COMMUNITY INPUT INTO SENTENCING OFFENDERS

This outcome area relates to effective Indigenous input into sentencing (eg, CJGs, elders, Murri Court). The responsible agencies are DATSIP, Department of Communities and DJAG.

The response to this outcome areas relies on previously identified changes including involvement of elders, respected persons, CJGs and the Murri Court.

5.18 INFORMED DECISION-MAKING ON INDIGENOUS CRIMINAL JUSTICE ISSUES

This outcome area relates to informed decision-making on Indigenous criminal justice issues. The responsible agencies are Department of Communities, QPS, DJAG, DATSIP, and Department of Corrective Services.

The QPS is the only agency that responded to this outcome area with reference to a consultative process: Aboriginal and Torres Strait Islander Police Review and Reference Group in Brisbane and the expansion of the Indigenous Community/ Police Consultative Groups throughout Queensland.

All other agencies responded with reference to the information they supply to the Queensland Aboriginal and Islander Legal Service Secretariat (QAILSS) regarding the implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations, and the development of an Indigenous identifier across justice agencies (see Outcome Area 20).

As a result of the outcomes from the federal tendering process for ATSILS, QAILSS no longer exists. With the abolition of ATSIC and ATSIAB there is a vacuum in representative and community consultative bodies for Indigenous people. There is also no independent Indigenous organisation with a monitoring role for the Justice Agreement, the Royal Commission into Aboriginal Deaths in Custody recommendations, or justice issues more generally.

5.19 EFFECTIVE COORDINATION AND INTEGRATION OF POLICIES

This outcome area relates to effective coordination and integration of programs relating to Aboriginal and Torres Strait Islander people. The responsible agencies are QPS, Department of Communities, Department of Corrective Services, Department of Child Safety, DJAG and DATSIP.

The Department of Child Safety is in the process of developing the Queensland Strategic Framework for Child Protection for 2006 – 2009. The framework is a whole-of-government framework that will also apply to the non-government sector. The framework will include a distinct stream focusing on Aboriginal and Torres Strait Islander child protection. The draft framework is due to go to Cabinet in March 2006.

The QPS response refers to the Cultural Advisory Unit, the regional cross-cultural liaison officers and the PLO network. The DATSIP response is substantially the same as it has provided to previous outcome areas (2, 3, 6, 8, 14 and 16) relating to partnerships under the *Meeting Challenges, Making Choices* initiative, the CEO Law and Justice Committee review, and the Indigenous Driver's Licensing Project.

The Department of Communities refers to the Indigenous Juvenile Justice Reference Group which 'meets quarterly with senior representatives from the Youth Justice Services Directorate, Department of Communities. The meeting provides an opportunity for representatives of Indigenous community agencies to discuss local issues with departmental staff'. It is surprising that the Department of Communities did not refer to this Reference Group in its responses to other outcome areas relating to Indigenous input into policy development.

The Department of Corrective Services noted that it 'engages with stakeholders, including non-government partners and government agencies, in the coordination and integration of policies, programs and services in relation to the specific needs of Aboriginal and Torres Strait Islander offenders'. Of relevance here is the disbanding of the Aboriginal and Torres Strait Islander Unit, which arose from recommendations of the Business Model Review.

> The review team has proposed that, rather than specific target group entities such as the Women's Unit and the Aboriginal and Torres Strait Islander Unit which currently exist, the issues now dealt with by these units would be dealt with more effectively when the policies relating to these areas are embedded within a Departmental policy framework. Consequently, it is proposed to have staff from these units integrated within the Department's policy and support services agencies as appropriate (Department of Corrective Services 2004:ix)

As one Department of Corrective Services staff member put it, the Unit had become a 'Black magnet' where all issues affecting Indigenous people were moved to avoid agency responsibility. The Unit was the 'conscience' of the Department but without real resources or power. The new view is that rather than passing problems on to the Aboriginal and Torres Strait Islander Unit, performance measures relating to Indigenous issues will be set across the Department.

However, a number of criticisms have arisen. Firstly, that the change process was not adequately managed. Although Indigenous issues are now one of shared responsibility across the Department, the processes to manage this are not clear. A second criticism is that there is now no process for developing an understanding of Indigenous issues. There is no formal process for Indigenous input. Thirdly, there is no particular Indigenous Strategic Plan or Policy that spells out the Department's goals for Indigenous people. The ADCQ noted that:

> While the ADCQ is in full agreement that Indigenous issues need to be embedded in departmental policy, this does not preclude the existence of specialist units which play a valuable role in building and retaining expertise for agencies in the extremely important areas of research and policy development (ADCQ 2005:3).

DJAG has identified that its *Indigenous Justice Strategy* (2005 – 2006) 'will assist in providing a coordinated response by the Department when developing, implementing, reporting and promoting initiatives relating to Aboriginal and Torres Strait Islander peoples'. DJAG also identified the LAQ *Integrated Indigenous Strategy* which works with an Indigenous community reference group on policy and service delivery issues.

Only DJAG and QPS have Indigenous Strategies. Child Safety is developing a Strategic Framework for Child Protection which will have a stream focussing on Indigenous child protection.

All agencies should have a clearly articulated and publicly available Indigenous policy that also outlines key strategies for addressing Indigenous issues. These policies provide a mechanism for coordination and integration, as well as providing transparency and public accountability.

5.20 A UNIFORM DATA COLLECTION SYSTEM

The last outcome area relates to a uniform data collection system to enable evaluation and monitoring of the outcomes of the Justice Agreement, and facilitate more informed decision-making. The responsible agencies are Department of Communities, QPS, DJAG, DATSIP, and Department of Corrective Services.

The adoption of the standard question used in the administrative collection to identify an Indigenous person was piloted in January 2003 across all justice-related agencies with full implementation commencing in July 2003. As the data utilised in this evaluation show, there is potential for better monitoring of the level of contact of Indigenous people with the criminal justice system.

Initial work has been completed on the development of an Integrated Justice Information Strategy. This Integrated Justice Information Strategy will link the main agencies involved in the criminal justice process including the Queensland Police Service, Department of Justice and Attorney-General, Department of Communities and Department of Corrective Services. Integration of internal and cross agency processes and information should assist agencies in better measuring the effects of policies and programs on Indigenous people in Queensland.

5.21 LIMITATIONS OF THE CURRENT APPROACH

There are two major limitations to the current approach, both of which are connected. There is overlap among the 20 outcome areas, and, partly arising from this overlap, the reporting process has been inadequate. There is a range of problems in terms of agency reporting on the outcome areas. In particular the following problems are identified:

- Repetition in reporting on the same initiatives, rather than outcomes (for example, the employment of 15 Aboriginal and Torres Strait Islander Family and Community Workers reported each year from 2002).

- Lack of evidence to support the argument that general policies will meet the desired outcomes for Indigenous people (for example, the New Business Model in the Department of Corrective Services).

- Lack of evidence of outcomes arising from specific policies (for example, how often do police use Elders/respected persons in cautioning? How frequently have Intensive Supervision Orders been used for Indigenous young people?).

- Lack of connection between the policy and the desired outcome (for example, do Murri chaplains help Indigenous people understand their legal rights?).

- Lack of evidence of impact, although it may be possible to assume some positive effects (for example, crime prevention programs).

There is clear utility in reducing the number of outcome areas to allow for:

- More focussed policy responses on the most important areas;
- A reduction in overlap;
- Closer connection to performance indicators; and
- Better accountability through more focussed reporting on fewer areas.

The 20 outcome areas could be collapsed into three key result areas. There is too much overlap between certain areas, while not enough attention to others (such as crime prevention, and a reduction in victimisation levels, particularly relating to family violence). The suggested three Key Result Areas are as follows.

1. Diversion of Indigenous Children and Adults from All Stages of the Criminal Justice System

This KRA would include strategies identified in the Justice Agreement for:

- Effective Early Intervention for Indigenous Young People.
- Availability and Use of Appropriate Alternatives to Court.
- Effective Diversionary Strategies.
- Availability and Use of Appropriate Community-based Sentencing Options.

Crime prevention should also be added to this list.

2. Indigenous Access and Equity/Equality Before the Law

This KRA would include strategies identified in the Justice Agreement for:

- Effective Legal Assistance.
- Increase Employment in Justice-Related Agencies.
- Improved Cultural Awareness.
- Effective Communication.
- Understanding by Indigenous People of Their Rights.
- Improved Access to Justice.
- Appropriate Criminal Justice Policies.
- Increased Participation.
- Informed Decision-Making on Indigenous Criminal Justice Issues.

3. Effective Indigenous Policy and Programs for Offenders

This KRA would include strategies identified in the Justice Agreement for

- Custodial Safety and Security
- Effective Rehabilitation and Community Reintegration
- Effective Operation of Indigenous Services
- Greater Recognition of Customary Practices
- Effective Indigenous Community Input into Sentencing Offenders
- Effective Coordination and Integration of Policies
- Uniform Data Collection System

Services for victims should also be added.

A move towards reducing the 20 outcome areas to more specific key result areas (KRAs) had begun prior to this evaluation and was reflected in the Justice Agreement Action Plan of 2003-04. The Action Plan streamlined the outcomes to four KRAs which were seen to be critical to achieving the overall outcome of the Justice Agreement of reducing the rate of Aboriginal and Torres Strait Islander people incarcerated by 50% by 2011. The emphasis was placed on those strategies which would have the maximum immediate impact.

Table 5.1 Draft Action Plan 2003-2004

KEY RESULT AREA	WHAT WILL BE ACHIEVED	INDICATORS OF SUCCESS
Crime prevention/ early intervention	Decrease in the numbers of first offences and repeat offences, corresponding with a decrease in the rate of Aboriginal and Torres Strait peoples coming into contact with the criminal justice system **ADD**: - increase in child protection matters (?) - decrease in Indigenous people, particularly women, who are victims of crime	• Reduction in arrest rates • Reduction in court appearance rates • Reduction in rates of charges against juveniles • Reduction in crime victimisation rates
Alternatives to/within the criminal justice system	Increased use of diversionary options (eg cautioning/conferencing/mediation) as alternatives to arrest, charging, court and incarceration, corresponding with a decrease in the rate of Aboriginal and Torres Strait Islander peoples coming into initial and further contact with the criminal justice system **ADD:** - specific reference to Indigenous juvenile remand population - specific reference to diversion for alcohol-related and liquor offences - specific reference to drug and alcohol courts	• Increase in caution rates • Increase in youth justice conferencing rates • Increase in ratio of community based orders to custodial sentences **ADD:** - decrease in liquor offences - decrease in Indigenous remand population
Rehabilitation and reintegration into the community	Appropriate programs (with maximum Aboriginal and Torres Strait Islander input, and in partnership, where possible), focussing upon offender rehabilitation and reintegration into the community, available at all correctional and youth detention centres and post-release, and to offenders under community based orders	• Increase in number of available places in rehabilitation programs • Increased uptake of program places • Reduction in offence rates in communities
Equitable access to justice	Increase in access to legal representation, Aboriginal and Torres Strait Islander input into sentencing and courts held in remote/regional locations, and enhanced knowledge and understanding of the criminal justice system by Aboriginal and Torres Strait Islander Queenslanders **ADD:** - sustainable and resourced community justice groups and Murri Courts - sustainable process for Indigenous consultation and negotiation on policy development	• Increased rates of community input incorporated into sentencing • Increase in number of court circuits held in remote communities • Increase in number of Magistrates Courts convened by Aboriginal and Torres Strait Islander Justices of the Peace

Source: DJAG, Draft Action Plan 2003-2004.

However, there are also areas missing from the key results areas identified above in Table 5.1. Some of these omissions derive from the Justice Agreement, others such as victimisation measures are new. Both have been added to the above Table.

5.21.1 Articulation between Justice Agreement and PQ Performance Measures

There is also a need to achieve a relevant articulation with the performance framework set by *PQ* in its priority action areas relevant to Justice Agreement

outcomes. As noted in Chapter 2 there are a number of priority action areas for *PQ*. Draft performance frameworks[29] have been developed for the following.

- Healthy outcomes for babies (relating to the 0 – 12 months group).
- Optimal development in childhood (relating to the 13 months – 6 age group).
- Successful childhood (relating to the 7 to 14 age group).
- Transition to adulthood (relating to the 15 to 24 age group).
- Healthy, prosperous and safe adulthood.

The reporting requirements for the above areas which are relevant to the Justice Agreement are identified in Attachment 2. They can be easily articulated with the requirements of reporting for the Justice Agreement, although the Justice Agreement requires more comprehensive reporting than the *PQ* process, particularly in relation to the adult criminal justice system where *PQ* reporting is very limited.

5.22 CONCLUSION

The 20 outcome areas of the Justice Agreement cover all aspects of the adult and juvenile criminal justice systems. The key issues emerging from government responses to these outcome areas are summarised below.

Crime Prevention / Early Intervention

It is reasonable to expect a positive benefit from general crime prevention programs. However, it is difficult to gauge their specific effect on Indigenous offending at a local level. It is reasonable to expect that the expansion of PCYC and associated support in Indigenous communities has had a positive impact on reducing offending levels given the literature linking the provision of leisure and sporting activities with effective crime prevention. However it is important that such initiatives are integrated with social support mechanisms. It is also important to recognise that the PCYC approach is expensive to establish. The multi-agency Community-Based Officers may provide a more sustainable alternative.

Mediation

The expansion of mediation training for CGJs members, and support for their attendance at training is a priority. Effective use of mediation could significantly reduce court matters, particularly arising from family disputes.

Alternatives to Arrest

A stronger management of police processing for minor offenders is required to ensure that attendance notices are used rather than arrest. The Operational Performance Reviews provide a method to ensure this outcome.

[29] The performance indicators referred to in the text are drawn from five draft performance framework papers prepared by the Strategic Partnerships Office, DATSIP.

Remand

The juvenile conditional bail and bail support programs appear to be functioning well with good levels of Indigenous participation and completion. However, they need to be expanded to deal effectively with the size of the Indigenous remand population. As noted earlier in this evaluation, the remand population of Indigenous young people is at a crisis level. Although the remand population would most probably be higher without these initiatives, it is worth considering:

- whether there has been a 'net-widening effect' with the program covering young people who would perhaps not have been remanded in custody, irrespective of the programs; and
- why the current Indigenous remand population were unable or ineligible to access either program.

The proposed Department of Corrective Services bail advocacy strategy may also reduce the Indigenous remand population if implemented with adequate attention to resourcing remote areas.

Indigenous JPs

The DJAG *Indigenous Justice Strategy* makes a commitment to evaluate the outcomes of the JP (Magistrates Courts), with respect to recidivism, culturally appropriate processes and other community justice issues. Such an evaluation is imperative.

Effective Legal Assistance

As a result of changes to ATSILS, DJAG need to put in place a process for monitoring the frequency of Indigenous people appearing unrepresented in the courts, particularly in remote areas.

Community-Based Sentencing Alternatives

There has been a failure to meet this outcome area in a meaningful way. Both Department of Corrective Services and Department of Communities have or are intending to initiate better service delivery models. This should lead to a greater capacity to supervise offenders in the community. Indigenous identified positions are important in this expansion. Greater use can also be made of properly resourced CJGs.

Custodial Health and Safety

It is important that relevant state authorities continue to monitor deaths in custody. A decrease in Indigenous deaths in custody is a strategic outcome of the *PQ* process.

Rehabilitation and Community Reintegration

Research suggests that effective post-release support can have a positive impact on reducing re-offending. There was no information provided on effectiveness of

programs or post-release for Indigenous adult or young offenders. A range of indicators are important including participation rates, completion rates and effects on re-integration and re-offending.

There is widespread acknowledgment that many mainstream programs do not have the capacity to engage Indigenous offenders. It is necessary for the Department of Corrective Services to maintain its stated commitment to developing culturally appropriate rehabilitation programs including Ending Offending, Ending Family Violence and the Indigenous Sex Offenders Program.

Cultural Awareness

There have been improvements in cultural awareness training. However, much more could be done, particularly in developing Indigenous cultural awareness programs which are more specific to the needs of particular justice agency workers. The QPS model is the most developed in this regard. Cross cultural training should be compulsory for all justice agencies' staff and managers, and made relevant to their work and the day-to-day situations they face. Judicial officers should have cross cultural awareness training at the time of their appointment and have ongoing cross cultural education courses made available.

Improved Communication and Access to Justice

Many of the initiatives designed to improve communications and outlined by Departments are important. Perhaps, less clear (except for QPS and court initiatives) are the processes for gaining input from the broader Indigenous communities.

A critical access to justice issue is the availability of interpreters. Although this was not raised in any of the government responses to the Justice Agreement, it was raised as an issue by some judicial officers working in the Cape York area. Representations have been made to government over many years concerning the need for accredited interpreters. There are still no accredited interpreters in any of the Cape languages.

Appropriate Criminal Justice Policies

Two examples are worth highlighting: youth justice conferencing and the Indigenous Licensing Program. They are examples which address issues of Indigenous participation (conferencing) and attempt to overcome an area of offending through adapting policy and procedure to meet Indigenous needs (license testing).

In the broader context of the *development* of appropriate policies, it appears that QPS is the only agency with *both* an Indigenous policy and a clear process for community consultation and negotiation.

Customary Law

Queensland is the only State with a large Indigenous population living on traditional lands that has not initiated in recent years an inquiry into the recognition of customary law. The Murri court, JPs (Magistrates Courts) and CJGs go some way to providing for Indigenous input into sentencing. However, this is not equivalent to understanding

the demands for the recognition of customary law. Nor does it appear that community by-laws have ever provided a satisfactory response to the issue.

Informed Decision-Making and Policy Coordination

ATSIC, ATSIAB and QAILLS have all been abolished. There is a vacuum in representative and community consultative bodies for Indigenous people. There is also no independent Indigenous organisation with a monitoring role for the Justice Agreement, the Royal Commission into Aboriginal Deaths in Custody recommendations, or justice issues more generally.

Only DJAG and QPS have Indigenous Strategies.

All agencies should have a clearly articulated and publicly available Indigenous policy that also outlines key strategies for addressing Indigenous issues. These policies provide a mechanism for coordination and integration, as well as providing transparency and public accountability.

Reducing the Twenty Outcome Areas of the Justice Agreement

There is too much overlap between the 20 outcome areas identified in the Justice Agreement. They should be reduced to three or four Key Result Areas with particular strategies which are likely to have the most impact. Those strategies are identified in the final chapter of this evaluation.

6. MAJOR ACTIVITIES IN THE IMPLEMENTATION OF THE JUSTICE AGREEMENT: COMMUNITY JUSTICE GROUPS AND THE MURRI COURT

6.1 COMMUNITY JUSTICE GROUPS

CJGs began as community initiatives in Kowanyama and Palm Island, and originally were supported by the Department of Corrective Services (Chantrill 1998). Since the mid 1990s they have been supported by the DATSIP Local Justice Initiatives Program – a program developed in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody with the aim to reduce Indigenous contact with the criminal justice system by developing and implementing local strategies for dealing with justice issues.

A significant part of the community consultations undertaken for the Justice Agreement evaluation involved meetings with community justice groups.[30] The focus on CJGs was justified given they are an essential element of the government (particularly DATSIP's) response to the Justice Agreement. However, as noted the CJGs pre-date the Justice Agreement.

6.1.1 DATSIP's 1999 Interim Assessment

In May 1999 the Department of Aboriginal and Torres Strait Islander Policy and Development released an *Interim Assessment of the Community Justice Groups* (DATSIPD 1999). The Interim Assessment considered CJGs in Kowanyama, Hope Vale, Mossman, Charter's Towers and Mackay. The purpose of the assessment was to assess the effectiveness to date and potential effectiveness of CJGs in meeting the goal of reducing Indigenous people's contact with the criminal justice system. In addition the assessment also considered the cost-effectiveness of CJGs by identifying some of the savings generated by the CJGs for government agencies (DATSIPD 1999:5).

The Interim Assessment found that CJGs were 'developing innovative and successful strategies for tackling community justice issues by working within the formal justice system and within the community itself' (DATSIPD 1999:6). Besides working with justice agencies, the CJGs had developed highly effective activities in addressing social and community issues without the direct involvement of the justice system. Thus the Interim Assessment found that there were two broad spheres of community justice group activity:

- Strategies involving the justice system.
- Strategies involving the underlying causes of crime and grassroots, community strategies for dealing with these issues.

[30] In all some 19 groups were spoken to in face-to-face meetings and a further seven were interviewed by phone. All CJGs were initially contacted by letter and all were later contacted by phone (usually by leaving several messages).

The Interim Assessment concluded that, 'despite their infancy, community justice groups are already achieving notable successes in various areas of community concern, according to their local priorities and their particular skills' (DATSIPD 1999:10).

In relation to working with the justice system, the following effective strategies were identified by the Interim Assessment.

- Encouraging police to exercise their discretion not to charge an individual but to refer them to the community justice group to be dealt with through customary law.

- Assisting in the granting of bail, supervising bail conditions to ensure compliance, organising accommodation, generally ensuring that bail is granted, that it can be meet and that it is not breached.

- Working to maximise use of community-based orders as an alternative to prison by providing local programs, and working to ensure that offenders do not breach orders.

- Developing programs and initiatives on community outstations for use as diversionary options, including traditional skills and work skills, self-esteem and cultural programs.

- Visiting prison to support offenders and conduct cultural activities.

- Supporting parolees (DATSIPD 1999:7).

The Interim Assessment found many examples of successful grassroots crime prevention strategies. One area of concern common to CJGs was the high level of juvenile crime. Programs were developed which sought to address some of the underlying causes including lack of recreational opportunities, lack of employment opportunities, poor parental supervision, loss of culture and identity, poor relations with police and wider non-Indigenous community. Successful strategies included the following.

- Organising basketball tournaments at night, organising football tours or camping trips as incentives for good behaviour.

- Running camps/outstation programs for cultural knowledge, increasing self-esteem and life skills.

- Attacking problems of low school attendance.

- Conducting night patrols.

- Counselling and mentoring young people on a day-to-day basis (DATSIPD 1999:8).

CJGs also developed measures in relation to alcohol and substance abuse and domestic violence. These strategies included:

- Elders publicly shaming adults who gave alcohol to children.
- Educative and counselling programs to address domestic violence and alcohol abuse.
- CJGs banning individuals from the canteen in response to alcohol abuse problems.
- Sending juveniles to outstations to address petrol and glue sniffing addictions (DATSIPD 1999:8).

CJGs also made use of mediation between individuals and between family groups. Mediation assisted in reducing community tensions. It also provides the opportunity to reduce court matters for minor disputes.

