



Aboriginal Over Representation Strategic Plan

The Department of Juvenile Justice welcomes the final report reviewing the Department of Juvenile Justice Aboriginal Over-representation Strategic Plan (AORSP).

The AORSP was a highly ambitious initiative aimed at providing services specifically designed to meet the complex needs of Indigenous young offenders, with the objective of reducing the risk factors associated with their re-offending.

In particular the plan called for the Department of Juvenile Justice to play an active role in advocating with frontline police and the courts about decisions concerning the charging and sentencing of indigenous juveniles.

The report of the evaluation of the AORSP has recently been completed. Many of the recommendations are in accord with the new direction being taken by the department. Even those findings which are not accepted, have been useful in stimulating debate about the department and its role in the wider criminal justice system.

Planning has been underway for some time for a new departmental policy framework aimed at providing clear policy and procedures for the delivery of services to Indigenous young people in an effective and culturally appropriate way.

The department will be focussing more clearly on those outcomes which are within its control and will be investing new resources in programs which can be evaluated and proven to make a difference.

The department will also be actively participating in the work of Two Ways Together Justice Cluster Group to strive to achieve a reduction in Aboriginal overrepresentation strategies which have been agreed by all criminal justice agencies including the courts, police, prosecutors and legal aid.

The department takes its responsibilities to indigenous clients very seriously and in this regard no resource is more highly valued than the very high proportion of indigenous staff employed by the agency. The department has a wide range of consultative mechanisms to engage with indigenous staff and is constantly looking for new ways to invigorate Aboriginal programs within the department.

A handwritten signature in black ink that reads "Jennifer Mason". The signature is written in a cursive, flowing style.

Jennifer Mason
Director General
30 June 2006

Department of Juvenile Justice Response to the final evaluation of the Aboriginal Over-representation Strategic Plan

Background

The Aboriginal Over-Representation Strategic Plan (AORSP) was released in September 2001. The Sydney Institute of Criminology won the tender for the evaluation of the AORSP, and the three year evaluation commenced at the beginning of 2003. The final evaluation report¹ was delivered in May 2006. This paper outlines the department's response to the report, and proposed strategies on the recommendations.

Evaluation Summary

The aim of the AORSP is to decrease the number of Aboriginal young people under the supervision of the Department of Juvenile Justice, particularly the number of Aboriginal young people in custody. The Department of Juvenile justice acknowledged at the time that the Strategic plan represented the first attempt at a coordinated strategic initiative to reduce over-representation of Indigenous young people.

- The number of formal police interventions involving Indigenous young people has risen slightly (2.6%) since the introduction of the AORSP. However, the level of Aboriginal over-representation has decreased from 6.7 to 6.0²
- There has been a drop in court case for Indigenous young people since the introduction of AORSP. In 2004 the number of Indigenous finalised matters (1705) was 7.1% lower than in 2001, and 15.1% lower than in 2000. However, non-Indigenous finalised matters have also decreased by 12.5% since 2000.
- Finalised court appearances as a rate per 1000 of the 10-17 Indigenous population have dropped by 21% (from 81.3 to 64.0 per 1000). The non-Indigenous rate has also declined by 18%.
- Indigenous detention rates fluctuate, however the lowest rates for Indigenous detention over the 22 quarterly periods from 31 March 1999 to 30 June 2004 were in the September and December quarters of 2000 and prior to the introduction of the AORSP.

¹ Cuneen C, Luke G and Ralph N, *Evaluation of the Aboriginal Over-Representation Strategy*, Institute of Criminology, Sydney.

² The AORSP aimed to reduce Indigenous over-representation. Change in the rate of over-representation is affected by both Indigenous and non-Indigenous rates. For example if both the Indigenous and the non-Indigenous rates of incarceration are declining, then there may be no difference in the rate of over-representation. If the non-Indigenous rate is falling faster than the Indigenous rate then the level of over-representation may increase. Conversely, both Indigenous and non-Indigenous rates may be increasing, and, if the non-Indigenous rate is increasing more quickly then the level of Indigenous over-representation may fall. This second scenario is shown in the data relating to police interventions noted above.

- The average annual detention rates (based on four days of the year) show a decline in the rate of Indigenous youth incarceration from 1999 to 2001 and an increase since then. Thus Indigenous detention rates have increased since the introduction of the AORSP. Non-Indigenous rates have declined, and as a result, the level of Indigenous over-representation in NSW detention centres has increased to 11.7.
- A major driver of the increased incarceration and over-representation of Indigenous young people in custody has been the growing Indigenous remand population. A further worrying aspect to this is that many of those refused bail and remanded in custody are under 15 years of age.