The Interim Assessment acknowledged that it was limited in measuring effectiveness quantitatively by the relatively short period of time the CJGs have been operating. However a number of indicators proved useful including reductions in juvenile court appearances, reported offences, drops in break and enter offences and motor vehicle theft in some communities, and so on. Further detail on quantitative indicators of success can be found in the report (DATSIPD 1999:67-73).

The improvement in justice indicators appears to be greater in relation to property offences than offences against the person. The report suggests that this is because offences against the person are more likely to be alcohol-related, and the CJGs have found that alcohol abuse is more difficult to address (DATSIPD 1999:10).

At the time of the Interim Assessment the average cost to fund a community justice group was between $40,000 and $50,000 per annum. The Interim Assessment found that 'it is highly likely that the efforts of the community justice groups generate at least this amount in savings to other agencies of government' (DATSIPD1999:9). Evidence of reduced numbers of adult and juvenile court appearances are likely to have significant cost saving benefits to police, courts and juvenile and adult corrections, particularly given current incarceration costs of around $50,000 for an adult and $80,000 for a juvenile.

Further analysis of cost saving estimates to justice and other agencies can be found in the Interim Assessment report (DATSIPD1999:76-78).

The Importance of Culture and Self-Determination for Effectiveness

The Interim Assessment found that 'a strong theme in the activities of CJGs is a desire to strengthen language, culture and customary law in their communities in order to restore a sense of cultural identity and high self-esteem' (DATSIPD 1999:9).

One of the 'spin offs' identified by the Interim Assessment was the heightened sense of empowerment and self worth gained within the community through the successful tackling of some of the issues affecting the community. The CJGs also fulfilled an important role as a de facto representative body for the communities when conducting affairs with outside agencies.

It is important to recognise that previous evaluations of CJGs in the 1990s identified their successful strategies and cost effectiveness.

6.1.2 Current Funding

DATSIP currently funds more than 40 CJGs to assist in decreasing the number of Indigenous peoples coming before the judicial system and going to prison for repeat offences. Total funds of $3.4m were allocated in the 2004-5 financial year. DATSIP has commenced a review of the program (DATSIP 2005:23-4).

The majority of CJGs are funded by DATSIP under the Local Justice Initiatives Plan, and these include both statutory and non-statutory bodies. Funding to CJGs varies considerably with statutory CJGs generally being paid more than non-statutory, Typically statutory CJGs are paid between $80-$90k per annum and non-statutory between $50-$60K. Thus there is significant disparity in the current funding arrangements.

In addition there are a number of CJGs that are completely unfunded. This tends to be the situation in relation to the Torres Strait Island CJGs, but also includes some mainland CJGs such as Cloncurry.

There are also a small number of CJGs funded by the Department of Corrective Services, such as *Yoombooda gNujeena*, the Rockhampton Aboriginal and Islander Community Justice Panel.

Funding levels are grossly inadequate for the complexity of the work performed. Coordinators and members are affected by the lack of funding. In some cases coordinators are working on CDEP plus top-up, giving them a take-home salary of about $300. This is a shameful and exploitative situation.

In some cases coordinators use their own vehicle and provide some out-of-pocket expenses to members from their own resources.

There is significant disparity in the current funding arrangements, which can range from unfunded to $90k per annum. Funding levels are grossly inadequate for the complexity of the work performed. Some coordinators are working on CDEP.

Although statutory CJGs have a role in AMPs, this does not justify the lower levels of funding to non-statutory groups.

6.1.3 Membership

Membership varies depending on location and whether the CJG is statutory or non-statutory. Some CJGs are comprised of local elders without representation from Aboriginal councils, some have elders and Aboriginal council members, others such as *Yoombooda gNujeena* have members from justice agencies, as well as other non-government bodies.

Some CJGs such as *Ngooderi-Mabuntha* have a governing committee comprised of elders and an advisory committee with members nominated by various organisations in the community.

One issue raised by several CJGs was the question of the selection of membership, and previous criminal records. The view expressed was that a person's criminal history would be raised and bar them from membership irrespective of how long previously the conviction may have occurred. It is worth noting the Royal Commission into Aboriginal Deaths in Custody recommendation 93 in this regard:

> 93. That governments should consider whether legislation should provide, in the interests of rehabilitation, that criminal records be expunged to remove references to past convictions after a lapse of time since last conviction and particularly whether convictions as a juvenile should not be expunged after, say, two years of non-conviction as an adult. (3:64)

There are a variety of issues that face members of CJGs:

- In many cases members are old and in receipt of a pension. Both their age and their financial situation limits the work they can do, particularly when they are not in receipt of any additional income to cover transport costs or any other incidental costs to their work with the CJG.

- In other cases members may be working in other local community-based organisations such as the women's shelter, the aged persons home, etc. If a CJG member is attending to CJG work during their normal working hours then these organisations are effectively financially supporting the work of the CJG.

There was almost unanimous support for CJG members being reimbursed for the activities they undertake. Whether this comprises a sitting fee or reimbursement of costs needs to be explored further. There was more disagreement among Indigenous members of CJGs over whether sitting fees should be paid. However, the long term sustainability of the CJGs is not viable under the current financial arrangements.

At a minimum CJGs members should be covered for out-of-pocket expenses.

6.1.4 Incorporated or Auspiced?

Some CJGs are incorporated bodies, others are auspiced by other Indigenous organisations. Auspiced CJGs lose a significant proportion of their funding to the parent body, while around 20% seems to be a common figure, in some cases it can reach as high as half the available funding.

6.2 GOVERNMENT AGENCY DEMANDS

There is a wide range of government agencies, as well as some non-government agencies that call upon the resources of a local CJG. Not all CJGs will be required to

fulfil all of these tasks, but many are. The agencies and their demands commonly include the following.

6.2.1 Department of Communities

Assistance may be required in locating young people and bringing them to court or to a youth justice conference, with the preparation of pre-sentence reports, and supervision in relation to court reporting requirements. Youth justice conferences may require assistance from CJGs, including in some cases the provision of space for the conferences to be held, and participation in the conference. CJGs may also play a role in monitoring agreements.

There were a few situations identified where conference facilitators were not Indigenous and did not make contact with the local CJG when the facilitators came to the community to conduct conferences. The CJGs were critical of this and also identified the need to train local facilitators through the CJGs.

6.2.2 Department of Child Safety

CJGs have been involved in preparing reports and providing advice in relation to child protection matters. The CJG may become the 'Recognised Agency' in a community for the purposes of community consultation in relation to child protection matters. The Department of Child Safety is currently consulting with Aboriginal and Torres Strait Islander communities as to who will be the Recognised Agency for each community. The decision as to which agency (or entity from 1 April 2006) will be determined by communities in conjunction with the Department of Child Safety. Depending on which entities are nominated by communities, this could include the Community Justice Group.

Several CJGs from a number of different locations in the State referred to the Department of Child Safety as the most difficult state government department to work with – particularly in terms of removing children without notifying the CJG, and with not following any community protocols. Given the role of the CJGs in local community mediation it is important that they are made aware child removals.

6.2.3 Queensland Police Service

The work which a local CJG undertakes with police varies from across locations. There may be requirements for liaison with community police or police liaison officers. Some CJGs attend interviews with police or assist clients with DV applications. Some CJGs provide a cell watch program. Some also provide a night patrol service.

In the overwhelming majority of cases the CJGs reported a good working relationship between the CJG and the local police. However, most CJGs did not report any involvement in police cautioning of juveniles, although this is clearly possible under (and arguably an intent of) the juvenile justice legislation.

Some CJGs also reported problems with some police treatment of Aboriginal and Torres Strait Islander young people including use of 'move-on' powers at the request

of local businesses, pulling-up young people riding bicycles without a helmet or light and the use of stop and searches. The CJGs that complained of particular police behaviour also reported generally good working relationships with senior police in the area.

6.2.4 The Courts

Where JP courts are operating there may be overlap between JPs and CJG members, with the CJG effectively providing support to the JP court. There appeared to be some confusion over the powers of the JP courts – ie not everyone realised that the change in legislation meant that JPs courts were no longer confined to hearing community by-laws. There was also a perception that JP courts were increasingly heavy with the fines they imposed.

The CJGs are usually an integral part of the operation of the Murri Courts where they are in place. This may involve both juvenile and adult Murri courts. In cases where there is not a Murri court, the magistrates court may still call upon the CJG members. Where the magistrates court sits periodically, it is not unusual for a CJG to be given the court list prior to the sitting day. In a few cases, judges of the district court are also calling upon the services of local CJG members. In some instances the CJG may be required to present reports in court, or have their reports attached to the papers that go to the District Court.

In some cases the CJG has been used to provide interpreters for the court, although this is seen as unsatisfactory given their role in the proceedings.

The basic services provided by the CJG to the court can include pre-sentence written and oral reports and other advice, interpreting, and advice on sentencing, reporting requirements and programs.

CJGs may also provide important support to victims. This may include assistance at court if required, with follow-up on the progress of a matter, or with helping in the completion of a Victim Impact Statement. The CJG may also assist with referring a victim to an ATSILS or Legal Aid for the purposes of criminal compensation.

CJGs also have a role in bail determinations. Amendments to s.15 of the *Bail Act 1980* require that when considering whether to grant bail, courts are to have regard to any relevant submissions made by a representative of the Community Justice Group in the defendant's community. Amendments to s.16 of the *Bail Act 1980* require that in deciding to refuse bail, courts are to have regard to any relevant submissions made by a representative of the Community Justice Group in the defendant's community.

6.2.5 Department of Corrections

CJGs may be involved in supervision of offenders on various types of community service orders, intensive corrective orders or probation. It was relatively common for courts to order that offenders report to CJG. In some cases this could be weekly.

While CJGs may provide support, supervision and counselling, they also generally noted the need for rehabilitative programs in the community. Department of

Corrective Services staff also noted that while CJGs provide support for the Department they do not necessarily have the organisational capacity to be effective, and are overloaded with other responsibilities.

6.2.6 Alcohol Management Plans

Statutory CJGs can make decisions relating Alcohol Management Plans including declaration of dry areas, the carriage of alcohol, the type of alcohol permitted in the community and amount that each person can bring to the community.

6.3 CJG ACTIVITIES AND COMMUNITY DEMANDS

There has been a growing list of demands placed on CJGs to the point where their long-term viability is under threat because of the workload and lack of resourcing. When Paul Chantrill reviewed the CJGs at Palm Island, Kowanyama and Pormpuraaw in the mid 1990s he noted then that:

> On a cautionary note is the possibility of the overburdening of justice groups, individual members and support workers who are called upon to perform a proliferating range of tasks and responsibilities within their communities (Chantrill 1998:176).

And further:

> At present, the level and kind of support offered to justice groups is uneven and unpredictable (Chantrill 1998:177).

6.3.1 Night Patrols

Many of the non-statutory CJGs are involved in night patrols which operate one or more nights per week. These are usually organised and operated by the coordinator with assistance from members of the CJG. It is worth noting that specific funding for Indigenous patrols in other States has come from police and attorney-generals, as well as the relevant Indigenous affairs office or department.

6.3.2 Young People

Some CJGs have focussed on young people as their core group of clients. This work can involve a range of activities from collecting young people for court, to providing advice in the Childrens Court (or Murri Court if this is operating), to directly cautioning a young person as directed by the court, or providing supervision in the community as directed by the court.

In some cases where CJGs have focussed on young people they have been able to work with the Department of Communities and Aboriginal Medical Services to ensure young people receive proper health assessments including identification of problems such as dyslexia, ADT and Alcohol Foetal Syndrome. As one CJG stated, their ‘role was stopping over-representation by finding the reasons for offending’.

6.3.3 Mediation

During the research it was common for CJGs to describe mediation as an important part of their ongoing daily work. Mediation might be related to family, kinship or community problems. Many issues were complex – such as community disharmony caused by the suicide of a teenage girl, or the removal of children by the Department of Child Safety. The demand for mediation may derive directly from the community or involve matters referred by either police, the courts or other agencies.

Very few CJG members had received training and this was acknowledged to be a problem. 'No-one has had any proper training in mediation but we try to work through the issues. We have been developing rules, but we do need training – this is a big issue' (CJG coordinator).

The Dispute Resolution Branch of the Department of Justice and Attorney-General has conducted some training for CJGs in the Mount Isa area. Funding for travel and accommodation during the course had to be met from existing CJG budgets.

There is real potential in mediation to reduce to the number of people going before the courts, if the CJGs are adequately trained and resourced at the local level, and the process is promoted in the community and to potential referring agencies.

6.3.4 Community Referral and Advice

It is clear the CJGs are fulfilling a need in relation to community referral and advice for both criminal justice and other matters. Referral to other agencies might include Aboriginal and Torres Strait Islander Legal Services, Legal Aid or community legal centres, or to diversionary centres, homeless shelters or sobering-up centres, or to counselling services.

Because of English literacy issues among Indigenous people, many CJG offices act as a drop-in centre where people have correspondence and forms explained to them. This correspondence relates to such matters as court appearance, police notifications, legal aid notices, Centrelink requirements, banking issues, housing issues, identification requirements or Department of Transport requirements.

In communities where there are extremely poor public facilities, the CJG office also acts as a centre where people can use the resources such as computer, phone, fax or photocopier.

Inevitably all this work falls on the coordinator, unless there is additional staff available under CDEP (which is unusual).

6.4 ISSUES RAISED BY THE CJGs

The following are the major issues raised by CJGs during the consultations.

6.4.1 Accommodation and Other Resources

Inadequate accommodation negatively effects many CJGs. Some have no space for confidential meetings with clients or for counselling. Many have only one phone line. Offices are often poorly equipped. Some CJGs have no vehicle.

6.4.2 Skills

There is a wide variation in the skills possessed by various coordinators. Some have significant previous experience working in justice agencies, some have tertiary level education, others have strong community – based backgrounds but are not experienced in dealing with basic administrative tasks.

There appears to be little assistance to coordinators or members, particularly those in remote communities. For example:

> It is now three months since I commenced in the Justice Coordinator position. I initially found procedures and requirements of the position extremely difficult to come to terms with, having had no real training in computers, typing, budgets or office administration. There was no training or induction period for the position on my commencement (CJG coordinator).

Placing unrealistic demands for entry level qualifications for coordinators would undermine the role of the CJGs. However, there is a need for better basic support and training for people once they are in the position. Given the varied and complex tasks that are demanded it is incomprehensible the CJG coordinators have no basic induction.

6.4.3 Demands, Fees and Funding

The rapid increase in the demands placed on CJGs has led to issues about time management and the prioritisation of demands in keeping with the core functions of the CJGs. However the core functions are often so broadly defined in, for example, the performance agreements with DATSIP, that there is still potential for considerable overload.

Given the demands that are placed on the CJGs serious consideration needs to be given to establishing a fee for service system. These might include:

- Payment for JPs court sittings.
- Fees for the preparation of specific reports ordered by the Courts.
- Payment for supervision or other types of assistance.
- Payment for the use of CJG facilities by government agencies.

An alternative to the fee for service model is joint funding across the justice agencies that utilise the services of the CJGs. A joint funding agreement would be administratively the easiest and least costly way to proceed.

6.4.4 Relationships with Indigenous Councils

There is clearly a need to improve the relationship between statutory CJGs and Councils, which in some communities is very poor. Councils are an elected body, and the CJG members are appointed by government. Although CJGs have statutory functions they cannot supplant the authority of the elected Indigenous council. At present the system in some areas creates a tension which is ultimately destructive to the development of good governance mechanisms.

Unless the situation is addressed, the tension is likely to increase as government agencies rely more and more heavily on CJGs to assist in their work.

The relationship between councils and CJGs might be formalised through a local MOU. Alternatively, Council might have one or more ex officio positions on the CJG, or might be involved as a partner with government in the selection of CJG members.

6.4.5 Reporting Requirements

The reporting requirements placed on the CJGs, particularly the Excel spreadsheets covering activities, appear onerous given the level of resources that the CJGs can typically call upon. The reporting requirements are very time consuming. In at least one office the computer had crashed and the spreadsheet data had been lost.

In most cases it is the coordinator who tries to make time to complete the requirements. In a few cases a CDEP worker may assist a couple of days a week, but this is rare.

A further complaint was that the spreadsheet of activities does not allow the service itself to usefully extract material for its own work. It does not allow particulars of clients to be entered (eg drug and alcohol issues, suicide risk, etc.)

Given that:

- DATSIP does not appear to be analysing the data.
- Not all CJGs are completing the data entry requirements.
- The data collected is of only limited utility.

The system needs to be redesigned as a client-based administrative system which is simpler, quicker and purpose built.

6.4.6 Statewide Conference and Reference Group

Regular meetings on both a statewide and regional level can assist in capacity building for the CJGs.

The CJGs coordinators held a statewide meeting in December 2004. There was a widespread view that regular meetings were necessary, perhaps also including one or

two of the members of the CJG. There was also a view that there should be more time available at these conferences to discuss common issues and various strategies and approaches.

There was general support for the development of a statewide reference group. A reference group should be established.

6.5 SUMMARY AND RECOMMENDATION: COMMUNITY JUSTICE GROUPS

The CJGs are inadequately skilled and resourced for the work they are required to undertake. There are differentials in funding and in some cases coordinators are working as part of CDEP. This situation is totally unacceptable for their level of responsibility. The CJGs provide an important avenue for community capacity building and the exercise of community self-determination. However, they are also filling the gap left through inadequate service provision by government.

In other jurisdictions, CJGs are funded through the Attorney-Generals Department, while specific functions such as night patrols are funded through crime prevention or police services.

It is recommended that the CJGs are funded by all justice agencies who utilise their services through a joint funding agreement, or a fee for service system is developed. Consideration should be given to transferring the administration of CJGs to DJAG given both the nature of their work and the move of DATSIP away from service delivery.

6.6 THE MURRI COURTS

6.6.1 Indigenous Courts

Aboriginal courts (Koori Courts, Murri Courts and Nunga Courts) have been established for both adult and juvenile offenders in Victoria, Queensland and South Australia over the last few years. The courts typically involve an Aboriginal Elder or justice officer sitting on the bench with a magistrate. The Elder can provide advice to the magistrate on the offender to be sentenced and about cultural and community issues. Offenders might receive customary punishments or community service orders as an alternative to prison. Aboriginal Courts may sit on a specific day designated to sentence Aboriginal offenders who have plead guilty to an offence. The Court setting may be different to the traditional sittings. The offender may have a relative present at the sitting, with the offender, his/her relative and the offender's lawyer sitting at the bar table. The magistrate may ask questions of the offender, the victim (if present) and members of the family and community in assisting with sentencing options. The Port Adelaide Nunga Court has increased the rate of attendance by Aboriginal people (80%) as compared to attendance in other courts (less than 50%) (see Harris 2004; Marchetti and Daly 2004; and Cunneen 2002). The Koori Court in Victoria is currently being evaluated by an independent evaluator.

6.6.2 Circle Sentencing Canada

Circle sentencing has also been influential in Australia, primarily in New South Wales. Circle sentencing arose in Canada in the early 1992 out of a decision from the Supreme Court of the Yukon in the case of *R v Moses* (1992) (see Green 1998). Circle courts are based on traditional north American Indigenous forms of dispute resolution and have been adopted by a number of more traditionally oriented first nations people in Canada, but have subsequently been adopted in Canadian urban settings and are also now used in the United States and Australia. Pilot circle sentencing began in Nowra, New South Wales in February 2002 and has subsequently been expanded to other areas such as Dubbo. Canadian case law sets out the criteria for involvement in a sentencing circle. *R v Joseyounen* set out the following criteria:

1. The accused must agree to be referred to the sentencing circle.
2. The accused must have deep roots in the community in which the circle is held and from which the participants are drawn.
3. There are elders or respected non-political community leaders willing to participate.
4. The victim is willing to participate and has been subjected to no coercion or pressure in so agreeing.
5. The court should try to determine beforehand, as best it can, if the victim is subject to battered woman's syndrome. If she is, then she should have counselling and be accompanied by a support team in the circle.
6. Disputed facts have been resolved in advance.
7. The case is one which a court would be willing to take a calculated risk and depart from the usual range of sentencing (see Green 1998:76).

These criteria have been widely quoted and applied across Canada.

Section 718.2(e) of the Canadian *Criminal Code* is also relevant to understanding the sentencing of Aboriginal offenders in Canada (see McNamara 2000). The legislation provides in Section 718 that a court that imposes a sentence shall take into consideration (among a range of other factors) the following principles:

> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

The Canadian Supreme Court in *R v Gladue* confirmed that the unique circumstances of Aboriginal people which judges needed to take into account included both the processes and outcomes of sentencing:

> The background consideration regarding the distinct situation of Aboriginal people in Canada encompass a wide range of unique circumstances, including most particularly:
> (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and
> (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (cited in McNamara 2000).

6.6.3 Circle Sentencing NSW

Circle sentencing in New South Wales currently has the following procedure. A participating court makes a suitability assessment order in respect of the offender. The Project Officer for the court convenes a special meeting of the Aboriginal Community Justice Group for the court to assess whether the offender is a suitable candidate to participate in the program. The Aboriginal Community Justice Group then assesses the offender. The Group must report its finding to the court that referred the offender. The Court determines whether a program participation order should be made. The offender enters into an agreement to participate in the program. The Project Officer convenes a circle sentencing group. The offender must comply with the program and any intervention plan. The court that referred the offender may, if it agrees with the consensus of the circle sentencing group on the issue, impose a sentence on the offender in the terms recommended by the group following the conclusion of the circle. Any such sentence will be pronounced in open court (see *Criminal Procedure Regulation 2000* [2000-435], Schedule 3, Part 2).

The Nowra circle sentencing trial was subsequently evaluated by the NSW Aboriginal Justice Advisory Council and the NSW Judicial Commission (Potas et al 2003). In relation to the objectives of the circle sentencing trial it was noted that:

> Circle court deliberations are typified as power-sharing arrangements. It is recognised that if the community does not have confidence that the power-sharing arrangements will be honoured, the prospect that circle sentencing will be successfully implemented is likely to be diminished. The fundamental premise underlying the philosophy of circle sentencing is that the community holds the key to changing attitudes and providing solutions.
>
> The objectives of the circle sentencing trial were to:
> (a) include members of Aboriginal communities in the sentencing process;
> (b) increase the confidence of Aboriginal communities in the sentencing process;
> (c) reduce barriers between Aboriginal communities and the courts;
> (d) provide more appropriate sentencing options for Aboriginal offenders;
> (e) provide effective support to victims of offences by Aboriginal offenders;
> (f) provide for the greater participation of Aboriginal offenders and their victims in the sentencing process;
> (g) increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong;
> (h) reduce recidivism in Aboriginal communities (Potas et al 2003:4).

The evaluation noted major characteristics that set the proceedings apart from traditional court proceedings. In relation to victims it was noted that,

> Victim participation in circle proceedings differed markedly from traditional offender focused court proceedings in which victims of crime may not even be present, or may only have a place as a silent observer. Victim participation is central to the concept of restorative justice and its objective of obtaining an

outcome that is satisfactory to all parties. In circle proceedings the victim had an opportunity to confront the offender, providing a visual reminder to the offender of the consequences of their actions. In many circles, the victim received a spontaneous apology from the offender, thereby demonstrating the offender's genuine remorse, their acceptance of responsibility for the harm caused, and the beginning of the process of rehabilitation (Potas et al 2003:10).

The importance of the role of the victim is more pronounced in circle sentencing than it has been in the Murri court.

The evaluation found among other things that circle sentencing:

- helps to break the cycle of recidivism;
- introduces more relevant and meaningful sentencing options for Aboriginal offenders;
- with the help of respected community members reduces the barriers that currently exist between the courts and Aboriginal people;
- leads to improvements in the level of support for Aboriginal offenders;
- incorporates support for victims, and promotes healing and reconciliation;
- increases the confidence and generally promotes the empowerment of Aboriginal persons in the community (Potas et al 2003:iv).

A significant difference between circle sentencing and Aboriginal courts (including the Murri Court) is the key role for the victim in circle sentencing.

6.6.4 Legislative Framework

The Koori Court, Nunga Court and the Circle Sentencing Courts operate within a legislative framework. The Nunga Court is recognised by the *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2003*. Legislation covering the Victorian Koori Court and New South Wales Circle Sentencing are dealt with in more detail below.

Koori Court

The Koori Court in Victoria is established by the *Magistrates' Court (Koori Court) Act 2002*. The legislation establishes a Koori Court Division of the Magistrates' Court and provides for the jurisdiction and procedure of the Koori Court Division.

The legislation determines that the Koori Court has jurisdiction where the defendant is Aboriginal and has pleaded or intends to plead guilty to the offence. The defendant must consent to the matter being dealt with by the Koori Court and consent to the adjournment of the proceeding to enable him or her to participate in a diversion program.

The Koori Court has jurisdiction over matters within the jurisdiction of the Magistrates' Court except for sexual offences and family violence offences (Section 4F).

In Section 4G the legislation covers sentencing procedure in relation to receiving oral statements or prepared submissions from Aboriginal elders or respected persons, Koori court officers, Aboriginal justice workers, victims, family members, health service providers community corrections and 'anyone else whom the Koori Court Division considers appropriate'.

Circle Sentencing

The establishment of the circle sentencing program is covered by *Criminal Procedure Regulation 2000* [2000-435]. The regulation covers the process involved in entry into and participation in the program, including:

- The role of Aboriginal Community Justice Group convened to assess referred offenders.
- Objectives of the program.
- Eligibility to participate in program.

The constitution of circle sentencing group is covered in the regulation, including the magistrate, the offender, the prosecutor, the offender's legal representatives (if required by the offender), the project officer, at least three Aboriginal persons chosen by the Project Officer. The circle sentencing group may include the victim and support person, and support person for the offender.

Other matters dealt with under the regulation include:

- Functions of circle sentencing groups.
- Exclusions of persons from meetings of circle sentencing groups.
- Victims to be heard.
- Records of meetings.
- Reconvening of the circle sentencing group.
- Project Officers.
- Establishment, appointment and function of Aboriginal Community Justice Groups for each court.
- Disclosure of information.
- Other general procedural matters.

The Koori Court, Nunga Court and the Circle Sentencing Courts operate within a legislative framework. The legislative framework may include the definition and range of the jurisdiction and relevant procedural matters. These schemes have the allocation of specific court workers or project officers to organise the relevant assessments and procedures that are required to be followed. Involvement of other Indigenous groups (CJGs) in the procedures is also specified.

6.6.5 The Murri Court

The Murri Court was established in August 2002 at the Brisbane Magistrates Court after the then Chief Magistrate Diane Fingleton and the Deputy Chief Magistrate

Brian Hine had investigated other Indigenous court initiatives such as the Nunga Court in South Australia (Hennessy 2005:1).

The main objective of the court is to reduce the number of Indigenous people in the criminal justice system. According to the Queensland Magistrates Courts *Annual Report 2003-04*:

> The Murri Court has been set up specifically to give the magistrate more culturally appropriate sentencing options by using the special guidelines within the *Penalties and Sentences Act* 1992… Community elders and respected persons explain cultural considerations and personal issues relating to the defendant and work with the magistrate to help determine the most appropriate sentencing options, penalties and interventions for each individual case… The Murri Court aims to impose sentences other than imprisonment wherever possible in an attempt to reduce recidivism. It also seeks to reduce the number of Indigenous offenders who fail to appear in court (Queensland Magistrates Courts 2004:25)

Murri Courts began operation in Rockhampton in 2003 and Mount Isa in 2004. The Youth Murri Court began in Brisbane Childrens Court in 2004.

Legislative Framework

The Murri Court is not governed by specific legislation. However, amendments to the Queensland *Penalties and Sentences Act 1992*, the *Juvenile Justice Act 1992* and the *Childrens Court Act 1992* enables elders and CJGs to formally assist judges and magistrates when sentencing Indigenous people. It was this legislative change that made the Murri Court a viable option (Hennessy 2005:1).

Section 9 of the legislation deals with sentencing guidelines. Subsection (2) states that in sentencing an offender, a court must have regard to:
(o) if the offender is an Aboriginal or Torres Strait Islander person — any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example:

> (i) the offender's relationship to the offender's community; or
> (ii) any cultural considerations; or
> (iii) any considerations relating to programs and services established for offenders in which the community justice group participates;

Subsection (8) defines a community justice group primarily either as a statutory CJG or as a group of persons within the offender's community providing information, programs or other activities relating to local justice issues. The 'offenders community' is defined as an urban community, a rural community, or a community on DOGIT land.

Eligibility criteria is set by the court. General requirements are that the matter is one that falls within the jurisdiction of the magistrates court, that the defendant is Aboriginal or Torres Strait Islander, the defendant consents to having the matter referred to the Murri Court and the defendant is be prepared to plead guilty. At the

Brisbane Murri Court there is also a requirement that there is a real likelihood that the defendant is facing a sentence of imprisonment. A further restriction (set on the advice of elders) is that if a defendant fails to appear in court on more than one occasion they will no longer be eligible for the Murri Court. The Brisbane Murri Court sits weekly. Both the Brisbane and the Mount Isa Murri Court have a male and female elder sitting with the magistrate on the bench.

The Brisbane Youth Murri Court sits once a month. Eligibility for the Youth Murri Court is that the offence is one within the jurisdiction of the Childrens Court and that the young person request the matter to be determined by the Murri Court. There are usually two (and sometimes three) elders who sit with the magistrate. The young person's family also have the opportunity to speak to the magistrate and the elders.

The Mount Isa Murri Court was sitting once every second week. It was suspended for much of 2005, but has resumed operation. The Mount Isa Murri Court requires the CJG to prepare a written submission in conjunction with the Department of Corrective Services.

The Rockhampton Murri Court utilises the assistance of the Fitzroy Basin Elders, the Yoombudda gNujeena (one of two Rockhampton CJGs), and the Rockhampton Community Corrections officers. It sits monthly, with one afternoon for adults and one afternoon for young people. Two reports are required: a presentence report from the Department of Corrective Services and a report from the CJG. The Rockhampton Murri Court decided not to invite victims to the Court because of the lack of support available for them, but they can provide a letter or statement to the court. Initially the Rockhampton Murri Court focussed on higher end offending where the offender was likely to go to gaol. However, it is also taking on more matters at the lower end of offending. There is also a focus on family violence matters, partly because there is an Indigenous Healing Centre available for referral.

Effectiveness

As present there is no systematic evaluation or consistent data available on the Murri Courts. However, the evidence that is available suggests a positive impact by the courts. Magistrates involved in the Murri Court were of the view that the process works well, but also strongly supported the need for an independent evaluation. The magistrate at the Rockhampton Murri Court has been analysing data for that Court in relation to participants before the Court and their later re-offending. Over an 18 month period she found that imprisonment with probation, intensive correction orders and probation orders had the greatest success in minimising recidivism. In these cases the conditions placed on orders involved meeting with Elders or CJG on a regular basis and undertaking courses, programs or counselling relevant to their particular needs.

> Orders, particularly probation orders and intensive correction orders, often include conditions requiring attendance on the Justice Group and/or Elders, attendance at counselling and/or programs to address specific issues (for example domestic violence and family violence, alcohol or drug abuse), attendance at Indigenous Men's Groups or other support groups… The extent of compliance required represents what might be considered to be significant

> punishment and deterrence whilst offering rehabilitation opportunities (Hennessy 2005:5).

Orders without ongoing conditions of Indigenous community involvement (imprisonment, fines, and community service orders) had the least impact on recidivism (Hennessy 2005:9).

The measures and results on effectiveness of the Murri Court will also be influenced by the criteria established for eligibility. For example, at the Brisbane Murri Court because defendants must be facing a term of imprisonment they will be likely to be recidivists who are relatively entrenched in the criminal justice system.

At the Youth Murri Court it was acknowledged that it is difficult to ascertain the full impact on young people. However, it was noted that the Murri Court had more impact than the magistrate alone and this was particularly the case for young people not entrenched in the system.

Mr Tony Pascoe, the magistrate at the Brisbane Childrens Court, stated:

> The [Youth] Murri Court sessions are intense, emotional occasions with a greater involvement of all parties. I can say that since the Youth Murri Court has been held that there has been a reduction in the number of serious offences committed by young Indigenous persons. There may be a number of reasons for this but I like to think that the Youth Murri Court, by involving the wider community in the concern for the futures of young Aboriginal and Torres Strait Islander people, has in some way contributed to this result (Pascoe 2005:7).

There was a perception that, while some young people who have participated in the Murri Court re-offend, it does appear to reduce the likelihood of re-offending. There had been a drop in court appearances during the 2004-05 year. There was also an impact on the broader Indigenous community who were now more aware of the offending of Indigenous young people as a result of the role of elders. Elders involved in the court had developed other mechanisms to stop re-offending such as involvement in sport. The positive impact of empowering elders was also noted by other magistrates involved in the Murri Court. At Rockhampton Murri Court it was noted that there have been beneficial spin-offs from the collaboration of organisations in the local community, including dovetailing programs and creating new programs. This has resulted in creating stronger community organisations and a more integrated approach to resolving community and individual problems (Hennessy 2005:5).

At the Rockhampton Murri the CJG and the Elders express their concerns and views directly to the offender. A statement by the victim is provided by the police prosecutor. Through this process the court validates a basic tenet of Indigenous law and values – the authority and respect for elders of the community (Queensland Magistrates Courts 2004:43). As the magistrate at Rockhampton has noted:

> The acknowledgment in a public forum of the Elder's authority and wisdom and their role as moral guardians of the community by the Court honours traditional respect for the role of the Elders. The Elders mean business and

> they make it quite clear to the offenders that they must honour their responsibilities after Court for the community support to be available. Often when addressing offenders, the Elders speak of the 'old people' (ancestors) and what they would have done or seen done to an offender in the 'old days'. This always strikes a chord with offenders – even the toughest (Hennessy 2005:6).

Other customary actions include banishment from various areas, apologies and reparation. CJG members also spend time with Community Corrections officers interviewing the defendant and providing post sentence support.

> Feedback indicates that the most significant impact on offenders in the Murri Court process is the possibility of reconnection with their local community and the support this offers them. Those who choose to take advantage of the support offered by the elders and the justice group tend to successfully complete their orders and make valuable changes to their lives (Queensland Magistrates Courts 2004:43).

It is clear that the Murri Court has a powerful effect on participants.

> What cannot easily be explained is the power of the Murri Court process on a spiritual or emotional level. The power of the natural authority and wisdom of the Elders is striking in the courtroom. There is a distinct feeling of condemnation of the offending but support for the offender's potential emanating from the Elders and the Justice group members.
>
> Often similar emotions are expressed by the offender's family members. Declaring private concerns and fears for and about the offender in front of those assembled in court, in a public way, can be very cathartic for the family members (who are often victims of the offending themselves). Orders often need to take intimate family considerations into account in order to tailor orders which are designed not only to punish but also assist the offender address his/her problems with appropriate supports (Hennessy 2005:5).

The Mount Isa Murri court relies on a degree of shaming of the offender by the elders. During the first four months of the court there had been 28 offenders sentenced. There had only been one breach during the period (Queensland Magistrates Courts 2004:44).

A number of magistrates involved in the Murri Court noted the need to include victims in the process, along the lines of the circle sentencing model. However, it was acknowledged that to do this required specific resources for victim support.

Limitations of the Murri Court

There is no data available to determine how many matters are finalised in the various Murri Courts. However, some Murri Courts (for example, Rockhampton) keep data on defendants, their current and previous offences, the order and whether the person re-offended.

It needs to be acknowledged that the Murri Court only deals with a very limited number of Indigenous people in the courts and only with pleas. As magistrates noted, it is an important approach but would require significant resources if it were to be expanded, for example, to Cape York. At present a circuit sitting one day per month in remote communities would require at least double the current time available to operate as a Murri Court.

The Murri Court is also limited by the lack of available options - a problem that was identified in urban, rural and remote areas. While Indigenous people are doing far more in the way of healing groups, men's groups and so on, these are not always available. The Murri Court still requires access to the basic services dealing with drug and alcohol issues, homelessness, counselling, etc.

Other limitations relate to resourcing and support. Departmental support has been lacking. For example, there was no-one from DJAG at the opening of the Youth Murri Court. Magistrates noted that it was an initiative of the magistrates not the government and the government provide no administrative support. Yet DJAG claim the Murri Court as a major initiative in relation to the Justice Agreement.

At the moment the Murri Court relies on the goodwill of elders and those involved in CJG. The work is all voluntary on their part, and some who are working fulltime need to be released from work. There is no reimbursement provided by the court for expenses incurred by elders or CJG members. Elderly people dependant on the pension are required to pay for bus and train fares, parking and any other ancillary expenses. In some cases, Indigenous organisations (like the Fitzroy Basin Elders Group) directly support (and indirectly resource) the work of the Murri Court through administrative assistance provided by the organisation's paid staff.

A related resource issue is the time required for magistrates to organise and operate the Murri Court: people need to be contacted, additional correspondence is required and each matter takes longer in all phases from initiating the referral, to hearing the matter, to following-up on the outcomes. The burden of this work without additional resources means that the Murri Court will not expand and will remain a tentative and ad hoc initiative of a few committed Indigenous and non-Indigenous people. As one magistrate noted, 'we desperately need an Aboriginal and Torres Strait Islander court liaison officer [for the Murri Court]'. The view was echoed by other magistrates involved in the court.

Magistrates noted that the work of the Murri Court and the CJGs go far beyond what was envisaged by the amendments to the *Penalties and Sentences Act*. The Murri Court would have no long term viability without the CJGs. In addition the CJGs are involved in community-based orders as an extra level (or sometimes the only level) of supervision and support. They are essentially an extension of the role of the Department of Corrective Services and the Department of Communities.

There was recognition that the Murri Court needed a legislative framework. A statutory framework was necessary for proper funding of the court. However, that framework needs to be flexible enough to respond to specific community needs.

The Murri Court Compared to the Drug Court

A comparison made by some of the magistrates involved in the Murri Court was the differing approaches between the drug court and the Murri Court.

Drug courts in Queensland (as in other States) have received federal funding as part of a national drug strategy. The Drug Courts in Queensland were developed within a legislative framework and have received funding of around $13 million over three years which provided for their operation and extensive evaluation.

By way of comparison, the Murri Court is unfunded, without specific staff and not evaluated. There should be some consideration of the role COAG could play in developing a National Indigenous Justice Strategy, and support for Indigenous courts could be a central element. This of course goes beyond the Justice Agreement.

6.7 SUMMARY AND RECOMMENDATION: THE MURRI COURT

At present the Murri Court has developed on an ad hoc basis through the commitment of individual magistrates and judges, and local Indigenous elders. Unless there is a serious government commitment, it will not expand and will remain tentative and seriously limited in capacity. There are identified needs, including:

- Aboriginal and Torres Strait Islander court support officers assigned to the Murri Court.
- Promotion of the court among Indigenous organisations, and police, prosecutors and defence lawyers.
- A legislative framework for the court.
- Appropriate levels of funding, including for additional magistrates.
- The involvement of victims and appropriate victim support.
- Expansion of the Murri Court, particularly in the north where the lack of functional alternatives means there is little between fines and imprisonment.

It is recommended that the Murri Court be developed as an integrated justice strategy that has a legislative base and is properly resourced and supported. As part of the development of the Murri Court there should be an evaluation of the effectiveness of the court which considers both re-offending measures and community capacity building.

7. THE NEED FOR IMPROVED OUTCOMES: ALCOHOL, DRUGS AND DIVERSION

This section of the evaluation deals with problems arising from homelessness, and alcohol and drug misuse. Although not arising directly from the Justice Agreement, alcohol management arrangements have been an important development in many Indigenous communities. As discussed below they have had mixed results. Similarly, there have been important developments in relation to drug diversion and treatment, and diversionary mechanisms for responding to homelessness. The effectiveness of these initiatives have the potential to impact on the extent to which Indigenous people come into contact with the criminal justice system.

7.1 ALCOHOL MANAGEMENT PLANS

Under the *MCMC* initiative, 19 communities have been targeted for the implementation of alcohol management arrangements, which may include 'restricted area' regulations under the *Liquor Act* or dry place declarations. When a 'restricted area' is declared by law, a limit is set on the type and quantity of liquor that can be carried within the restricted area. There may be a zero limit, prohibiting the carriage of any liquor in the restricted area, or alternatively, a carriage limit may be set specifying the amount and type of liquor which may be carried in the restricted area (DATSIP 2005:27).

The 19 communities are: Aurukun, Cherbourg, Doomadgee, Hope Vale, Kowanyama, Lockhart River, Mapoon, Mornington Island, Napranum, Palm Island, Pormpuraaw, Woorabinda, Wujal Wujal, Yarrabah and the Northern Peninsula Area communities of Bamaga, Seisia, Injinoo, New Mapoon and Umagico.

Alcohol restrictions have now been implemented in 18 of the 19 remote Aboriginal and Torres Strait Islander communities identified in the Cape York Justice Study. Alcohol restrictions for Palm Island have been endorsed by the government but not implemented (DATSIP 2005:27).

According to the DATSIP submission, during the consultation process for the implementation of alcohol management plans, the use of home brew kits was identified in some communities as a possible way of circumventing alcohol management plans, thus reducing their effectiveness (DATSIP 2005:28).

The *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* were amended in 2004 to ban the possession of homebrew kits, home-brew concentrate and the possession and supply of homemade liquor in a prescribed community area. The new laws do not apply to an area until the area is prescribed under a regulation. The *Community Services (Aborigines) Act 1984* has been subsequently amended and renamed the *Aboriginal Communities (Justice and Land Matters Act 1984).*

The *Community Services (Aborigines) Regulation 1998* was amended on 9 December 2004 prescribing the communities of Mornington Island and Aurukun to effect the home brew ban. The new laws make it an offence for a person to possess a home brew

kit, home brew concentrate or homemade alcohol or to supply homemade alcohol to anyone else in the Shires of Mornington and Aurukun (DATSIP 2005:29).

7.1.1 Penalties

Subsection 168B(1) of the *Liquor Act 1992* as amended provides for the following:

> A person must not in a public place in a restricted area to which this section applies because of a declaration under s 173H have in possession more than the prescribed quantity of liquor for the area other than under the authority of a restricted area permit.
>
> Maximum Penalty - (a) for a first offence 500 penalty units; or (b) for a second offence - 700 penalty units or 6 months imprisonment; or (c) for a third or later offence - 1000 penalty units or 18 months imprisonment.

A penalty unit is currently $75. Thus for a third offence the maximum fine is $75,000 or 18 months imprisonment.

The maximum penalty for a breach of either of the *Aboriginal Communities (Justice and Land Matters Act 1984) and the Community Services (Torres Strait) Act 1984* relating to home brewing is 250 penalty units, or at current rates, $18,750.

The relevant changes to the *Liquor Act 1992* were introduced by the *Indigenous Communities Liquor Licences Act 2002*. The changes were part of the legislative response to a perceived need to respond to alcohol abuse and the resulting disturbances, public disorder and associated violence identified in the Cape York Justice Study. The government responses to the issues were broadly formulated in *Meeting Challenges Making Choices*. The Queensland Parliament made quite clear the purpose of legislation in controlling alcohol, and it is expressly stated in Section 173F of the *Liquor Act 1992*:

> The purpose of this part is to provide for the declaration of areas for minimising -
> (a) Harm caused by alcohol abuse and misuse and associated violence, and
> (b) Alcohol related disturbances or public disorder in a locality.

One issue that needs to be addressed is whether the potential penalties attached to the prohibitions and restrictions of alcohol are completely out of proportion to the seriousness of the offence. This is especially so given that violence or public disorder are covered by separate substantive criminal offences. It is appropriate to ask whether, in responding to the Cape York Justice Study, there has been an over-reaction and over-reliance on criminal sanctions. Even if we accept a strategy of controlling supply of alcohol through criminalisation, the penalties which should be attached to a breach of the law are by no means self-evident.

7.1.2 The Callope Decision

On 16 December 2004 Mr Callope pleaded guilty to two offences in the Magistrates Court at Weipa, namely that he had in his possession one can of beer in a public place which was a restricted area (the Napranum DOGIT Lands) declared under s

173H of the *Liquor Act 1992*. The second offence occurred the following day when he had in his possession one cask of red wine. The penalty imposed for the first offence was one months imprisonment to be followed by a period of probation for 40 weeks commencing 16 December 2004. For the second offence the penalty was six week's imprisonment to be followed by a period of 42 weeks probation from 16 December 2004. A special condition on each of the probation orders was that the defendant must undertake a substance abuse programme or any other programmes specially provided in this locality. The sentences were to be served concurrently.

The magistrate's decision was appealed. District Court Judge White overturned the magistrate' decision and ordered Callope's immediate release, taking into account the seven days he had served in custody prior to release on bail pending the appeal.

Judge White discussed the importance of considering the purpose of the legislation.