Recommendations

The recommendations of the AORSP are reproduced below, together with the planned departmental responses.

Recommendation 1: Aboriginal Strategic Plan

It is recommended that a new Aboriginal Strategic Plan be developed. In the context of this Strategic Plan it is recommended that specific Departmental policies be developed covering in particular

- ✦ matters relating to Indigenous clients such as programs (both Indigenous-specific and mainstream), advocacy, funded services, 24(1)c, and attendance at funerals.
- ✦ matters relating to Indigenous staff issues such as attendance at Aboriginal Regional Advisory Committee meetings, Aboriginal Staff Advisory Committee meetings, Aboriginal Staff Conferences and NAIDOC week responsibilities.
- ✦ matters relating to non-Indigenous staff issues such as cultural awareness training (see Chapter 7.1)

Recommendation 2: Aboriginal Strategic Plan

It is recommended that in the development of a new Aboriginal Strategic Plan, there is the following:

- ✦ A broad consultation process with staff on the Strategy
- ✦ An educational component in the roll-out of the Strategy
- ✦ Adequate resourcing to enable compliance
- ✦ The development of performance indicators

- ✦ Either an enhanced Regional Review Report or a specific Indigenous Report to facilitate reporting on outcomes, and timely access to that Report for all staff responsible for managing the implementation of the Aboriginal Strategic Plan.
- ✦ The development of specific Departmental policies within the overall Strategy
- ✦ A reporting process that can be incorporated into existing business plan reporting
- ✦ (see Chapter 7.1)

Recommendation 3: *Two Ways Working Together* and the *Aboriginal Justice Plan*

The NSW *Aboriginal Justice Plan* identifies a range of *strategies* directly relevant to the Department of Juvenile Justice. The *Two Ways Working Together* Aboriginal Affairs Plan provides for a *process* of engagement and partnership with Aboriginal communities.

It is recommended that the Department of Juvenile Justice develop its Aboriginal Justice Strategy in a manner that is directly connected to and consistent with these broader framework agreements. (see Chapter 7.2)

Comment

Recommendations 1, 2 and 3 are accepted. The department accepts that an Aboriginal Strategic Policy Framework is needed that incorporates the management of Aboriginal clients and issues into mainstream policy and the core business of service provision. This is in line with the principles of Two Ways Together. This work is already in the planning stages and a Policy Framework will cover a five-year period in line with the Aboriginal Justice Plan and the Two Ways Together Justice Cluster Action Plan.

A workshop is being arranged to enable executive staff and senior managers to agree on the scope of the framework. It is expected that this will result in Aboriginal specific policies for:

- ✦ Programs
- ✦ Community Funded Programs
- ✦ Departmental consultation with Aboriginal staff and community members
- ✦ Employment and Career Development Strategic Plan
- ✦ Cultural celebrations

Recommendation 4: Inter-Departmental Monitoring Committee

It is recommended that an Inter-Departmental Monitoring Committee be established to monitor the implementation of any future Aboriginal Strategic Plan, and that its composition reflect the proposal of the Aboriginal Unit. (see Chapter 7.3)

Comment

Recommendation 4 is not accepted. The department would prefer to utilise the Aboriginal Justice Advisory Council (AJAC), established out of the Royal Commission into Aboriginal Deaths In Custody, to monitor and advise on any future strategy, including the proposed policy framework. The council would monitor the implementation of the recommendations and is across current movements in the Criminal Justice Sector in regards to treatment of indigenous people and issues that surround over-representation. The council also has links with other sectors, for example human services, as well as the Aboriginal Youth Justice Advisory Network. The AJAC is also independent of other government departments and advises the Minister directly.

Recommendation 5: Regional Review Report Enhancements and Distribution

It is recommended that a section be added to the Regional Review Report which summarises hotspots - those LGA's and courts with the highest number and rates of Indigenous and Non-Indigenous participation. (see Chapter 2.3)

It is recommended that reporting be improved in regard to specialist interventions by Aboriginality. Specifically, at present the Regional Review Reports do not contain information on Youth Drug Court interventions, 24(1)c, and specialist programs such as Violent Offenders Program (VOP) and Serious Offenders Program (SOP) by Aboriginality. The lack of data limits analysis of participation and completion of specific programs. (see Chapter 2.8)

Comment

Recommendation 5 is accepted. Commencing in 2006/07, the department will be developing a Corporate Information Framework which will enable reports for monitoring the department's key business results. This will include data to monitor departmental outcomes for Aboriginal young people.