> Firstly, it was not and could not have been the purpose of this Act to single out the residents of Queensland Aboriginal communities for arbitrary restriction on them of freedoms…. Alcohol abuse and resulting domestic violence and public disorder are not confined to Aboriginal communities...
>
> In this case His Honour was told that the appellant was an alcoholic and had been so for many years. That is undoubtedly true. However it was not the purpose of this legislation to single out alcoholics who live in Aboriginal communities to be punished and branded criminals simply for being so.
>
> It would be abhorrent if this legislation were to inadvertently become an instrument of oppression against the residents of Aboriginal communities by further aggravating an existing over-representation of Aboriginal people in the prison population or by further driving down an already poor standard of living by the imposition of substantial fines (White J at 3).

Judge White argued that it was important to see if there were circumstances involved which demonstrate a potential for the particular offence under consideration to undermine the stated purpose of the legislation. Such factors might include:

- Was the offender heavily intoxicated and behaving in an angry and aggressive fashion?
- Did the offender's criminal history show previous offences of domestic violence or against public order associated with the excessive consumption of alcohol?
- Was there in existence a Domestic Violence Protection Order that might demonstrate a potential for the commission of the offence to undermine the purpose of the legislation?
- Was there possession of a large quantity of alcohol suggesting that it might be consumed by a number of people?

Judge White found that:

> In the first instance the offender had possession of one can of beer. There was nothing to suggest that he was excessively intoxicated. There is nothing to suggest that he was behaving in an angry or aggressive fashion. Similar considerations apply to the second offence. He was basically sitting down with a group of companions, each of whom had their own alcohol and each of whom was consuming it (White J at 4).

7.1.3 The Criminalisation of Alcoholism

Callope's criminal history showed that, prior to the introduction of Alcohol Management Plans, his last appearance in court for any offence was 22 September 1988. Between 1988 and 2003 he was not convicted of offences of violence, public disorder, or any other type of offence. The fifteen year period of not having contact with the criminal justice system changed with the introduction of the new legislation restricting alcohol possession. Once the legislation was in place, Mr Callope was regularly before the courts. The offences which gave rise to the decision in *Callope* were his third and fourth against the legislation. As Judge White noted, 'it is difficult to imagine a less serious example of this offence than the possession of one can of beer in circumstances in which there was no potential for the commission of the offence to undermine the purpose of the legislation' (White J at 5).

7.1.4 Outcomes from the AMPs

Consultations for the evaluation showed that there was widespread agreement that the AMPS had a positive impact on domestic violence offences, especially in the period immediately after its introduction. Secondary impacts in some communities have included more money being spent in the local stores on food and fewer break-ins by children trying to obtain food.

The DATSIP submission notes that:

> In the seven communities where sufficient data are available, there has been an overall drop of 41 percent in the monthly average number of alcohol-related presentations at community health clinics since the implementation of alcohol restrictions. In the 17 communities where there are sufficient data to measures changes, hospital admissions for assault dropped 38 percent (DATSIP 2005:28).

Data was supplied by DATSIP on hospital admissions for assault and other external injuries from the *MCMC* communities and cover the quarterly average number of admissions from September quarter 1999 to December quarter 2004.

Table 7.1 MCMC Hospital Admissions. Assault and Other External Causes. Quarterly Average. Sept Quarter 1999 to December Quarter 2004 Inclusive

	Pre AMP	**Post AMP**	*Change*
Assault	125.4	78.4	-37.5%
Other external injury	181.8	149.1	-18.0%

Source: DATSIP.

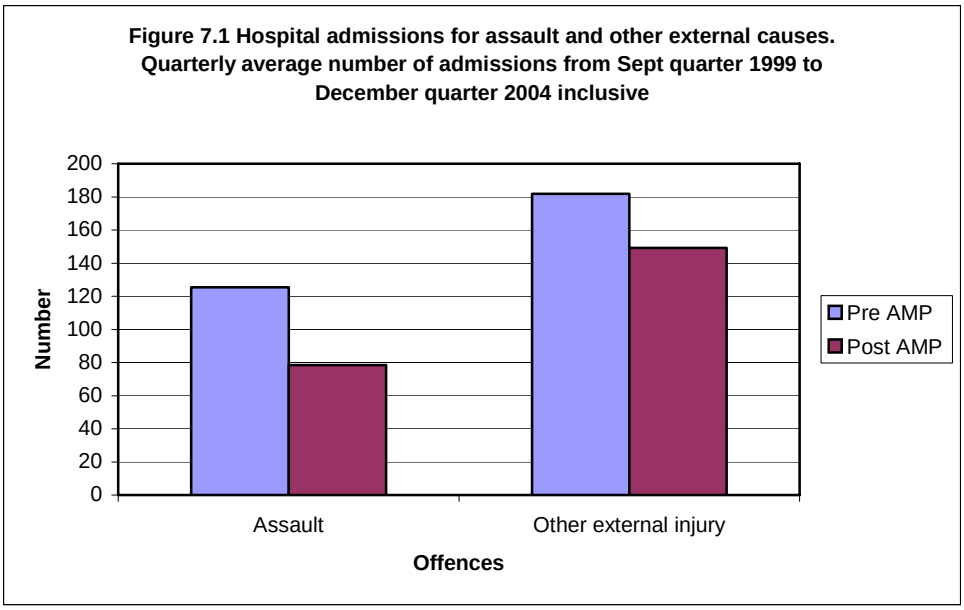


Table 7.1 and Figure 7.1 show the drop in admissions relating to assault and other external injury. The 37.5% drop in relation to assaults has been particularly noticeable. There is clear evidence to support the view that the AMPs have had a positive impact on violence and injury levels within the communities.

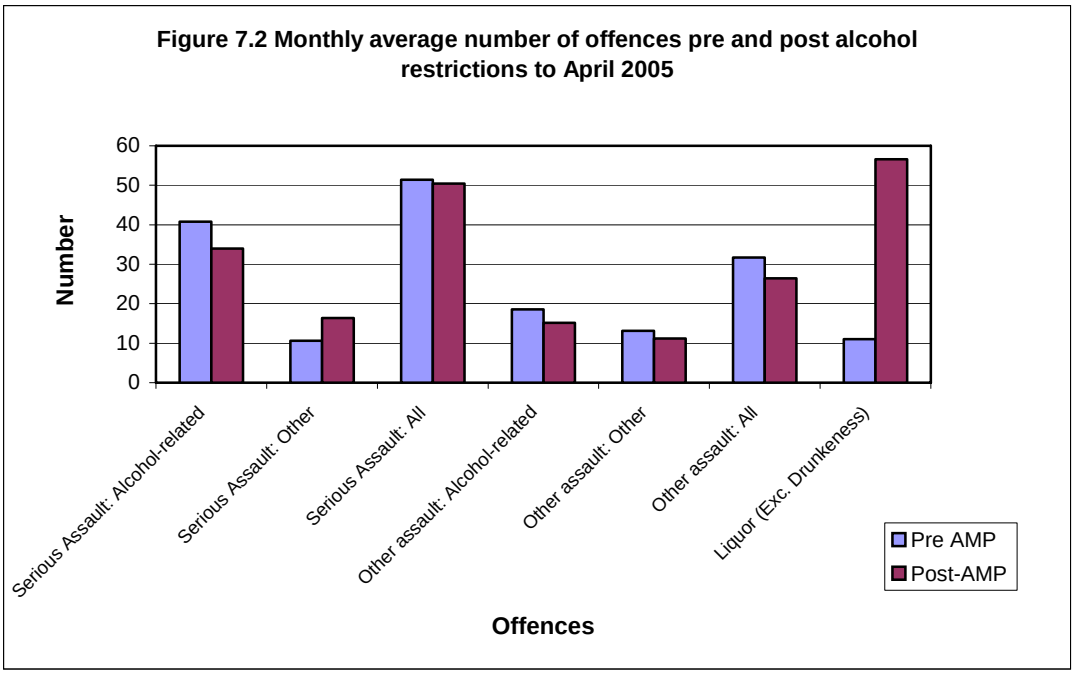
Data in relation to the impact of the AMPs on criminal offending is more mixed. Table 7.2 below shows the monthly average number of offences for the specified categories in the AMP communities (excluding Palm Island, Napranum and Cherbourg).

Table 7.2 Monthly Average Number of Offences Pre and Post Alcohol Restrictions to April 2005

Offences	**Pre AMP**	**Post-AMP**	**Change**
			%
Serious Assault			
Alcohol-related	40.8	34.0	-16.67
Other	10.6	16.4	54.14
All	**51.4**	**50.4**	-2.02
Other Assault			
Alcohol-related	18.6	15.2	-18.28
Other	13.1	11.2	-14.70
All	**31.7**	**26.4**	-16.7
Liquor (Exc. Drunkenness)	11.0	56.6	414.55

Source: DATSIP and QPS. Note: Based on a total of 34 months data for each Police Division and 22 months data for, Wujal Wujal, Hopevale, and Mapoon. Excludes Palm Island, Napranum and Cherbourg.

Figure 7.2 shows the same data as above in Table 7.2. It shows an overall drop in serious assaults by 2% and other assaults by 16.7%. It is noteworthy that non-alcohol related serious assaults have increased during the period.



The greatest change shown in Table 7.2 and Figure 7.2 has been the increase in offences relating to Liquor (excluding drunkenness) which rose by over 400% from the pre to post AMP period. The data shows a significant new level of criminalisation which has not been offset by the decline in assault offences.

7.1.5 The Need for Reform

There is no doubt that there have been positive outcomes from the introduction of alcohol management plans, including a slight drop in offences of serious assault, a more significant drop in other assault offences, and significantly lower hospitalisations arising from assaults and other external trauma. However, it is also clear there have been increased arrests and convictions for liquor offences, and in cases such as *Callope* these convictions have lead to sentences of imprisonment. There has also been concern by some magistrates over the dramatic increase in charges under the *Liquor Act 1992* and the very steep fines imposed by Indigenous JPs. As one magistrate noted during the consultations, 'the JPs were particularly severe, which made us feel that we too had to be that severe'.

There are two public policy issues which are important to address in relation to the current use of alcohol management plans: the over use of criminalisation and racial discrimination.

Criminalisation or Diversion to Rehabilitation?

Criminalisation of possession has lead to a number of problems in that:

1. Prohibition of possession does not directly address the criminal behaviour of violence. At least from the stated purpose of the amendments to the *Liquor Act 1992* the aim of the legislation is to decrease particular types of behaviour (which are

already criminal offences). Blanket prohibition casts a net that captures a wide range of people who, except for the existence of the prohibition or restriction on alcohol, would not come into contact with the criminal justice system. Conversely, the legislation ignores those who commit assaults irrespective of whether they are affected by alcohol. As the data shows, perversely, there has been more than a 50% *increase* in non-alcohol related serious assaults after the introduction of AMPs.

In relation to the impact of the legislation, one magistrate noted during the consultations:

> I have not seen any of the sly groggers that are supposed to be rampant, only having one sizeable seizure in […] last year where I forfeited the car. The people who generally front up [to court] are either poor old drunks, or people bringing a bit of grog home from shopping.

2. There are reports of significant community disharmony arising from the introduction of alcohol management plans. In some communities councillors have been elected on the promise of doing away with the AMP.

There needs to be more work on how a consensus approach can be reached in managing alcohol consumption in particular communities. This is more likely to be achieved through education, mediation and community development strategies rather than criminalisation.

3. Displacement has been reported where people have moved away from communities where there are prohibitions to towns or other areas where alcohol is available. The issue was raise in consultations in relation to the movement of people from the Gulf to Mount Isa, and by the ADCQ in relation to the movement of people to Townsville.

4. The penalties attached to breaching alcohol restrictions are unnecessarily punitive. The potential fines are excessive particularly given that the communities where restrictions have been put in place are also the areas where CDEP is the mainstay for generating limited income. Penal provisions are inappropriate given the purpose of the legislation. If a person commits an offence of public disorder or violence there are already criminal sanctions in place to punish these offences. At the very least the penal sanctions attached to Subsection 168B(1) of the *Liquor Act1992* should be repealed.

During the consultations, many Indigenous and non-Indigenous people involved in criminal justice agencies expressed the view that Indigenous communities affected by alcohol needed rehabilitation centres, and preferably an approach based on holistic ‘healing centres’. As one judicial officer expressed the problem, ‘there should be more preventative work. The AMPs were introduced with little to counter alcohol consumption’. Or as a Department of Corrective Services staff member stated, ‘A lot of things did not happen with the Justice Agreement, for example alcohol counselling. The AMPs were introduced but there is absolutely no counselling on the ground in Doomadgee, Mornington Island or Normanton. This is necessary and more effective’.

Racial Discrimination

Alcohol Management Plans and the corresponding legislation are only acceptable under anti-discrimination legislation if it is regarded as a 'special measure'. To achieve that it must have community support and be in place for a limited period.

While some alcohol plans have been put in place with the substantial agreement of most people residing in that community, in other places the agreements have been imposed by government without substantial community support. There is evidence of resistance from the majority of residents in some communities. The QADC has noted significant opposition to alcohol management plans has emerged at both Mapoon and Palm Island.

In its submission the QADC noted that 'the practice of imposing plans without substantial consent by the communities is a breach of individual human rights, and may be difficult to be argued to be a 'special measure' as the concept is understood in the *Race Discrimination Act 1975* (see *Gerhardy v Brown*)'. This issue was addressed extensively by the Federal Race Discrimination Commissioner in her *Alcohol Report* (1995) which arose in relation to alcohol restrictions in the Northern Territory. The Commissioner noted that:

> The concept of special measures rests on the idea that certain racial groups may require special treatment until they attain the standard enjoyed by others. The rationale underpinning this provision is redress for past discrimination. It is basically a 'catch-up' provision (Race Discrimination Commissioner 1995:37).

If Indigenous people living in Queensland communities are being treated less favourably than people residing in non-Indigenous communities, and that less favourable treatment is against their will, then a claim of 'special measures' is problematic. In addition 'special measures' are conceived of as being for a particular period of time. It is difficult to locate an exit strategy in relation to the restrictions. For example there is no sunset clause, nor any official statement that the restrictions will be for a period of time or until a particular goal is reached.

7.1.6 'Demand Reduction'

There are proposed government programs to assist people who have alcohol dependency. Thus rather than relying only on 'supply management', there will be some attention to demand reduction. According to DATSIP funding has been made available from two government sources, the Queensland Illicit Drug Diversion Initiative (QIDDI) and the Commonwealth Aboriginal and Torres Strait Islander Services.

> Funding of $1.76 million from QIDDI will be used to implement measures including community-based initiatives focussing on family cohesion, parenting and personal development and targeted education, training and support for Indigenous community organisations in their important early intervention roles.

> Other measures to be implemented include youth intervention and diversion initiatives that provide education and training, sport and recreation and community-driven, targeted education initiatives and community-designed solutions.
>
> The Aboriginal and Torres Strait Islander Services funding is aimed at developing outstations where intervention and diversion activities and support will be delivered to young people and adults who have been abusing alcohol or other substances (DATSIP 2005:29-30).

It is clear from the DATSIP submission that these are measures 'to be implemented'.[31] It was widely recognised during the consultations that the focus of recent government policy has relied too heavily on criminalisation. Measures to assist those with alcohol dependency are desperately needed.

7.2 SUMMARY AND RECOMMENDATION: ALCOHOL MANAGEMENT PLANS

There have been positive outcomes from the introduction of alcohol management plans, including a slight drop in arrests for assaults and significantly lower hospitalisations arising from assaults and other external trauma. There has also been an increase in liquor offences (over 400%), and in cases such as *Callope* these convictions have lead to sentences of imprisonment.

The potential fines under the legislation are excessive, penal provisions are inappropriate. The penalties applicable to Subsection 168B(1) of the *Liquor Act 1992* should be reviewed and the penal sanctions should be repealed.

The significant opposition to the alcohol restrictions in some communities, the failure to introduce measures to assist those with alcohol dependency, and the failure to develop an 'exit strategy' in relation to the restrictions, means that the alcohol restrictions may be in breach of the *Racial Discrimination Act 1975 (Cth)*. These issues need to be comprehensively addressed.

It is recommended that the penalties applicable to Subsection 168B(1) of the Liquor Act should be reviewed and the penal sanctions should be repealed.

7.3 HOMELESSNESS, PUBLIC DRUNKENNESS AND DIVERSION FROM CUSTODY

7.3.1 Homelessness initiatives

In January 2003, the government endorsed the public release of the *Safer Places with New Opportunities – Blueprint for Strategic Action on Indigenous Homelessness* to assist those at risk of homelessness.

[31] More recent information from DATSIP indicates a further $12 million allocated to the demand reduction program.

The regional blueprints incorporated a number of key actions, including the establishment of community patrols, the joint management groups in Cairns and Townsville and the Government Coordinating Group in Mount Isa. The recommended response to public intoxication is the development of case management and service coordination to address underlying issues for individual clients.

- Cairns has established a street-based outreach service which provides crisis intervention and case management services.

- In Mt Isa, the Jimaylya Topsy Harry Centre caters for 10 men in the Yudu Hostel, 3 couples in the Crisis Building and 10 females in the female dormitory. The centre also provides case management services.

- In Townsville, funding has been sought for the Aitkenvale Hostel to be refurbished. DATSIP and the Department of Housing identify the potential for the Aitkenvale reserve to be used as a base from which to develop and deliver service responses to Indigenous peoples who are homeless and/or who use public spaces as places to gather (DATSIP 2005:23).

While the above initiatives are important, it is also recognised that there is insufficient appropriate accommodation for individuals and families in many Indigenous communities.

The Cairns Project: Successful Interagency Collaboration

Of the above mentioned projects, it is worth considering the homelessness project in Cairns in more detail because it is an example of a successful interagency approach between QPS, DATSIP, and Departments of Corrective Services, Communities, Health and Housing and a range of community and local groups.

The homelessness project in Cairns is funded by DATSIP and the Departments of Communities and Housing. The project focuses on diverting Indigenous persons from police custody and correctional facilities through partnerships with key stakeholder agencies. The Community Patrol commenced in August 2003 and is funded for three years. The budget funds two PLOs to:

- arrange transport for persons affected by alcohol to a safe place;
- monitor identified public places with a history of anti-social behaviour;
- link homeless people to relevant community, government and professional support networks and agencies; and
- diffuse conflict situations and prevent escalating violence and assault by mediating in potential problem situations.

Data from QPS covering mid 2003 to October 2004 show average monthly client numbers of 711.

The Homelands Partnership program is a related QPS initiative which was developed to provide homeless people from Cape York communities living in Cairns with an option of returning home and providing support systems to assist them to do this. The main aim is to reduce the level of anti-social behaviour and incidence of violence in

the Cairns CBD by assisting Indigenous homeless people wishing to return home, to do so.

In April 2004, Cairns Police established that there were approximately 80 involuntarily homeless people living in parks in Cairns. It was also established that a significant proportion of this group were coming from Cape York to Cairns for various reasons and falling into a cycle of alcohol abuse, violence and poor health. Police Liaison Officers also established that most itinerant people were in favour of returning to their homelands.

Key partners to the QPS in this project are: the Department of Aboriginal and Torres Strait Islander Policy Unit, Queensland Health, CentreLink, Lotus Glen Correctional Centre, Skytrans, Lyon Street Diversionary Centre, Oz Care, St Vincent de Paul, Community Councils and Justice Groups.

The program has been in operation since April 2004. As at November 2004, 85 people have been returned home. Of these, 6 people are known to have returned to Cairns while the others have remained in their communities.

In addition, many of this group of people have also voluntarily agreed to pay off their SPER penalties so that they can 'start afresh' (106 homeless Indigenous people have now made arrangements to make these payments).

The project has also contributed to a reduction in admission numbers to the Lyon Street Diversionary Centre giving them greater capacity to receive and provide a service to intoxicated persons rather than those who have been diverted there as an alternative to arrest.

Another successful initiative has been the Cairns Alcohol Remand and Rehabilitation Program (CARRP). CARRP is a sentencing-based diversion scheme, which arose as a result of adverse comments from community leaders about Indigenous 'street people' in Cairns. It is a combined initiative of the Cairns magistracy and police prosecution corps, in conjunction with Aborigines & Islanders Alcohol Relief Services and is aimed at addressing alcohol-related offending behaviours.

The program aims to give homeless people an opportunity to address alcohol induced, offending behaviour. Since its inception in 2003, approximately 20 people have been involved in the program. A formal evaluation of the program will be undertaken during 2006. Although the program is not limited to Indigenous participants, the overwhelming majority of participants to date have been Indigenous people. The program has demonstrates success by providing culturally appropriate treatment.

The local Magistrates in Cairns are very supportive of the program.

7.3.2 Diversion from Custody Centre Program

There are five diversion from custody centres, which also operate watchhouse cell visitors schemes. They are located in Brisbane, Cairns, Townsville, Mt Isa and Rockhampton. In addition, there is a stand-alone watchhouse cell visitors scheme in

Mackay. The centre in Townsville is operated by DATSIP. All other centres are operated by non-government organisations funded by DATSIP.

The diversionary centres provide care, support and protection to intoxicated Aboriginal and Torres Strait Islander peoples who may otherwise be placed in watchhouses for drunkenness and/or may cause harm or injury to themselves or others as a result of their intoxicated state.

In practice, there are more self-referrals than QPS referrals to the Centres. It is possible that communities are using these centres as emergency or short-term accommodation. Referrals also come from the community patrols funded through the homelessness strategy (DATSIP 2005:24).

7.3.3 Pilot Court Support Program

A Pilot Court Support Program has been planned for homeless people charged with public order offences in the Brisbane Magistrates Court. The purpose of the two year pilot is to assess the viability of diverting homeless people from the criminal justice system through referral to services to address accommodation, health and other needs of homeless people which may be contributing to offending behaviour. While the target group for this program is homeless people generally, it is expected that a significant proportion of people eligible for the program will be Indigenous (DJAG 2005:2-3).

7.3.4 Other Initiatives

Other whole of government initiatives to address homelessness and public intoxication include the following.

<u>Queensland Police Service</u>

- New funding to establish PLO Community Patrols in Townsville and Mt Isa based on the Cairns model. The PLO Community Patrol in Townsville will complement the existing community patrol which is funded by DATSIP and will be enhanced under the homelessness and public intoxication strategy.

<u>Queensland Health</u>

- Establishment of culturally appropriate Alcohol and Drug Withdrawal Service in Townsville (enhancement of current 30 bed residential facility for Indigenous People).
- Establishment of culturally appropriate outreach service within Townsville ATODS (Alcohol Tobacco and Other Drugs Service) which will enable expansion of clinical services to Ingham and Palm Island.
- Establishment of homelessness health intervention teams to provide assertive community mental health treatment to homeless people in Brisbane, Cairns, Townsville, Mt Isa and the Gold Coast. (This is a generic service but given the demographic of homeless people in most of these centres, a significant proportion of clients will be Indigenous).

Department of Communities

- Expansion of outreach services that respond to vulnerable people who are intoxicated in public places in Cairns (currently funded through the Management of Public Intoxication Program for services in Townsville, Rockhampton, Woorabinda, Gold Coast, Sunshine Coast, Ipswich, Mornington Island and inner city Brisbane).
- Funding for a counselling and evaluation component for the CARRP trial currently being run in Cairns (DJAG 2005:2-3).

There have been important initiatives to deal with homelessness issues and public drunkenness. The approach in Cairns is highlighted in this regard. However, it must be recognised that there are few facilities or programs available in Indigenous communities. Basically diversionary centres do not exist outside of a few major towns. As noted previously public order offences are the single largest category for court appearances for Indigenous males – accounting for one in three appearances before the courts.

There is no shortage of potential initiatives as the Cairns model shows. However, there needs to be commitment and resources to expand these initiatives.

7.4 DIVERSION AND SPECIALIST DRUG AND ALCOHOL COURTS

There have been significant developments in diversion and treatment options for offenders who have problems with drug and alcohol misuse. It is worth noting why drug courts and drug and alcohol diversionary schemes are important in relation to Indigenous peoples' contact with the criminal justice system. It was noted earlier in this report (see Tables 3.8 and 3.14) that Indigenous adult and juvenile court appearances are proportionately less for drug offences than non-Indigenous appearances. It is important to recognise that drug courts or drug diversion schemes are likely to have a greater benefit for non-Indigenous offenders than Indigenous offenders. However, having said that, it is also important to recognise that these justice mechanisms are already in place and there is a need to ensure that they can respond effectively and comprehensively to Indigenous needs.

There is evidence to suggest that Indigenous people are less likely to be eligible or to participate in drug diversionary programs. For example, in relation to the New South Wales Drug Court, Taplin found that Aboriginal offenders were disproportionately excluded from entry into the program because of previous offending histories and previous offences of violence (Taplin 2002).

It is also necessary to remember that police and court diversionary schemes for drugs are varied. Some deal with strictly drug offences – that is diversion for those charged with possession of illicit drugs, others such as the Youth Drug and Alcohol Court and the various MERIT-type courts deal with offending behaviour which is drug (or alcohol) related. The later type of diversion and treatment alternatives, particularly where they include alcohol-related offending, are likely to have greater potential effects on Indigenous diversion.

7.4.1 Youth Drug and Alcohol Court

The President of the Children's Court of Queensland has expressed the view that 'serious consideration should now be given to the establishment of a specialist Youth Drug Court' (O'Brien 2004:7). There is also discussion at senior government level concerning the establishment of 'alcohol diversion' in Queensland, although these proposals will not include juveniles at this stage. Programs specifically targeting young people may be developed in the future depending on needs analysis.

It is worth considering the New South Wales specialist Youth Drug and Alcohol Court (YDAC) for juveniles which was established in 2000 for young people facing a custodial sentence. As the name suggests it deals with both drug and alcohol problems. The program provides for intensive supervision and case management to deal with a range of health, welfare and legal issues. The program helps young people who have been charged with an offence overcome their drug or alcohol problem. At the end of the program the young person will be sentenced, with the Court taking their participation in the program into account.

Young offenders at the Children's Court can be referred to the Youth Drug and Alcohol Court if they:

- plead guilty;
- are charged with an offence the Children's Court can deal with;
- have a serious drug or alcohol problem;
- live in the program catchment area;
- are not eligible for a Young Offenders Act caution or youth justice conference;
- are suitable for treatment and rehabilitation; and
- agree to participate in the YDAC program while on bail.

At their first appearance before the Youth Drug and Alcohol Court, the magistrate determines the young person's legal eligibility to participate.[32] The YDAC magistrate has, at this point, a discretion to exclude a legally eligible young person because a caution or Youth Justice Conference is more appropriate; or because the young person's offence or history of offending is so severe that the young person would be sentenced to a control order even if he or she successfully completed a YDAC program.

Each young person who is legally eligible and acceptable to the YDAC has their matter adjourned for 14 days, while they undergo an in-depth, holistic assessment of their needs. These assessments are conducted by the Joint Assessment and Review Team (JART) to determine the young person's clinical suitability to enter and participate on the YDAC Program.

[32] Practice Direction for the Youth Drug and Alcohol Court, Practice Direction No.23, can be found at <http://www.lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/vwFiles/YDAC%20Practice%20Direction%2023.doc/$file/YDAC%20Practice%20Direction%2023.doc>.

Indigenous Participation

The YDAC has now been evaluated (University of New South Wales 2004). Some 164 referrals were made over a two year period, and less than half (75) of those referred were accepted as eligible for the program. Of the 75 accepted, 39% (29) went on to 'graduate' (complete) the program. Those who graduated were less likely to re-offend than those who did not complete the program (University of New South Wales 2004:iii).

There was some discrepancy between data sources on the number of Indigenous referrals to the Youth Drug and Alcohol Court, however Indigenous young people appear to have comprised between 23% and 33% of referrals (University of New South Wales 2004:17). By way of comparison Indigenous young people were between 35% and 45% of the New South Wales youth detention population during the same period.

There were 13 young women accepted onto the program of whom 5 were Indigenous (University of New South Wales 2004:18).

The data on acceptance into the program shows that 42% of Indigenous young people referred to the program were accepted, compared to 48% of non-Indigenous young people accepted onto the program. There does not appear to be information available on whether Indigenous young people were more likely to complete the program than non-Indigenous young people or their comparative re-offending rates.

Alcohol

The evaluation noted that the main problem drug in use by both the referral group and actual participants was heroin, followed by cannabis, alcohol and amphetamines. The New South Wales Department of Juvenile Justice database records heroin as the principal drug of use for 54 per cent of all referrals during the pilot period, followed by amphetamines (15 per cent), cannabis (14 per cent) and alcohol (12 per cent).

Amongst those accepted onto the program, heroin featured more strongly as the principal drug of use (59 per cent), with amphetamines following at nearly 19 per cent. Alcohol was identified as the principal drug by only six per cent (University of New South Wales 2004:18).

Recent interviews with New South Wales Department of Juvenile Justice drug court staff suggest a change of YDAC clients over recent years from a high risk heroin injecting group to an increasing number of young people abusing cannabis and alcohol. Workers were of the view that the drug court process worked equally well for alcohol compared to other drugs.

Age

Participants in the Drug and Alcohol Court must be 14 years of age, however there is discretion to allow younger children onto the program. In particular alcohol may be a significant problem for the younger age group of Indigenous youth. Certainly the

evaluation noted that the use of alcohol and cannabis began at a much earlier age than other drugs (University of New South Wales 2004:97).

7.4.2 Adult Drug Courts in Victoria and New South Wales: MERIT and CREDIT

The MERIT (Magistrates Early Referral into Treatment) and CREDIT (Court Referral Education, Drug Intervention and Treatment) programs in New South Wales and Victoria respectively are voluntary pre-sentencing schemes for early referral of people charged with criminal offences who are motivated to engage in treatment and rehabilitation for drug use problems. The primary focus is illicit drugs and this results in lower Indigenous participation because their principal drug problem is usually alcohol. However, there is the opportunity to develop the guidelines and criteria for admission to include those whose offending involves alcohol.

An evaluation of MERIT in Lismore found that 16% of participants were Indigenous. There were no differences by Indigenous status between those accepted onto the program, and those who either did not attend, were considered ineligible, or declined the program. However, Aboriginal participants were significantly less likely to complete the program than non-Indigenous participants (36% completion compared to 54% completion) (Passey 2003:20). The report recommended:

> Implementing strategies to better meet the needs of Aboriginal participants including: employment of an Aboriginal caseworker; liaising more closely with Aboriginal agencies and communities; development of culturally appropriate resources; and relevant staff training (Passey 2003:xii).

QMERIT

The submission from DJAG noted the forthcoming establishment of the QMERIT program which will be similar to the NSW Magistrates Early Referral into Treatment program (MERIT), which diverts offenders whose drug use contributed to offending to treatment whilst on bail. This program is scheduled to commence in 2006.

It is important that the lessons from evaluations in other States and of the pilot programs in Queensland be considered in terms of the involvement of Indigenous offenders.

7.4.3 Queensland Police Diversion

The Queensland Police Diversion Program for minor cannabis offences commenced in June 2001. Police can divert eligible offenders to a drug diversionary program for assessment and education. If the offender attends the program he or she is not charged with a criminal offence, does not attend court and does not receive a criminal record. The compliance rate for attending for assessment and education is approximately 81% (Queensland Government 2005:8).

The *Police Powers and Responsibilities Act 2000* requires police to offer eligible people an opportunity to attend an assessment and education as an alternative to

prosecution for persons found in possession of not more than 50 grams of cannabis.[33] The aim of the assessment and education session is to reduce the number of offenders appearing before courts for minor drugs offences, provide incentives for these offenders to curb drug use and increase the number of offenders accessing drug education and treatment programs. Clients assessed as dependent are offered the opportunity to continuing treatment on a voluntary basis.

Some preliminary data was supplied for the evaluation by QPS covering the period June 2001 to May 2005. During the period there were 56,977 'diversionable' offences where a response was recorded. Some 5,175 (9.1%) involved Indigenous people.

- Matters involving Indigenous people were less likely to be offered diversion than matters involving non-Indigenous people (56.1% compared to 47.8%).

- Reasons for not offering diversion are not available by Indigenous status. However, the major reason for not offering diversion for all offenders was 'no admission of offence' (61% of those matters where diversion was not offered).

An evaluation of the Police Diversion Program has been recently completed (Health Outcomes International, nd). It reported on 10,623 offenders who were referred by police between June 2001 and March 2003. Of these 6% identified as Aboriginal and 2% and Torres Strait Islander.

The evaluation showed that overall compliance with attendance at the Drug Diversion Assessment Program was 81%. However for Aboriginal and Torres Strait Islander people compliance was lower at 68% and 70% respectively. However, the evaluation does not deal with Indigenous issues further, other than to note that 'future research should address the range of issues yet to be explored. The impact of diversion on sub-groups such as Indigenous people, women and offenders from non-English speaking backgrounds requires examination' (Health Outcomes International, nd: 133)

7.4.4 Queensland Court Diversion Program

The Illicit Drugs Court Diversion Program commenced in 2003. Pilot programs are operating at Brisbane Magistrates Court and Brisbane Children's Court. Offenders charged with possession of small amounts of illicit drugs can be diverted from court. No conviction is recorded for those who complete the program, which focuses on treatment and education. Compliance rate remains constant at between 93% and 96% (Queensland Government 2005:8).

The Court Diversion Program has been evaluated by Health Outcomes International (2005). The evaluation concentrated on examining process, impact and outcome measures associated with the conduct of the pilot program. Between March 2003 and March 2004 801 offenders were referred to the program. Some 670 clients responded to the question relating to Indigenous status and 6% identified as Aboriginal and/or Torres Strait Islander. The evaluation found that the intervention session developed and implemented under the pilot program was regarded as being largely effective.

[33] A key difference between the Queensland Police Diversion Program and similar schemes in other states is that it is compulsory to offer diversion to offenders who meet the eligibility criteria.

However the evaluation notes that the suitability of the current intervention format for Indigenous participants needs further consideration (Health Outcomes International 2995:49).

> To date, approximately 6% of participants have identified as being of either Aboriginal or Torres Strait Islander origin. In a state-wide rollout of the program, this proportion may increase, or at least have a higher prominence in some areas. Service providers expressed some concerns as to the cultural suitability of the current intervention for this population, and this issue may warrant further examination, particularly for Indigenous participants from rural and remote areas.

The Court Diversion Program has been expanded State wide effective 1 July 2005 (DJAG 2005:2-3).

7.4.5 Queensland Drug Courts

Under the *Drug Rehabilitation (Court Diversion) Act 2000* drug courts can suspend custodial sentences and issue an Intensive Drug Rehabilitation Order (IDRO) which requires offenders to take part in a designated treatment and rehabilitation program.

The drug pilot program commenced in 2000 in South East Queensland magistrate courts of Ipswich, Southport and Beenleigh. The pilot program was extended to Townsville and Cairns in 2002. The drug courts have since been established on a permanent basis in Queensland. The South East Queensland pilot program has been evaluated (Makkai and Veraar 2003). However, the evaluation does not deal with Indigenous issues other than to note that Indigenous people comprised 13% of those where an IDRO was issued and 12% of those deemed ineligible (Makkai and Veraar 2003:17).

The North Queensland Drug Court has also been recently evaluated (Payne 2005). This evaluation also noted low referral rates for Indigenous offenders. Indigenous referrals to the drug court comprised 6% of the total in Cairns and 10% in Townsville. Overall Indigenous referrals were 8.6% (21 of 243).

The qualitative interviews highlight a number of barriers to referral, including:

- limited dissemination of program information to local Indigenous communities and legal practitioners, including the Aboriginal Legal Aid Service (sic);
- problems in communicating and establishing a good rapport with Indigenous offenders at the time of referral; and
- the application of eligibility criteria which inadvertently prohibit many Indigenous offenders from participating in the drug court program (Payne 2005:11).

The first of these reasons is the one most likely to adversely impact on the referral of Indigenous offenders. The report notes that ‘referral rates are heavily reliant on the successful promotion of the drug court as a viable sentencing option for Indigenous offenders… greater dissemination of program information should be undertaken

within local Indigenous communities, as well as within [ATSILS]' (Payne 2005:43-44).

Interviews with several drug court team members noted current communication difficulties and the absence of a qualified Indigenous case manager as an additional barrier to referral. An offender's willingness to participate is heavily reliant on both the information and encouragement provided by the team members during the initial referral process. The report notes the need for 'assessment officers [who] are equipped with the skills necessary for dealing with offenders with special needs (such as an Indigenous assessment officer)' (Payne 2005:46).

The report notes that increases in the referral of Indigenous offenders will not necessarily translate into subsequent increases in program participation rates because 'structural barriers, the result of legislative eligibility restrictions, were noted by drug court team members as prohibitive for Indigenous offender participation' (Payne 2005:44). These barriers include:

- imprisonment history – Indigenous offenders are more likely to have already served greater than the maximum 12 months imprisonment, despite a similar number of lifetime offences;
- alcohol abuse – the primary drug of dependence for Indigenous offenders is more likely to be alcohol, a substance which is not easily accommodated among the illicit drug focused treatment regimes of the drug court;
- violence – Indigenous offenders are more likely to have a history of violent offences, including domestic violence and assault of a police officer which can disqualify them from participation; and
- residence – the residential requirements for the drug court program do not extend to many of the outlying Indigenous communities, and participation is conditional on location of residence. Although offenders can move into accommodation within the residential requirements of the court, an offender's reluctance to do so may hamper their willingness to seek referral (Payne 2005:44).

Although not statistically significant, Indigenous offenders were slightly under-represented amongst the profile of successful referrals.

7.4.6 Indigenous Alcohol Diversion Program

The Queensland Government is currently considering the establishment of a bail-based Indigenous alcohol diversion program for court-based diversion from custody of Indigenous offenders with an alcohol problem.

The scheme under development differs significantly from the existing Drug Court structure and provides a potentially wider catchment group of offenders. The program uses the same legislative mechanism as with QMERIT, but has broader eligibility criteria and a wider range of offences that can be dealt with by the court.

It is proposed that entry into the program would be restricted to Indigenous offenders

who are (1) adults; (2) suitable for release on bail; (3) whose use of alcohol contributes to their offending behaviour; (4) charged with an offence(s) that does not involve sexual or significant violence against any person; (5) willing to participate in the program; (6) clinically assessed as being suitable for treatment; and (7) approved to participate in the program by the magistrate. Depending upon the outcome of a pilot of the program, consideration could be given to extending it to juvenile offenders.

It is proposed that under the program, court matters will proceed as they would in the ordinary course of a criminal prosecution. Where program participants reach the point of trial or sentence and are still undergoing treatment the court may adjourn the matter until treatment has been completed or sentence the person to an order that provides for continuation of the treatment.

It has been acknowledged that potential clients of the program are likely to have complex needs ranging from problematic alcohol use, history of involvement with the criminal justice system, mental health issues, disabilities, family dysfunction, health problems, and employment, financial and accommodation issues. One of the features of the program under development will be its capacity to match treatment options to participants' individual needs. Treatment programs will be individually tailored to the particular needs of each client, continuing beyond the bail period if necessary and where possible addressing other issues of alcohol dependence. The program would also feature an extensive aftercare. The program will take into account the specific needs of Indigenous

Under the proposal, potentially eligible Indigenous offenders would be diverted to treatment by the Magistrate ordering the person to attend a clinical assessment with a health service provider. During this assessment, the client's eligibility and suitability for the program would be determined and an individual treatment program formulated for the endorsement of the court. The program will last for approximately five to six months.

The program would seek to link in with existing government programs and initiatives such as demand reduction initiatives being coordinated by DATSIP as well as programs offered by the Department of Communities and the Department of Employment and Training.

7.4.7 Volatile Substance Misuse Trial

The volatile substance misuse (VSM) trial is being undertaken in 5 areas of the State at Brisbane, Logan Townsville, Mt Isa and Cairns. Legislative changes have provided police with enhanced power to respond to VSM by detaining a person affected by the inhalation or ingestion of harmful substances and transporting them to a place of safety. Six service providers were selected by the Department of Communities to operate designated places of safety.

The trial is aimed at conveying people who are misusing volatile substances (eg by sniffing glue) to a place of safety. Once at the place of safety the person may stay until the effects of the substance misuse have passed. However, the person will not be

compelled to stay (DJAG 2005:3). An evaluation by the Crime and Misconduct Commission (CMC) (2005a) found that 70% of all police VSM responses involved Indigenous persons (2005a: 19). A second CMC evaluation of the designated places of safety found that the majority of clients (64%) identified as Indigenous (2005b: ix). Most referrals to places of safety were made by outreach agencies or were self-referrals, rather than by police (2005b:6).

After discussions with Indigenous stakeholders in Aurukun and the Torres Strait Islands, the CMC concluded that there was a need to question the applicability of the current model outside of major urban centres, 'especially in situations where cultural considerations suggest the need for unique local responses to VSM' (CMC 2005a: 44).

7.5 SUMMARY AND RECOMMENDATION: DRUG AND ALCOHOL DIVERSION AND SPECIALIST COURTS

The research shows that:

- Indigenous youth and adults have relatively low participation rates in drug diversion schemes and courts operating in Queensland, at least when compared to their incarceration rates.
- Some research suggests Indigenous referrals are less likely to be accepted on to existing programs due to eligibility restrictions.
- Once on a program research results vary as to whether Indigenous completion rates are lower or the same as non-Indigenous participants.

Evaluations of drug courts which specifically considered Indigenous issues have developed similar recommendations to better meet the needs of Indigenous participants:

- Employ Indigenous caseworkers;
- Liaise more closely with Indigenous agencies and communities;
- Review eligibility restrictions;
- Develop culturally appropriate resources; and
- Provide relevant staff training on Indigenous issues including cross cultural training.

Further, a critical issue recognised by staff working in specialist courts is the availability of community-based programs that can be utilised by the courts.

The proposed alcohol diversion program, if properly resourced, is likely to have a positive impact on reducing Indigenous re-offending and subsequent court appearances. It is also likely to be more effective if it is specifically designed for the needs of Indigenous clients.

It is of considerable concern however, that current and proposed court diversionary processes for drug and alcohol related matters are only for adults.

It is recommended that

- Needs analysis be undertaken to determine the potential development of a youth drug court, and expansion of the proposed adult alcohol diversionary program to young offenders

- Previous recommendations from drug court and drug diversionary evaluations aimed at improving Indigenous participation be implemented

- There be ongoing evaluation to ensure that existing and new drug and alcohol court diversionary processes meet the needs of Indigenous clients, particularly in rural and remote areas.

8. THE NEED FOR IMPROVED OUTCOMES: POLICING IN INDIGENOUS COMMUNITIES

At present there are four roles Indigenous people might have in policing. They are either State police, QATSIP, community police or police liaison officers. Of these, community police have proven to be the least effective. For government agencies, community police are also the cheapest to resource because it is Aboriginal and Torres Strait Islander Councils that pay their wages. Issues relating to each of these policing roles are discussed in this section of the evaluation.

8.1 INDIGENOUS POLICE LIAISON OFFICERS

Indigenous Police Liaison Officers, whose role is to establish and maintain a positive rapport between Indigenous communities and members of the Queensland Police Service, now number 115 throughout the State. About half of the PLOs are female.

More than 50% of PLOs have completed the Certificate III implemented through the QPS Academy as part of the continuous improvement policy for the PLO scheme. This development has been coupled with the appointment of a specified Indigenous AO4 position at the QPS Academy to assist in the development and delivery of this qualification. A Certificate IV course is currently under development.

From the consultations which occurred as part of the evaluation, it is clear that over recent years there has been an improvement in the training and professionalism of the PLOs. Basic conditions covering wages, superannuation and association coverage are now available. One gauge of this change in status is the positive response received when PLO positions are advertised – being employed as a PLO is seen as a desirable job.

As the following indicates, the roles of PLOs are also much better defined than they were in the past.

8.1.1 Role and Functions of Police Liaison Officers

The objectives of the PLO scheme are to:

- promote trust and understanding between diverse community groups and the Queensland Police Service through effective and sensitive liaison aimed at enhancing communication and cooperation;
- contribute towards the provision of policing services that are responsive to the needs of all members of the community;
- enhance community knowledge and appreciation of policing services and law and order issues;
- provide advice to police officers on issues of diversity and education in cultural awareness;
- identify issues of concern to the community and assist to develop plans to address these issues;

- contribute towards providing a visible presence of the Queensland Police Service in the community;
- recommend and participate in interventions aimed at crime prevention and/or reduction including assisting in diverting people from the criminal justice system and reducing numbers of people in custody; and
- assist to develop and participate in activities designed to reduce the involvement of youth in anti-social behaviour and criminal activity.

The responsibilities of PLOs are to:

- establish and maintain communication between diverse community groups and the Qld Police Service;
- maintain regular contact with diverse community groups, to identify local community concerns and to assist in developing crime prevention and detection strategies;
- assist in identifying potential crime and disorder problems, and provide advice, liaison skills and support in applying appropriate prevention measures;
- advise police officers on the characteristics and protocols of diverse community groups, including providing advice on the appropriate means of communication, while remaining aware of the necessity to balance specific community needs with Service and broader community needs;
- assist in the response to specific incidents through effective liaison, as well as in developing crime prevention strategies, fostering cooperation and understanding between members of the community and the Queensland Police Service;
- help to minimise offensive behaviour, violence and crime through effective and sensitive communication with members of the public;
- contribute to the development and implementation of strategies designed to reduce the involvement of youth in anti-social and criminal activity;
- assist members of the community in accessing policing services and advise on referral to other community services where appropriate; and
- comply with human resource management principles and legislation, including workplace health and safety, equal employment opportunity and anti-discrimination legislation as applied in the working environment.

PLOs may be deployed in the following manner:

- Performing traffic control duty in an emergency situations where a police officer is not available to attend to that duty;
- Assisting a police officer in escorting, tending or guarding persons in custody, but only if police officers are present … and the physical presence and communicative skills of the PLOs may be able to prevent or reduce violent behaviour of the person in custody;
- Searching, photographing or fingerprinting a prisoner where the prisoner refuses to cooperate with a police officer but consents to cooperate with a PLO;
- Performing duties to assist Community Consultative groups and other community groups;

- Performing duties in conjunction with schools that promote the role of police and PLOs; and
- Gathering community information to assist in the provision of policing services.

PLOs are not to be deployed in:

- Performing duties that require the PLO to act in a capacity that could lead to an expectation or perception that they are a police officer.
- Attending interviews as independent persons.
- Performing duties as a first response officer at any incident scene, especially one which involves domestic violence or other forms of violence or disturbances.
- Detaining or removing intoxicated persons to a watchhouse or rehabilitation centre.
- Providing transport services for other government agencies without authority of their supervisor.

At the local level PLOs are involved in a range of specific projects such as the Community Patrols in Cairns, which are also about to be extended to other areas (see Chapter 7), or working with Indigenous organisations involved with young people such as the Stockland Police Beat, or domestic violence such as the Domestic Violence Resource Centre, both of which are in Townsville.

Training for PLOs has improved to the point where there is now offered a Certificate Level III. PLOs are also able to use their training as a step into recruitment as sworn officers, and there are examples of where PLOs have successfully made the change to State police.

There have been significant improvements in the training, skills levels, roles and responsibilities of the PLOs. The QPS policy of 'continuous improvements' should be maintained. In particular, the innovative use of PLOs in Cairns and Townsville should be adopted in other areas. The effective use of PLOs can have a positive impact on over-representation through avoiding conflict between Indigenous people and state, and through involvement in diversionary strategies.

8.2 ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY POLICE

Community police have been used in DOGIT communities for decades. According to the DATSIP submission:

> In communities with no state police presence, Aboriginal and Islander police are responsible for maintaining law and order in their communities and work with the Queensland Police Service (QPS) when assistance or intervention is required. Aboriginal and Islander police are able to work with their community in developing stronger links between the police and the community. The QPS currently provides training to Aboriginal and Islander police on their roles and responsibilities (DATSIP 2005: 24).

Collaboration between agencies (QPS and TAFE) has produced an accredited training course which aims at standardising the skill level of those employed as community police officers by the community councils. This training package includes direct links and access to literacy and numeracy, information technology and general communications components already available within the TAFE system. The course design will also ensure that participants gain skills necessary to progress to higher Certificate levels with the option for progression to careers in the Community Corrections and Security areas, as Police Liaison Officers or to complete the Diploma in Public Safety (Policing) (DATSIP 2005: 24).

While there have been significant improvements in the training packages available to community police, a critical issue remains that many community police do not receive training.

8.2.1 Coronial Findings in the Death of a Hope Vale Man in an Aboriginal Community Police Van

The recent State Coroner's report in relation to the death of a Hope Vale man in an Aboriginal Community police van highlights the ongoing problems associated with Indigenous community police. The coronial inquiry revealed that systemic problems have not been dealt with despite their acknowledgment over many years (Barnes 2005).

According to the coroner's findings, the deceased spent the afternoon of 28 April 2003 at his home in Hope Vale socialising with friends. As the evening wore on, he became increasing intoxicated and a violent dispute erupted between he and his partner resulting in the deceased being arrested by the Hope Vale Aboriginal Community Police. They took him back to the community police station and contacted the state police in Cooktown who agreed that the deceased should be brought to Cooktown. The three community police therefore drove to Cooktown with the deceased in the back of the community police van. When they arrived at the Cooktown police station they found the deceased was dead (Barnes 2005:1).

The deceased regularly drank to excess, abused marihuana, and engaged in domestic violence towards his partner. There was a domestic violence order taken out in May 2002, that required the deceased to refrain from committing acts of domestic violence against her.

Community Police Powers

The community police derive their powers from Aboriginal Council by-laws. In Hope Vale the by-laws provide that a community police officer may arrest a person without warrant if he/she reasonably suspects that the person has committed an offence against the provisions of Division 2 of Part 2 of the by-laws and the continued liberty of the person would be likely to endanger the safety of any person. The offences contained within that part of the by-laws include assault and offensive behaviour.

The coroner was of the view that the behaviour engaged in by the deceased justified his arrest. There was evidence that the deceased had assaulted his partner and that could have justified his arrest.

> The community police sensibly sought to defuse the situation by assisting the deceased to leave the house. However, when the deceased came running back to where Paula and her mother were standing outside the Gibson's house, acting in a manner that led everyone there to conclude that he was going to assault his wife, the community police had to arrest him. The only reasonable conclusion that could be drawn from his attempt to attack Paula, his resistance to his arrest and his threats to the community police and others, was that unless he was arrested the deceased was likely to endanger the safety of others (Barnes 2005:6).

After the community police had arrested the deceased, it was not possible to bring him immediately before a court. The community police needed to consider whether he should be granted bail. The likelihood that he would endanger the safety of others was sufficient justification for refusing to release the deceased on bail. The community police were obliged by the provision of the by-laws to take the deceased to a watch house under the control of the QPS. The closest watchhouse was in Cooktown about one hours drive from Hope Vale.

8.2.2 Community Police Training

In the Hopevale matter, the coroner noted that:

> None of the community police officers noticed whether the deceased was wearing a belt but no consideration was given to searching the deceased before transporting him to Cooktown. The officers involved say they have never been told that they should do so and it did not occur to them that the deceased would self harm (Barnes 2005:8).

The deceased hanged himself in the back of the van. The Coroner noted that, 'because of their lack of training, the officers did not think to search the deceased to remove his belt and did not think to keep a regular watch on him to ensure that he did not self harm' (Barnes 2005:14).

The three community police involved in the arrest of the deceased man had been police officers for 4 months, 2 months and 3 weeks respectively. All officers combined had less than 7 months experience in the position.

None had received any training. None had access to a mobile phone or a two way radio. They were not provided with hand cuffs. The van they were given to transport prisoners in had no internal light in the prisoner compartment and had numerous hanging points. It could not be adequately inspected from the passenger compartment. There was no watchhouse in which they could hold prisoners in the Hope Vale community.

The Coroner noted that 'Although they have no statutory responsibility to do so, the QPS has commendably attempted to provide training for Aboriginal community police and has devoted considerable resources to this activity' (Barnes 2005:15). However, it has been acknowledged that training is difficult to effectively deliver because of a high turn over among community police members. The high turnover is

itself related to the poor pay, the lack of opportunity for career advancement, and other factors. As noted below, the issues have been identified for decades.

8.2.3 Aboriginal Community Police Employment, Roles and Supervision

The Hopevale coronial inquiry demonstrated the various roles that Indigenous community police were expected to fill. Aspects of the role mentioned in the inquiry were:

- Front line crime prevention.
- A first response in times of emergency.
- Intelligence gathering.
- Witness and suspect locating.
- Dissemination of information about law enforcement and public safety issues.
- Developing cultural awareness in new state police and informants on local sensitivities and relationships.

The Cooktown police division provides a good example of the vital role of community police officers. The State Coroner noted that:

> The [Cooktown police division] has an area of 11,850 square kms. Yet there is only one state police station situated in the township of Cooktown. The community police in Wujal Wujal and Hope Vale obviously provide essential augmentation to the delivery of policing services to the citizens of these communities. However, even a cursory examination of the support given by the government to this essential service demonstrates its gross inadequacy (Barnes 2005:14).

Indigenous community police are the employees of Aboriginal and Torres Strait Islander Community Councils in more than 30 of the 35 Aboriginal and Torres Strait Islander communities. Three of the remaining communities have QATSIP (see below). It is therefore the responsibility of the community councils to recruit, train and equip the community police, although QPS have taken on significant aspects of these responsibilities.

The State Coroner has noted that the community councils are:

> obviously ill-equipped to discharge this role. They have no expertise in what is clearly a very specialised function. Consider, for example, how Cooktown might fare if the QPS withdrew to Cairns and passed to the Cook Shire the responsibility for local policing. Further, as the Aboriginal community councils are totally dependent upon state government grants and have no power to raise funds by charging municipal rates as do mainstream local authorities they have dire funding shortages which results in health care, housing and other community services competing for funding with community policing.

8.2.4 Aboriginal and Torres Strait Islander Communities with Only Community Police

There remain at least four Aboriginal communities where there are no state police: Injinoo, Naprunam, New Mapoon and Wujal Wujal. A police station at Hope Vale is being completed. There are also Torres Strait Islander communities without permanent police including Seisia and Badu. In these communities policing services are provided by community police without immediate state police supervision or assistance.

8.2.5 A Summary of Previous Inquiries Recommending Urgent Action in Relation to Community Police

A useful summary of previous inquiries which have commented upon the problems associated with Aboriginal community police is provided by the State Coroner. The list is extensive.

- In 1986 the Australian Law Reform Report Commission recommended that Aboriginal Police Aides should have a career path after necessary training in the regular police force, periodic review and adequate police powers and they should not be seen as a second hand police force.

- On 2 July 1987 the *Powder-Law Report* into possible causes for Aboriginal suicides recommended 'effective training and career paths for Community Police'.

- In 1988 the Aboriginal Co-ordinating Council recommended the incorporation of Aboriginal Community Police as special constables of the Queensland Police Service and to consider ways to financially assist the Community Police such as providing them with uniforms, training, equipment and vehicles.

- In 1991 Commissioner Wyvill (Royal Commissioner into Aboriginal Deaths in Custody) commented on the lamentable state of the under-resourcing of Aboriginal Community Police in Queensland, the absence of a career structure, formal qualifications, character checks, and training and found that many of the deaths in custody would have been preventable if the Aboriginal Police had been properly trained (see in Individual Reports on *Perry Daniel Noble, Richard Frank (Charlie) Hyde & David Mark Koowootha, The Young Man Who Died At Aurukun on 11 April 1987, The Young Man Who Died At Wujal Wujal on 29 March 1987, and Alistair Albert Riversleigh*).

- In 1991 the Royal Commission into Aboriginal Deaths in Custody, National Report, Volume 1, The Queensland Community LockUps, National Report, Volume 4, Aboriginal Police Aides, National Report, Volume 2, Queensland, further called for the resourcing and proper training of Aboriginal Community Police.

- The summary of *Review and Recommendations* of the Royal Commission recommended that :

- That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organizations, whether there is a sufficient emphasis on community policing … (recommendation 88).
- That the question of Community Police in Queensland and the powers and responsibilities of Community Councils in relation to them be urgently reviewed (recommendation 232).

- In 1991 the Legislative Review Committee in a *Final Report of an Inquiry into the Legislation relating to the Management of Aboriginal and Torres Strait Islander Communities in Queensland* , while not pre-empting community choice, welcomed a proposal for the policing of communities which involved the integration of the Community Police into the State Police Service.

- In 1993 the Aboriginal Co-ordinating Council Discussion Paper again called for substantial improvement in Community policing.

- In 1993 the Aboriginal Community Representatives Workshop in Cairns (13-15 April 1993) assessed that the expectations placed on Aboriginal Community Police were unrealistic.

- On 25 August 1994 the *Queensland Police Service Review of Policing in Remote Aboriginal and Torres Strait Islander Communities* found through extensive Aboriginal community consultations a lack of a clearly defined role for community police which affected the respect accorded by members of the community to them. It found that community police were hesitant to act in the absence of clear guidelines as to the their duties and powers. The other factors of lack of training, poor wages, lack of support from the State Police and Councils, conflicting family and work obligations and criminal history of some officers also affected their status in the community. The review reported that the issue of costs incurred by the QPS was the main reason given by State Police officers opposing employment of community police because of the assumption that it would come from the QPS budget and the need for additional funds being made available to QPS to enable a transfer of community police to the QPS. Nevertheless the review recommended that the Aboriginal Community Police be employed by the QPS contingent on additional funds being made available. The review also recommended that QPS officers be rostered at appropriate times to provide an effective, proactive and reactive policing service and to ensure adequate supervision of community police. The review recommended that individual protocols be developed between each community and the QPS to cover the roles and responsibilities of community and QPS officers. Another recommendation of the review was that the QPS provide formalised, structured and continual training to community police, with particular emphasis on watch house procedures and safe custody awareness.

- In 1993 and 1995 the Human Rights and Equal Opportunity Commission, Race Discrimination Unit, in its Mornington Island Report and its follow-up

Review Report called for a substantial increase in resources and training for Aboriginal Community Police.

- In May 1996 the Office of Aboriginal and Torres Strait Islander Affairs, Brisbane in *The Local Justice Initiatives Program* sought improvements in Aboriginal Community Policing.

- In 1996 the *First Report of the Aboriginal and Torres Strait Islander Overview Committee (Queensland), An Agenda for Action*, the Department of Families, Youth and Community Care called upon the Queensland Government to delay the introduction of amendments to the Community Services Acts until after the delivery of effective training for community police, and the completion of community-wide consultation (recommendation 32). The Overview Committee called upon the Queensland Police Service to take responsibility for the supervision, training, and remuneration of Aboriginal and Torres Strait Island Council community police officers, who must be trained in all aspects of community policing, including the administration and execution of relevant community law and order by-laws (recommendation 38).

- In July 1997 the Aboriginal Co-ordinating Council in the *Kowanyama Customary Law Workshop* recommended that the State Government ensure appropriate training, award conditions and career structure for Community Police (recommendation 23).

- In 1997 the Human Rights and Equal Opportunity Commission, *Bringing Them Home -National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* observed there was an urgent need for training of Aboriginal Community Police.

- In 2000 the *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* stated that if Aboriginal Community Police are retained, either under the current arrangements or through the collaborative jurisdiction of Queensland Police and Community Councils, their training program needs review. The Task Force said it must be an accredited program under Queensland Police and given before appointees are assigned to the workplace and then as an ongoing requirement.

- In early 2000 in response to the recommendation to *1994 QPS Review*, referred to above, the Queensland Aboriginal and Torres Strait Islander Police Project (QATSIP) began. Queensland Aboriginal and Torres Strait Islander Police were established in the three communities of Badu Island, Yarrabah and Woorabinda. The Department of Aboriginal and Islander Policy has recommended that the Queensland Government give serious consideration to the allocation of sufficient resources to the QPS to allow the expansion of this program to all Deed-of-Grant-in- Trust (DOGIT) communities.

The preceding list has been adapted from the Sate Coroner's report on Hope Vale (Barnes 2005:16-19). The State Coroner concluded that:

> Justice and the rule of law require an end to what had long been recognised by inquiry after inquiry as an inadequate police service, delivered "on the cheap" for Aboriginal communities.
>
> Unless the decade old *Queensland Police Service Review of Policing in Remote Aboriginal and Torres Strait Islander Communities* is fully implemented with the QPS budget adequately augmented to enable Aboriginal Community Police to be transferred to the QPS and properly resourced, trained and supervised, I anticipate that there will be similar deaths of Aboriginal deaths in custody as occurred on this occasion (Barnes 2005:20-21).

He recommended:

> In accordance with the numerous reports of expert inquiries over many years, the responsibility for recruiting management and training and the funding of Aboriginal community police is transferred to the Queensland Police Service (Barnes 2005:21).

The State Coroner's report in the recent Hope Vale matter shows that endemic problems continue with the use of Aboriginal community police. Despite decades of reports that have identified the issues and recommendations to improve the situation, Aboriginal community police do not have the capacity to provide a basic policing function. The problems are particularly exacerbated in communities where there are no state police.

8.3 QATSIP

QATSIP refers to the Queensland Aboriginal and Torres Strait Islander Police. In February 2000, the Queensland Government piloted the transfer of management and control of Aboriginal and Islander community police to the QPS. The pilot arose from the recommendations from the *Queensland Police Service Review of Policing in Remote Aboriginal and Torres Strait Islander Communities* (see above).

QATSIP officers were initially employed on twelve month contracts. An MOU was signed between the Community Council and the QPS relating to the responsibilities for the QATSIP including management, recruitment, selection, training and logistics. Officers were sworn is as 'special constables' and completed the accredited training course designed for Aboriginal community police. They also received additional POST (Police Operational Skills and Tactics) training and training in the use of QPS information technology.

The principal responsibilities of the QATSIP are to:

- Provide an effective policing presence within the community by performing regular patrols, attending to incidents requiring police attention and administration duties.
- Enforce local community by-laws/local laws.
- Identify, evaluate and resolve incidents occurring within the community and advise QPS police officers as appropriate.
- Maintain a high degree of personal integrity and set a good example within the community.
- Perform community policing duties.
- Establish and maintain effective communication with the Community Council, other organisations and community members.

An evaluation of the trial on Yarrabah, Woorabinda and Badu Island found at each of the sites, despite contextual differences, that the trial had been successful. However, it was most successful where there was an effective community justice system operating in the community concerned, and a local court to hear charges under the community by-laws. It also drew attention to the need for adequate supervision of QATSIPs by State police. In summary the evaluation found that:

- The QATSIP Project is working sufficiently well in all three trial communities to warrant permanent implementation.
- Continued 'project' status is a barrier to further success in these communities. In particular lack of permanent employment status, combined with the lack of a structural training and development program and a clear career path is undermining the QATSIP officer's morale.
- The project model at Woorabinda and Yarrabah is transferable to other communities with a permanent police presence provided it has the strong support and commitment of local councils and communities and a sustainable community justice system in place.
- Stakeholders strongly support extension of the model to other communities providing the above conditions are met.
- The project has significantly benefited the Badu Island community, but extension of the model to other communities without co-located police would be problematic primarily because of the difficulties with remote supervision and mentoring (Review and Evaluation Unit 2003:1-2).

As part of requirements for an effective community justice system, the report identifies up-to-date by-laws and a local JP (Magistrates Court).

Added to the QPS evaluation requirements is the need for an effectively operating CJG, and in particular one that has mediation training. An important point missing in the QPS evaluation is the need to recognise the importance of mediation. There is an assumption that matters initiated by the QATSIP must go before a court, when in fact many of the by-law breaches might be dealt with by way of mediation.

According to information supplied by QPS, following the positive evaluation of the QATSIP initiative, permanent funding has been provided to continue this program in Badu Island, Woorabinda and Yarrabah. The QATSIP trial has now become a permanent program on those trial sites of Badu Island (4 officers), Yarrabah (7

officers) and Woorabinda (4 officers) communities with a full-time position of Senior Sergeant, Development Officer, based in Cairns. The program is funded by the QPS in those communities at around $1M per annum.

The continuation of the program is consistent with the recommendations of the Cape York Justice Study (2001) which commented that:

> Policing in Cape York will also be improved by more effective community police employed by community councils to assist State police. This will require a better level of training for these officers. In the longer-term, community police will need to be transferred to the Queensland Police Service under QATSIP Scheme, which appears to have improved the quality of community police service and provided improved career opportunities for community police personnel (Cape York Justice Study 2001:(1)29).

Discussions with QATSIP officers for the Justice Agreement evaluation were positive of the scheme ('the best thing that has been put into place by police'), but also revealed some issues.

Training
Not all the current QATSIP police were trained. There was a perception that training had dropped off in recent times. One QATSIP officer had been in the position for twelve months without training and therefore had not been sworn in as a special constable.

Equipment
The lack of handcuffs, batons or spray was a particular issue. The QATSIP have less equipment, than for example, licensed security guards.

Lack of Permanency
The QATSIP are still employed on short-term contracts.

Relationship with State Police
Not all State police feel comfortable working with QATSIP. Sometimes the QATSIP are made to feel awkward in particular situations.

Powers
A major issue was the perception of a lack of adequate powers in particular areas such as motor traffic (including alcohol breath testing). The limited arrest powers are seen to undermine the authority of the QATSIP.

Support
Despite the appointment of a QATSIP Coordinator in Cairns, some QATSIP felt there was a lack of support, or opportunity to raise issues.

The supervising state police officers were supportive of the QATSIP, and noted that the stations could not run without the QATSIP – that they were necessary for the operational functioning of the stations and regularly did shifts where there were only

QATSIP on roster. Both QATSIP officers and State police noted that QATSIP operated better than community police because they were not employed by the Council and were directly responsible to the State police. It was also noted that Councils were also happy with QATSIP because they also do not want the extra responsibility.

Issues were also raised State police including:

- The need for better training, particularly in the use of accoutrements.
- The need for ongoing training to keep QATSIP motivated.
- The need for QATSIP to be able to take on more roles (such as arrest for 'fail to appear' warrants, traffic matters).

Following the recent recommendation by the State Coroner, DATSIP, QPS and other agencies have commenced discussions regarding the transfer of the management and control of community police from councils to the QPS. An assessment and costing of possible future expansion of the QATSIP program is being considered. This assessment will consider the criteria which must be met by a community including a detailed physical site inspection of each building or proposed site for a station, an operational community justice system and a local court and adoption by the community and its council of the new model by-laws.

The QATSIP program is at a crossroads. It is successful and supported by stakeholders. However, it is also clear there are re-emerging problems that are very similar to those which have plagued the operation of Aboriginal community police, in particular around training, enforcement powers, stability of employment and morale. It does not appear that the findings of the Review and Evaluation (2003) have been acted upon (for example, Woorabinda QATSIP are understaffed by 50% and employed on short term contracts).

The expansion of QATSIP in Aboriginal and Torres Strait Islander Communities is necessary, and needs to be integrated with broader justice community justice strategies including CJGs and the JPs (Magistrates Courts). The QPS will require significant additional funding over a lengthy implementation period to introduce QATSIP into all Indigenous communities.

8.4 RECRUITMENT INTO THE STATE POLICE

Changes to the training and professionalism of PLOs has assisted in providing an avenue for some PLOs into the State police.

Similarly, the QATSIP have also provided an avenue into State police. For example at Woorabinda two of the four QATSIP left to go to the Police Academy to train as State police.

Ten Indigenous people graduated from the 2004 Justice Entry Program traineeship and commenced the Police Recruit Operational Vocational and Educational Program (Recruit Program).

If QATSIP is maintained and the PLOs continue to function at the current level we should expect to see a continual supply from these groups into the State police.

8.5 SUMMARY AND RECOMMENDATION

There have been significant improvements in the training, skills levels, roles and responsibilities of the PLOs. The QPS policy of 'continuous improvement' should be maintained. In particular, the innovative use of PLOs in Cairns and Townsville should be adopted in other areas.

The State Coroner's report in the recent Hope Vale matter shows that endemic problems continue with the use of Aboriginal community police, despite decades of reports that have identified the issues and recommendations to improve the situation.

The QATSIP program is at a crossroads. It is successful and supported by stakeholders. However it is also clear that there are re-emerging problems that are very similar to those which have plagued the operation of Aboriginal community police, around training, enforcement powers, stability of employment and morale. It does not appear that the findings of the Review and Evaluation (2003) have been acted upon (for example, Woorabinda QATSIP are understaffed by 50% and employed on short term contracts).

The expansion of QATSIP in Aboriginal and Torres Strait Islander Communities is necessary, and needs to be integrated with broader justice community justice strategies including CJGs and the JPs (Magistrates Courts). It is recognised that the QPS will require significant additional funding over a lengthy implementation period to introduce QATSIP into all Indigenous communities. This must be a priority matter.

It is recommended as a matter of priority that a strategy be developed and implemented to effect the replacement of Indigenous community police with QATSIP.

9 ALTERNATIVE CONSIDERATIONS AND FUTURE DEVELOPMENTS

The submission from DJAG (2005) noted the following:

> The Justice Agreement is, and will continue to be, one of the key policy documents that arose from the Ministerial Summit on Indigenous Deaths in Custody. It is submitted that the key aim of the Justice Agreement, reduction in Indigenous contact with the justice system should retain a high priority (DJAG 2005:2).

The purpose of this final section of the evaluation is to consider some alternative developments which are occurring either in Queensland or in other jurisdictions, and their possible impact on reducing Indigenous contact with the justice system. We also draw attention to some of the factors which undermine diversion in public places. The chapter also summarises the key elements which should be the focus of ongoing attempts at reduction in over-representation.

9.1 LOCALISING JUSTICE AGREEMENTS

One avenue for making the Justice Agreement relevant to more localised issues is through the development of local or regional Justice Agreements (or perhaps MOUs). Currently there are at least two examples of this approach: the proposed local Justice Agreement in Aurukun and the development of the Justice Negotiation Table in the Torres Strait, neither of which have been concluded. The proposed Aurukun Agreement is used as an example here.

9.1.1 The Aurukun Justice Agreement

The Aurukun Justice Agreement[34] is in the process of being formulated and is receiving assistance in this from Cape York Partnerships.

The purpose of the Justice Agreement is to formalise and codify the roles and functions of the Aurukun CJG. While there are legislative functions for the CJG in relation to AMPs and the provision of advice to courts, the role of the Justice Agreement is to specify more fully what the group does and the boundaries of its responsibilities.

Elements of the proposed Aurukun Justice Agreement include

- The role of the CJG in relation to broader social, health and educational issues.
- The relationship between the CJG and other service providers and stakeholders such as State and Commonwealth government agencies, the local council, the community and other community-based organisations.

[34] While there is reference here to a single Justice Agreement, discussions in Aurukun around this issue indicate that there may be a need for a number of agreements covering different issues and agencies.

The proposed Justice Agreement will work to develop the interaction of the CJG with broader issues. For example, mutual obligations required by Centrelink or Shared Responsibility Agreements might be developed by the CJG on behalf of the community and in cooperation with the Council. Other areas might include child protection and juvenile justice where there is a perceived need to dramatically improve service delivery.[35] Importantly it is expected that any Agreement will be signed by the CJG and the Council on behalf of the Indigenous community.

The potential importance of the Aurukun Justice Agreement and the ongoing Torres Strait Justice Negotiation Table is that they may provide a mechanism for bridging the broader goals of the Queensland Aboriginal and Torres Strait Islander Justice Agreement with local issues, and of clearly defining governmental and non-governmental roles and responsibilities.

9.2 CHANGES TO SENTENCES OF IMPRISONMENT: ABOLISHING SHORT TERM PRISON SENTENCES

The abolition of six month prison sentences is on the reform agenda in a number of jurisdictions. Western Australia has abolished prison sentences of six months or less, and there is discussion at present in New South Wales (NSW Sentencing Council 2004).

Some of the key arguments behind the abolition of short sentences of imprisonment are that they

- Do not provide rehabilitation
- Introduce minor offenders to more hardened serious offenders
- Have negative effects on family, employment, income and housing
- Increase stigmatisation.

Those who support short term sentences usually do so on the basis of either the effect of incapacitation on minor repeat offenders as an effective crime control strategy, or the positive effect of a 'short, sharp shock' in decreasing offending. Neither view is sustainable on the evidence as a longer term crime control strategy (Sherman et al 1998).

The critical issue is that short term sentences may not achieve sentencing objectives, other than short term incapacitation. There are also specific issues which need to be considered in relation to Indigenous people and the likely impact the abolition of short term prison sentences would have on their incarceration rates.

9.2.1 Research Findings on Short Term Imprisonment

[35] As noted in Chapter 7, the Department of Child Safety is currently consulting with Aboriginal and Torres Strait Islander communities as to who will be the Recognised Agency for each community. Depending on which entities are nominated by communities, this could include the Community Justice Group.

Lind and Eyland (2002) found that the abolition of sentences of six months and less would decrease the number of people entering prison in New South Wales each year by 40%. Census figures show that the prison system would be reduced by 10% on any particular day.

Indigenous people are among those more likely to be sentenced to short term imprisonment. The reasons for this appear complex, research in the Northern Territory suggests that the sentence of imprisonment occurs earlier in the offending career of Aboriginal people than non-Aboriginal people (Luke and Cunneen, 1998). In New South Wales Indigenous people comprise 16% of the total prison population, however they comprise 20% of short term sentenced prisoners (Lind and Eyland 2002). Whatever the reason for Aboriginal and Torres Strait Islander people being more over-represented among those serving short sentences, any change to the availability of short prison sentences will have a significant impact on Indigenous prisoner numbers entering the system.

New South Wales research has indicated that if Aboriginal adults given prison sentences of six months or less were given non-custodial sanctions instead, then the number of Aboriginal people sentenced to prison would be reduced by 54% over a twelve month period (Baker 2001:8).

In 2004 some 72.4% of custodial sentences for Indigenous people in the lower courts in Queensland involved sentences of six months or less.

9.2.2 The Western Australian Example

In 1993, 60% of offenders were imprisoned for minor offending for periods of three months or less and 75% for six months or less. In this same year, Indigenous people represented 36% of the total incarcerated population of Western Australia (Morgan 2002).

Against this background, the *Sentencing Act 1995* (WA) was enacted. One of its principal aims was to expand the range of rehabilitation options for less serious offenders. Although a number of non-custodial options had been available to courts prior to the enactment of the *Sentencing Act*, they were not effectively used (Western Australia 1995:4255-6). Section 86 of the *Sentencing Act* is s 86 abolished prison sentences of three months and less. The reason behind the abolition was that such sentences where thought to be of little utility since they failed as a means of providing deterrence, community protection and addressing the offending behaviour. The intensive supervision order and the suspended prison sentence were intended to provide a more effective means of achieving these goals. The enactment of s 86 was also aimed at reducing the number of Indigenous prisoners who had been 'proportionally over-represented in prisons and police lock-ups' (Western Australia 1995:4259).

The abolition of six month sentences was part of the *Sentencing Legislation Amendment and Repeal Bill* 2002 which was assented to on 9 July 2003. The statute has been proclaimed in stages in order to provide sufficient time to evaluate the impact of the various amendments. The prohibition of prison sentences of six months and less (the new s 86) was proclaimed in mid 2004.

The Australian Bureau of Statistics (ABS) notes that between 2001 and 2002, Western Australia recorded a 12% decrease in the number of prisoners, more specifically it effected a reduction of 20% in the prison population for Indigenous Western Australians (ABS 2003b). Theses changes occurred prior to the abolition of six month sentences. The ABS attributes this decrease to a number of factors including an increase in the acquittal and dismissal rates in courts, greater use by the courts of suspended imprisonment and community orders as penalties and a decrease in the breach rate for early release orders.

9.3 THINKING ABOUT ALTERNATIVE TYPES OF CUSTODY AND ALTERNATIVES TO CUSTODY

There is a need to think about alternative types of custody and alternatives to custody which have the potential to reduce recidivism and increase community capacity building in dealing with offending behaviour. Some of the initiatives undertaken in other jurisdictions are worthy of consideration.

9.3.1 Release to the Community and the Need for Imaginative Reponses

The small number of Indigenous prisoners in community custody, WORC programs and home detention suggest that there is insufficient graduated release to the community. As we acknowledge earlier in Chapter 5 the Department of Corrective Services is attempting to change this situation.

Some judicial officers interviewed during the evaluation stressed the need for holistic approaches to dealing with Indigenous offenders. It is possible to work with communities to put in place effective alternatives and to draw on the goodwill which is evident in the CJGs and Elders groups.

Many of those interviewed noted that the outstations seemed to have been working, but the Department of Corrective Services have withdrawn support. There needs to be consideration of healing centre and holistic approaches. Judges and magistrates are willing to look at alternatives because of the realisation that imprisonment is not the answer.

9.3.2 Canadian Corrections and Aboriginal Offenders

Some of the developments in Canada are worth considering in relation to Aboriginal offenders. The Correctional Service of Canada (CSC) develops policies, programs and services for Aboriginal offenders, with the help of a National Aboriginal Advisory Committee whose membership is drawn from across the country. The law that governs the way federal corrections is managed makes some very specific provisions to involve Aboriginal communities in the correctional process. Two sections of the *Corrections and Conditional Release Act (CCRA)* provide communities with the opportunity to be active partners in the care and custody of offenders.

Section 81 of the legislation allows for CSC to enter into an agreement with an Aboriginal community for the provision of correctional services to Aboriginal

offenders and for payment by the CSC for the provision of those services. In accordance with any agreement entered into, the CSC may transfer an Aboriginal offender to the care and custody of an Aboriginal community, with the consent of the Aboriginal offender and of the Aboriginal community.

Section 81 supports a wide spectrum of custodial or service delivery arrangements for the care and custody of Aboriginal inmates. It contemplates that an offender could be transferred at any time in his or her sentence, specifically from the date of sentencing to the completion of the sentence, and can include supervision of offenders on conditional release (day parole, full parole, or statutory release).

Services that can be provided under the provisions of Section 81 fall into the following categories:

- Transfer of an individual Aboriginal offender to an Aboriginal community under a Section 81 Custody Agreement.

- The operation of an urban or rural-based facility designed for Aboriginal offenders, involving the transfer of more than one offender (e.g. halfway houses, healing lodge, etc.).

- Community parole supervision or operations of parole services offered in the Aboriginal community, or in an urban center.

- The provision and delivery of correctional services within federal institutions or community parole offices (Wilson 1999:2-3).

Section 84 of the *CCRA* makes provision for the following:

> Where an inmate who is applying for parole has expressed an interest in being released to an Aboriginal community, the Service shall, if the inmate consents, give the Aboriginal community:
> a) adequate notice of the inmate's parole application; and
> b) an opportunity to propose a plan for the inmate's release to, and integration into, the Aboriginal community.

Section 84 encourages the participation of Aboriginal communities in the release planning process by requiring the Correctional Service of Canada (CSC) to consult with the community and seek their input.

If the offender agrees, Aboriginal communities may be approached very early in the sentence to determine if there is interest in proposing a release plan. This will happen even if a release is not forecasted for two or three years. Early release planning will result in a better co-ordination of efforts and a better chance of a successful release. Communities are welcome, and are encouraged, to become aware of the efforts being taken by the offender while incarcerated. This can provide encouragement to the offender and, at the same time, promote the expectations the community may have of the offender's behaviour both while incarcerated and upon eventual release (Wilson 1999:3)

There are many Canadian examples of successful ‘healing lodge’ type facilities operated by both Canadian Corrections and Aboriginal communities.
In particular the Canadian models have emphasised the necessity of a holistic approach which strengthens native cultural and responsibility.

There are innovative approaches in Canada in terms of Indigenous offenders serving custodial sentences in Aboriginal communities, as well as other release mechanisms to those communities. These processes deserve serious consideration by the Department of Corrective Services.

9.3.3 Corrective Services Operated, Indigenous-Specific Residential Alternatives

An alternative to community operated facilities and programs are those operated by a correctional department.

In Canada, two healing lodges have been recently opened by CSC as special institutions for lower-security Aboriginal offenders. Pê Sâkâstêw Centre is a 60-bed facility for male offenders located in Hobbema, Alberta. A women's centre, Okimaw Ohci Healing Lodge, is located in Cypress Hills, Nekaneet First Nation. The lodges are based on Aboriginal ethics, values and principles, while maintaining the statutory mandate of the CSC. They were planned in full partnership with the Aboriginal community. The majority of staff, including the wardens, are Aboriginal. A body of Aboriginal community members monitors the lodges’ operations and provides advice on further development. Inmates and staff are reported to be enthusiastic about the lodges; evaluations, to date, have been very positive.

According to the CSC, this means that the relatively low federal recidivism rates among Aboriginal Healing Lodge participants are an early indication of having made a positive impact. It also means that CSC is encountering some success in its mandate to safely and successfully reintegrate offenders.

Although not as fully oriented towards Aboriginal community participation as the Canadian examples, there have been worthwhile developments in New South Wales with the operation of low security Indigenous correctional centres operated by New South Wales Department of Corrective Services. These facilities are designed for Indigenous prisoners who have a low security rating and are moving towards the end of their sentence. The facilities are staffed predominately by Indigenous people and they may include Aboriginal community members in programs, such as elders. Programs are specifically designed for Indigenous inmates, including cultural programs, health, education and employment. Referrals to the program are generally only open to those already sentenced to a period of imprisonment.

Yetta Dhinnakkal (Brewarrina)

Yetta Dhinnakkal, on a 10,000 hectare property near Brewarrina opened in 1999 and provides an opportunity for primarily first time Aboriginal offenders to learn rural work skills and participate in programs. The centre houses up to 70 minimum security inmates.

The Yetta Dhinnakkal Centre programs are conducted at the centre. The programs include anger management, domestic violence, alcohol and other drug counselling. The programs target first time young Aboriginal offenders through culturally relevant intensive case management. Community, inmate families and Aboriginal Elders are involved in the rehabilitation process by having input into case management. The Program has an Aboriginal Elder living on the property.

The rural skills program includes farm plant and machinery, fencing, shearing, farm management as well as environmental management and conservation.

The Yetta Dhinnakkal Program criteria are:

- must be sentenced
- must be C2 or C3 (minimum security)
- must have a non parole period or fixed term of 12 months or less
- must not be convicted of an assault offence where a weapon was used
- must not be convicted of sexual offence(s)
- must be aged between 18 and 30 years
- must be methadone free
- must not have served a previous sentence of more than 6 months.

Most of the inmates are Aboriginal, but non-Aboriginal inmates are also considered.

The centre also has a mobile outreach facility which is used for community and emergency projects. Up to 10 minimum security inmates under the supervision of officers can be relocated from the centre in a self contained camping vehicle.

Warrakirri (Ivanhoe)

Warakirri, at Ivanhoe caters for 50 minimum security, primarily Aboriginal, inmates who work on community projects and in national parks within a 400 km radius. The Program has places for 50 C2 and C3 Aboriginal inmates who have less than two years left to serve. Non-Aboriginal inmates may be included in the Program.

The Warakirri Program focuses on land care projects such as river care, heritage sites, weed control, and cultural areas. Skills include fencing, welding, small motor maintenance, and building maintenance.

Entry to the Ivanhoe Warakirri Program is via case management. Program entry criteria are:

- a C2 or C3
- less than 2 years left to serve
- no further court appearances
- no methadone
- not been convicted of a sex offence.

There is a Mobile Outreach Program, operating from *Warakirri* which provides opportunities for low security offenders as an alternative to incarceration in a mainstream prison. The Mobile Outreach Program covers a radius of 400 kilometres

with offenders involved in community projects. Whilst working on these projects the offenders gain vocational and employment skills as well as being able to participate in cultural and heritage based activities.

Aboriginal Cultural Link Program, Mobile Camp, Broken Hill Correctional Centre

The Aboriginal Cultural Link Program is a Mobile Camp that operates out of Broken Hill Correctional Centre. It employs 10 C2-C3 inmates under supervision of an Aboriginal Officer/Overseer. They camp on site at work locations from Monday to Friday.

The Cultural Link Program works on projects with the National Parks and Wildlife Service in Mutawintji and Kinchega National Parks. These projects include site maintenance, constructing walkways; bush regeneration, land care, fencing, and general clear up operations.

At present we know that Indigenous prisoners are only 3% of the WORC program and are therefore significantly under-represented (see section *4.3.5 Location of Prisoners*). The Queensland Department of Corrective Services has restructured its WORC program, and it appears there has been some increase in Indigenous participation. However, there needs to be consideration of specific WORC programs related to Indigenous prisoners needs. The Yetta Dhinnakkal Centre and Warakirri Program in New South Wales should be considered in this context.

9.3.4 Indigenous Community Supervision

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

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

According to the Victorian Department of Human Services, the operation of the program during the 1990s was a major reason for the significant reduction in the over-representation of Aboriginal youth placed on custodial orders. Data from the Australian Institute of Criminology shows that between March 1993 and June 1994, following the period when most of the VKJP programs were implemented

(1992/1993), there was a 61% reduction in the rate of Aboriginal young people aged 10-17 years in Victorian juvenile justice institutions (Urbis Keys Young 2001).

In Western Australia 40 Aboriginal communities in the Kimberley and Eastern Goldfields have contractual arrangements so that communities can supervise adult offenders on community based orders. The Community Supervision Agreement provides the framework for the supervision of offenders in participating communities. Rates of payment to the community are subject to negotiation and are set out in a Schedule to the Agreement. There is considerable flexibility in how the payments are structured according to what best meets the needs of the case. The scheme has had a number of important effects including a dramatic improvement in the rate at which Aboriginal people successfully complete some orders. In the Kimberley region of Western Australia, where the largest single number of Community Supervision Agreements operate, the home detention program has a success rate exceeding 80% (Cunneen 2001a).

The examples provided of Victoria and Western Australia show there is room to develop the processes for Indigenous community supervision of offenders. In the Queensland context this will most likely be achieved through the development of effective and sustainable CJGs.

9.4 UNDERMINING DIVERSION : PUBLIC SPACE, NOTIFIED AREAS AND DISCRIMINATION

One of the developments which has the potential to, and arguably is currently, negatively impacting on a reduction in Indigenous over-representation in the criminal justice system has been the use of 'notified areas' under the *Police Powers and Responsibilities Act 2000.* One of the major concerns arising out of the declaration of notified areas is the increased potential for Indigenous people to come into contact with the justice system as a consequence of being required to 'move on' by police.

The ADCQ made the following comments in its submission for Justice Agreement evaluation.

> The ADCQ has been closely monitoring the situation in Townsville involving the use of public spaces, particularly by Indigenous people. While there has, over a considerable period of time, been conflict in Townsville about the use of some public spaces by Indigenous people, of recent times this has escalated. This has resulted in the Townsville City Council recently increasing the number of 'notified areas'…(ADCQ 2005:1).

The ADCQ is also concerned specifically with the continuing expansion of notified areas within Townsville.

> The inner city area was subject to attempts to remove the homeless through such actions as the closing of Ki-Meta and the introduction of notified areas in the Flinders Street Mall. The Townsville City Council also implemented Local Law 51. However, this resulted in the moving of the targeted park users to other areas and the suburbs, in particular West End. It appears that

> constantly targeting and moving people on does not achieve the desired outcome and will require further notified areas in the future (ADCQ 2004:2).

A major concern for the ADCQ is the increased contact between Indigenous people and police, and possible criminalisation.

> Even if up until that point in time they have been involved in no unlawful activity, if they fail to move on, or use any 'offensive' language in response to the move on request, they are immediately at risk of being arrested. Rather than being diverted from the justice system, they are again in direct contact with it. These are the very issues that were canvassed so comprehensively in the Royal Commission into Aboriginal Deaths in Custody.
>
> Similar proposals to declare further notified areas have recently been mooted for several areas in Brisbane, including the Botanical Gardens, the Goodwill Bridge, areas of Fortitude Valley, New Farm and West End and Kurilpa Point at South Brisbane, where a number of Indigenous homeless youth are residing. The proposal to declare these areas as notified areas is of significant concern to the ADCQ for the reasons outlined above (ADCQ 2005:1-2).

It is the ADCQ's view that sufficient powers already exist to deal with unacceptable behaviour in public. The *Police Powers and Responsibilities Act* 2000 already provides the police with powers to move on individuals from prescribed places under sections 37 and 38 of the Act.

This evaluation has noted the many initiatives undertaken to ensure alternatives to the criminalisation for homeless people and diversion for those with alcohol problems using public space (see section 7.2). These initiatives are to be commended. However, we need to ensure that the use of particular legislation does not lead to unnecessary criminalisation or the abuse of human rights, in particular:

- The use of 'notified areas' under the *Police Powers and Responsibilities Act (2000)* and the subsequent use of move-on powers, and
- The use of provisions under the *Summary Offences Act (2005)*

Given that 30% of Indigenous finalised appearances in the magistrates courts in Queensland are for public order offences, there is reason for serious concern that diversionary processes are not being used and that Indigenous people's use of public space is being unnecessarily curtailed.

9.5 WHERE TO FROM HERE?

Each of the relevant Departments have made progress in some areas and are limited in others in their response to the Justice Agreement.

9.5.1 Some Strategies are in Place

Some of the key strategies which will reduce over-representation are already in place, but need substantial and immediate resourcing for any hope of achieving the outcome of reducing Indigenous incarceration rates by 50% by 2011. These strategies include

- Youth justice conferencing and police cautioning
- Conditional bail and bail support
- Crime prevention programs in remote communities like the PCYC and Community-Based Officers
- Diversionary programs for homeless and alcoholics, and the assistance of PLOs
- Indigenous offender programs
- Community-based supervision in remote and rural areas for adult and juvenile offenders
- Driver licensing project
- CJGs, Murri Courts, JP (Magistrates Courts)

To say that these strategies are in place is not to say that the current level of support is adequate. For example we do not know that the expansion of Youth Justice Service Centres will go anyway near what is needed to provide a proper set of community-based sentencing alternatives to the Childrens Court.

9.5.2 Some Strategies Need Serious Consideration

Other areas need serious consideration if the goal of reducing incarceration rates it to be met, including

- More targeted crime prevention programs
- Drug and alcohol courts designed to enhance Indigenous participation
- The abolition of short term prison sentences
- Release of offenders to Indigenous-run programs
- Development of Indigenous-specific residential alternatives
- Law reform in relation to alcohol restrictions

9.5.3 Some Strategies are Important for Reasons Other Than Their Impact on Over-Representation

Some strategies are important to ensure that the criminal justice system is fair, equitable and just in its application to Indigenous people in Queensland. These strategies may not have the largest impact on over-representation, but they are intrinsically important for societies guided by the rule of law.

- QATSIP in remote communities
- Cross cultural training
- Indigenous employment
- Mechanisms for recognising customary law
- Indigenous legal representation and provision of interpreters

9.5.4 What Have Been the Greatest Failing of Each Department?

In terms of meeting the outcomes of the Justice Agreement the most significant failures can be identified as following.

- The failure by the Department of Communities and Department of Corrective Services to ensure the availability of supervision for non-custodial sentencing options in Indigenous communities.
- The failure of the QPS to ensure alternatives to arrest are used for Indigenous juveniles and adults and the failure to develop the QATSIP program beyond the pilot communities
- The failure of DATSIP to properly train and resource the Community Justice Groups
- The failure of DJAG to resource and support the Murri Courts

Some of the most important initiatives like CJGs and Murri Court began as local initiatives. While on the one hand they can be seen as successes, they also represent a failure of government response.

9.5.5 Realism, Urgency and Resources

Perhaps the greatest failure of implementation in relation to the Justice Agreement is the least tangible: there appears to be little sense of urgency in meeting the primary goal set by the Justice Agreement.

The failure to resource justice initiatives means that it is unlikely that the target of reducing Indigenous incarceration rates will be met by 2011. However, the target should not be abandoned.

Perhaps the example of the Murri Court shows the missed opportunity in resourcing, expanding and developing an alternative to traditional courts.

How great an expansion of the Murri Court would be required to make a real indent into the matters determined in the lower courts? As noted previously it is not possible to obtain data but it appears that Rockhampton dealt with 34 matters in 2003-04, and Mount Isa 28 matters in the last five months of 2003-04 (Queensland Magistrates Courts 2004:43-44). In the interests of determining a 'ball park' figure, let us suppose that the three adult Murri Courts (Brisbane, Rockhampton and Mount Isa) hear about 200 matters over a twelve month period, and the Youth Murri Court around 60 matters per year.[36]

In 2004 there were 97,788 matters involving Indigenous adult defendants finalised in the magistrates courts in Queensland and 4,044 matters involving Indigenous juvenile defendants finalised in the childrens courts.[37]

[36] The latter figure is based on the Youth Murri Court sitting monthly and determining approximately five matters at each sitting.
[37] See Table 3.7. The figures cited in the text exclude a further 25,000 finalised matters where the Indigeneity of the defendant was unknown.

Although very approximate, we can estimate that currently the Murri Courts deal with about 0.2% of adult Indigenous court matters, and about 1.5% of juvenile Indigenous matters. Not every matter involving an Indigenous offender should go before the Murri Court, nor should it over-ride other initiatives involving CJGs and JPs (Magistrate Courts). However, we can gauge the level of expansion needed if the courts are to impact on Indigenous offenders.

A similar example might be drawn with the lack of funding to the CJGs comparative to their responsibilities. Some $3.4 million was allocated to all the CJGs in the last financial year. That is only slightly more expensive than for example the cost of building one PCYC in a remote community.

Providing for proper supervision of orders in Indigenous communities will also require resources. However the longer term savings in reducing the costs of imprisonment are likely to be significant. For Department of Corrective Services, the daily cost of offenders in the community is $8.73 per offender compared to $167.24 per prisoner.[38]

Finally it should be noted that not all strategies require significant resources. For example the greater use of diversionary options and alternatives to arrest by police is likely to be cost neutral in terms of decision-making, and have longer term savings in relation to fewer court appearances.

[38] Correspondence, Department of Corrective Services.

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Safe and Strong Families: Draft Family Violence Agreement

Ten Year Partnership Documents
Looking After Country Together Agreement
Indigenous Economic Development Agreement

ATTACHMENT 1

JUSTICE AGREEMENT EVALUATION CONSULTATIONS COMPLETED

5/9/05

DATSIP

Torres Strait 14-16/7/05
Elizabeth Pyle, Regional Director
Helen Hambly, Special Projects

Mount Isa (12/7/05)
Lila Pigliafiori A/ Principal Project Officer
Patricia Dempsey Project Officer
Jenni Webster A/ Project Officer
Desley Ah WingA/ Project Officer

Townsville (26/4/05)
Greg Anderson Regional Director
Tony Boxsell Office Mgr
Marion Callope Project Officer

Bruce Walker, Manager Renewal Delivery North Queensland

Cairns (30/5/05)
Alan Butler Regional Director
Jenny Ruben Project Officer
Alex Daiwa Project Officer
Troy Davis Project Officer

AMP Review (4/7/05)
Robyn Kerr Assistant Director
Marjorie Hauritz Special Research Advisor

Brisbane Office (4/7/05)
Bryan Kennedy

JUVENILE JUSTICE

Garry Page 24/5/05
Executive Director, Youth Justice Services
Shane Ryan 24/5/05
Youth Justice Conferencing

Cleveland Detention Centre (27/4/05)
Tim Evans, Centre Manager
Christine Dawes, School Principal
Sue Bailey, Program Coordinator
Trevor Laverick, Forensic Nurse
Annette Edgerton, Team Leader Casework Team
Duane Stanley, Indigenous Program Support Officer
Les Walker, Unit Leader
Fran Biddulphamaral, Unit Leader

Brisbane Detention Centre (5/7/05)
Brooke Winter, Centre Manager
Peter Drage, Ass Centre Manager
Steve Henderson, A/ Deputy Principal Education Queensland
Robert Cooper, Indigenous Support Programs Officer
Anne Suthers, A/ Health Services Coordinator
Michael Costs, Human Resource Coordinator
Wayne Bailey, Monitoring and Compliance
John Turner, A/ Unit Manager
Col Bray, Unit Manager
Joanne McKernzie, A/ Secure Care Manager
Michelle Kavanagh, Team Leader
Terry Shooter, Unit Manager

Youth Justice Service Townsville Thuringowa (27/4/05)
Jill Roberts, Manager
Ross Goldsworthy, Team Leader.

Youth Justice Service Cairns (31/4/05)
Brett Heyward Regional Director Far North Queensland
Arna Brosnan
Billy Ross Manager Cairns Youth Justice Service

Youth Justice Service Mt Isa (14/7/05)
Louise Weeks, Manager
Karly Newman, Acting Team Leader

Youth Justice Conferencing (Townsville) (29/4/05)
Catherine Baulch, Coordinator North Queensland
Joe Conway, Resource Officer

Youth Justice Conferencing (Cairns) (31/5/05)
Ted Wymarra Coordinator Cape York / Torres Strait
Ernie Oberdorf Convenor

CORRECTIONS

Brisbane (24/5/05)
Barbara Shaw, acting Executive Director, Strategic Policy
Mark Browning Director Performance and Evaluation

Julie Steele, Manager, Community Operations
Lidia Pennington, Manager, Custodial Operations
Col Williams, Adviser, Research Unit.

Brisbane (25/5/05)
John Anderson, Director, Offender Programs and Services
Mark Rallings, Director, Performance and Evaluation
Di Taylor, Executive Director, Offender Programs and Services
Dimitris Petinaku, Project Manager, Managing Growth in Prison Numbers

Townsville Correctional Centre (29/4/05)
Vincent Bin Dol, Senior Adviser, Indigenous Services
Dallas Grant, A/Manager, Offender Services
Helena McKinnon, Counsellor
Christine Crooks, Counsellor
Sandra Wickham, Psychologist
Eddie Albert, A/Cultural Development Officer
Marissa Wixon, A/Cultural Liaison Officer
Brian Twomey, Drug & Alcohol Counsellor

Townsville Community Corrections (29/4/05)
Trevor Ganley, A/Regional Director, Northern Region
Gail Quincey, Regional Adviser, Corporate Services
Karla Hartnett, A/Regional Programs and Training Officer
Nikki Row, Community Correctional Officer (Programs)
Kylie Osborne, Community Correctional Officer (Programs)
Greg (Bruno) Bryant, Area Manager

Palm Island Community Corrections (28/4/05)
Joe McCluskey, Snr Community Correctional Officer
Henry Miller, Community Correctional Coordinator

Mount Isa Community Corrections (12/7/05)
Ed Naglik Area Mgr
Ian Williamson Community Correctional Officer
Petra Keepence Community Correctional Officer

JUDICIARY

Brisbane (4/7/05)
Brian Hines A/Chief Magistrate
Jacqui Payne Magistrate

Brisbane (5/7/05)
Tony Pascoe Children's Court Magistrate

Townsville (27/4/05)
David Glasgow, Senior Magistrate
Stephanie Tonkin, Magistrate
Wendy Cull, Magistrate

Rockhampton (6/7/05)
Annette Hennessy Magistrate

Cairns (8/7/05)
Sarah Bradley District Court Judge
Tina Previtera Snr Magistrate
Paul Kluck, Magistrate (by email)
Thomas Braes, Magistrate (by email)
Duncan Clarke

State Coroner 27/6/05
Michael Barnes (by phone)

DEPARTMENT OF PREMIER AND CABINET

Brisbane (5/7/05)
Mary Burgess, Director, Law and Justice Policy
Sue Bell, Mgr, Criminal Justice Research

POLICE

Cultural Advisory Unit (Office of the Commissioner) 25/5/05
Insp John Fox
Snr Sgt Lilian Bensted
Snr Sgt Michael Maat

Rockhampton Police (6/7/05)
A/ Ass Commissioner Kevin Hedges
Snr Sgt Josephine Griffin DVLO
Snr Sgt Derel Pickless PLO Coordinator
Snr Sgt Darren Somerville
Snr Sgt Shane Gowdy
Insp Wayne Preston Regional training Coordinator
A/ Supt Ronan Bono, District Officer Rockhampton
Const Gerald Doyle Nth Rockhampton
Selwyn Bowman Police Liaison Officer
Rod Ivey Police Liaison Officer
Lester Adams Police Liaison Officer

Woorabinda 7/7/05
Sgt Tate Laycock
Eric Kent QATSIP Police
Ken Truby QATSIP Police

Townsville Police (26/4/05, 29/4/05)
Ass Commissioner John McDonnell

Superintendent John Howell
Det. Sgt. Darren Robinson

Snr Sgt Dave Dini Cross Cultural Liaison Unit 4726 8649
Sgt Adam Muir Cross Cultural Liaison Unit
Linda Janetzki Coordinator Police Liaison Officer
Leslie Warria Snr Police Liaison Officer
Charlotte Wacando Police Liaison Officer
Napau Namok Police Liaison Officer
Edward Townson Snr Police Liaison Officer

Cairns Police 31/5/05
Insp David Tucker Staff Officer
Insp Trevor Adcock Cross Cultural Unit
Sgt Brendan McMahon Cross Cultural Unit
Lomas Amini Snr Police Liaison Officer Coordinator
Lloyd Brehler Police Liaison Officer
Chris Anu Police Liaison Officer
Sgt Owen Kennedy Cairns City Beat
Snr Sgt David Bird Regional Crime Prevention
Snr Sgt Matt Orme QATSIP Development Officer

Mount Isa Police (12/7/05)
Supt Garry Molony
Insp Steve Dabinett
Snr Sgt Bryan Kennedy
Karen Williamson, Police Liaison Officer
Margaret Chong, Police Liaison Officer
Darren Caulton, Police Liaison Officer
Tomasina Chong, Police Liaison Officer
Bill Kelso, Police Liaison Officer
John Punch, Police Liaison Officer

Doomadgee Police (13/7/05)
Snr Sgt Peter Flanders, Officer in Charge

Yarrabah Police 2/6/05
Sgt Dick Van Drie
Kelvin Hasty, Police Liaison Officer
Clarence Fourmile, Police Liaison Officer

DEPARTMENT OF CHILD SAFETY

Far North Queensland 14-16/07/05
Brenda Campbell, Zonal Director

Indigenous Support and Development Unit 14-16/07/05
Joann Schmider, Director

Cape Torres Child Safety Service Centre 2/6/05
Kristina Fraser, A/Manager

ANTI-DISCRIMINATION COMMISSION QUEENSLAND
Susan Booth, Commissioner,
Neroli Holmes, Deputy Commissioner
Liz Bond, Mgr, Indigenous Unit

ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY COUNCILS

Palm Island Aboriginal Council (28/4/05)
Erykah Kyle
Rosina Norman

Doomadgee Aboriginal Council 12/7/07
Clarence Waldren

ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES

QAILSS 19/5/05
Geoff Atkinson, executive legal and advocacy policy officer
Tony Bond, Njiku Jowan Legal Service
Tom Corrie, Tharpuntoo Legal Service
Steve Veaver
John Robinson, State Solicitor

The Aboriginal and Torres Strait Islander Corporation (QEA) for Legal Services Brisbane, 18/5/05
Shane Duffy, CEO

Townsville Aboriginal and Torres Strait Islander Legal Service
Kevin Rose, Principal Practitioner (27/4/05)
Andrea Kyle, Field Officer Palm Island (28/4/05)

Njiku Jowan Legal Service (1/6/05)
Tony Bond, Executive Officer

COMMUNITY JUSTICE GROUPS

Fitzroy Basin Elders Group (6/7/05)
(Also members of *Yoombooda gNujeena* Justice Group, and Elders to the Murri Court)
Lindsay Black
Des Hamilton

Kuranda Local Justice Group 1/6/05
Bevan Ah Kee, Coordinator
Darrel Deshong, Member
Eve O'Brien, Student

Maijag Community Justice Group (Mackay) (29/4/05)
Harold Doyle
John Kennell
Beverly Raikaki
Maud Corowa

Milbi Incorporated Rockhampton (6/7/05)
Lloyd Willie, Manager

Mossman Community Justice Group 31/5/05
Julie Cook, Coordinator

Mount Isa Community Justice Group (14/7/05)
Dianne Mayers, Coordinator

Ngooderi-Mabintha Justice Association (Doomadgee) (17/7/05)
Lenore Ketchup, Coordinator
Val Campbell, Indigenous Community Volunteer

Palm Island Community Justice Group (28/4/05)
Jan Lenoy Coordinator
Noel Morsau Member
Kathy Gibson Member
Dave Smallwood Member

Tablelands Justice Service 1/6/05
Kent Kingston,
Coordinator: Mareeba, Atherton, Ngalma-Ngalma Community Justice Groups

Townsville Thuringowa Community Justice Group (26/4/05, 27/4/05)
Graham Pattell, Chairperson
Kevin Ngan-Woo, Coordinator
Elsie Kennedy

Wooribinda Justice Group and Blackboy Outstation (7/7/05)
Lynnette Booth, Coordinator
Peter Savage, Member
Ailsa Weazel, Member
Rosa Thaiday, Member
Laura Jarrett, Member
Neola Savage, Member

Yarrabah Community Justice Group 2/6/05
Brian Connelly, Coordinator

INDIGENOUS AND OTHER COMMUNITY-BASED ORGANISATIONS

Arthur Petersen Special Care Centre, Mount Isa 9/7/05
Christine Kelso

Murrie Watch, 17/5/05
Ken Georgetown, coordinator
Sam Watson, member of Murrie Watch Board
Kenny Murphy, Youth Liaison Officer (19/5/05)

Former Chair Indigenous Advisory Board 17/5/05
Robert Anderson,

Former Chair Indigenous Advisory Board 17/5/05
Barbara Flick, (Meeting via phone)

Murri Ministry 19/5/05
Ravina Waldron

Foundation for Aboriginal and Islander Legal Action (FAIRA) 19/5/05
Bob Weatherall, Vice Chairperson
Les Malezer, Chairperson

Aboriginal and Torres Strait Islander Women's Legal Advocacy Service (ATSIWLAS) 20/5/05
Mandy Brazier, coordinator
Cathy Pereira, solicitor
Jennifer Ekanayake, solicitor

Bahloo Women's Youth Shelter 20/5/05
Lily Davidson, coordinator

Tugalawa Aboriginal Women's Corporation 27/4/05
Leila Ball, Acting Coordinator

North Queensland Women's Legal Service 27/4/05
Anne Florence, principal solicitor
Sharney McNeil solicitor

Indigenous Coordination Centre, 29/4/05
Anne-Marie Roberts, Regional Manager

Cape York Partnerships 29/6/05
Maurice Herman (by phone)

Queensland Centre for Domestic Violence and Family Violence Research, 18/5/05
Heather Nancarrow, Director

Doomadgee Aboriginal Community Health Centre 13/7/05
Thomas Orcher Mgr

TORRES STRAIT CONSULTATIONS 14-16/7/05

Michele Fulcher, Executive Director, Meeting Challenger, Making Choices, DATSIP
Terry Ryan, A/Executive Director, Research and Executive Services, JAG
Russell Rhodes, Inspector, Far North Region, Queensland Police
John Anderson, Director, Offender Programs and Services, Corrective Services
Val Scher, Department of Communities
Joann Schmider, Director, Indigenous Support and Development Unit, Child Safety
Brenda Campbell, Zonal Director, Child Safety
Michael Limerick, Community Governance Division, Local Government, Planning, Sport and Recreation
Stefan Preissler, Policy and Legislation Division, Local Government, Planning, Sport and Recreation

Charlotte Nona, Badu Island
Ishmail Giuma, Boigu Island
Audrey Harry, Dauan
Dick Pilot, Enub Island
Tommy Sabatino, Hammond
Belphina Namok, Horn Island
Fred Bann, Iama Island
Rita Kaitap, Kubin Community
Allan Repu, Mabuiag Island
Fr Rocky Nai, Masig Island
James Bon, Mer Island
Joey Mosby, Poruma Island
Eric Warasum, Saibai Island
Donny Van Rhysinge, St Pauls
Annie Bucknell, Ugar
Frederick Larry, Warraaber Island
John Abednego, Chair
Saree Tabo, Eastern
Ida-May Pearson, Central
Jefferey Bosuen, Inner
Rita Kaitap, Near Western
Job Uta, Top Western
George Mye, MBE, OAM, Elder Statesman

CONTACTED BUT UNAVAILABLE FOR CONSULTATION

Child Safety Townsville
Jan Metcalfe, Zonal Director

Department of Communities Townsville
Patricia Walsh, Manager, Community Capacity and Service Quality

Magistrates
Bevan Manthey, Magistrate Mount Isa

Kootana Womens Centre (Palm Island)
Delena Foster, Centre Manager
Selena Solomon.

Palm Island PCYC

Sergeant Paul Morley

Townsville Aboriginal and Torres Strait Islander Health Service

Rachel Atkinson, Chief Executive Officer

ATTACHMENT 2

DRAFT PQ REPORTING REQUIREMENTS

Draft PQ reporting requirements relevant to the Justice Agreement.

Healthy outcomes for babies (relating to the 0 – 12 months group)

Outcomes with performance indicators relevant to the Justice Agreement are

- A reduction in the rate of substantiated child protection notifications for Indigenous babies.
- A reduction in the rate of child protection orders for Indigenous infants
- An increase in the proportion of Indigenous infants on orders placed in accordance with the Indigenous Child Placement Principle

Optimal development in childhood (relating to the 13 months – 6 age group)

Outcomes with performance indicators relevant to the Justice Agreement are

- A reduction in the rate of substantiated child protection notifications for Indigenous children (1-6 years).
- A reduction in the rate of child protection orders for Indigenous children (1-6 years)
- An increase in the proportion of Indigenous children (1-6 years) on orders placed in accordance with the Indigenous Child Placement Principle
- A decrease in the rate of hospitalisations for Indigenous children for injury/assault

Successful childhood (relating to the 7 to 14 age group)

Outcomes in this area are divided between 'three year targets' and 'long term goals' Three year targets with performance indicators relevant to the Justice Agreement are

- A decrease in the rate of Indigenous children in the juvenile justice system
- A decrease in recidivism by Indigenous children
- Halt the progression to more serious offending by Indigenous children
- A reduction in the rate of substantiated child protection notifications for Indigenous children (7-14 years).
- A reduction in the number of children (7-14 years) who are on an order and placed in out-of-care
- A reduction in the proportion of Indigenous children being subjected to repeat child protection orders within 24 months of a previous order.
- A reduction in the number of children in out-of-home care who are unsafe
- An increase in the proportion of Indigenous children (7-14 years) on orders placed in accordance with the Indigenous Child Placement Principle
- A decrease in the rate of hospitalisations for Indigenous children for injury/assault/poisoning

- A decrease in the proportion of Indigenous children (7-14 years) who are homeless

Transition to adulthood (relating to the 15 to 24 age group)

Outcomes in this area are divided between 'three year targets' and 'long term goals' Three year targets with performance indicators relevant to the Justice Agreement are

- A reduction in the rate of substantiated child protection notifications for Indigenous children (15-24 years).
- A reduction in the number of children in out-of-home care who are unsafe
- An increase in the proportion of Indigenous children (15-24 years) on orders placed in accordance with the Indigenous Child Placement Principle
- A decrease in the rate of Indigenous youth in the juvenile justice system
- A decrease in recidivism by Indigenous youth
- A decrease in the number of deaths in custody by Indigenous youth
- Reduce the progression of Indigenous youth from the juvenile justice system to the adult system
- A decrease in the proportion of Indigenous youth (17-24 years) in the adult justice system
- A decrease in the rate of Indigenous youth (15-24 years) who are homeless
- A decrease in the rate of assault on Indigenous youth (15-24 years)
- Indigenous youth have access to alternate avenues of justice including community based mediation and Murri court.

Healthy, prosperous and safe adulthood

Outcomes with performance indicators relevant to the Justice Agreement are

- A decrease in the number of deaths in custody by Indigenous adults
- A decrease in the proportion of Indigenous adults in the adult criminal justice system
- A decrease in the rate of assault on Indigenous adults by sex