Contrary to the assertion of the report 24 (1) c is not a "program". It is a provision for the conditional discharge of detainees, exercised only in the rarest of circumstances.

Recommendation 6: Aboriginal Unit

Given the size and complexity of the over-representation problem, it is recommended:

1. that the staff levels of the Aboriginal Unit be reinstated at one manager and two project officers, and
2. that the Aboriginal Unit be directly responsible to the Director General. (see Chapter 2.6.1)

Comment

Recommendation 6 is partially accepted. The most senior position in the Aboriginal Unit was upgraded by the department in 2001 to a managerial level to raise the profile of the Unit and adopt a more strategic approach to Aboriginal issues. The Aboriginal Unit is now located within the Office of the Director General, which provides a good platform for a more integrated approach. An additional project officer in the Aboriginal Unit is part of the current proposal for the community restructure.

Recommendation 7: Aboriginal Staff Advisory Committee

The Department, in co-operation with the Aboriginal Unit, should provide for a process whereby the Aboriginal Staff Advisory Committee (ASAC) can have a clearly defined role in the development and monitoring of the AORSP. (see Chapter 2.6.3)

Comment

Recommendation 7 is accepted. The department has in the last twelve months reiterated its commitment to a viable consultative mechanism with their indigenous staff. To this end the Aboriginal Staff Advisory Committee (ASAC) and the Aboriginal Regional Advisory Committee (ARAC) Terms of Reference are currently being re-developed to ensure that the roles of the ASAC and ARAC are clear and supported at all levels of the department and leads to better service delivery to Aboriginal clients.

Recommendation 8: Aboriginal Program Support Officers

There needs to be a reconsideration of the role of the Aboriginal Program Support Officers (A/PSO) with a view to developing clear guidelines for their work in relation to Indigenous policy and improving their status within the Department commensurate with the tasks they are required to undertake. (see Chapter 2.6.5)

Comment

Recommendation 8 is partially accepted. The current and future needs of the department to address the issues may warrant more effective resource allocation at broader levels of the department. A more integrated way of doing business with the Aboriginal Unit and all of the branches of the department will not necessarily require

more resources but will require better planning and coordination of existing resources. Currently, Aboriginal Program Support staff are located in Regional Offices, reporting to Regional Directors. The department's restructure of community staff will encourage greater integration of this work within mainstream activity. The net effect of the restructure will result in more Aboriginal positions, with some being at a more senior level.

It should also be recognised that in the department Aboriginal people occupy mainstream positions that are not ATSI-identified, including some management positions.

Recommendation 9: Cultural Awareness Training

The Department needs to review the content and availability of cultural awareness training for non-Indigenous staff to ensure that it is widely available, ongoing and specific to the needs of staff. (see Chapter 2.6.4)

Comment

Recommendation 9 is accepted. In the past twelve months the Aboriginal Unit and the ASAC have been involved in the review and updating of the Induction Cross Cultural Awareness Training Package for Youth Officers. As part of the community restructure this training will cover all direct care staff in the department with a view to providing the skills and knowledge required to better understand and act on indigenous issues. Implementation of extended training will be undertaken in line with the Aboriginal Strategic Policy Framework (Recommendations 1 and 2).

Recommendation 10: Community Funded Agencies

It is recommended that CIMS be enhanced to provide better quality data on Aboriginal young people's referral to, acceptance on and completion of funded agency programs.

It is also recommended that the Aboriginal Unit, in consultation with A/PSOs and other Departmental staff, develop specific strategies to increase the number of Aboriginal funded agencies supported by the Department and improve DJJ referral of Aboriginal clients to all funded programs. (see Chapter 2.5)

Recommendation 10 is accepted. The department's Client Information Management System is already designed to record this information. The department is developing strategies to address a number of data quality issues as part of its Corporate Information Framework. Information in relation to referrals to funded agencies will be targeted as part of a data quality review, and strategies implemented to monitor and improve the quality of that data.

With regard to the Community Funded Agencies generally, the Aboriginal Unit was consulted as part of the review of the Community Funded Programs. The department will be working towards ensuring community funded agencies have the capacity to

deliver services effectively to indigenous clients. Where programs are found to be particularly effective for particular groups of young people, the department will target programs towards those groups. For example, the Post Release Support Program was found through an independent evaluation to be beneficial to Aboriginal young people and girls. Staff will therefore be encouraged to refer more indigenous clients and girls to this program.

Recommendation 11: Mentoring

It is recommended that funds be made available to allow the mentoring program to be re-instated. (see Chapter 2.7)

Comment

Recommendation 11 is not accepted. The Mentor Program is funded. However, it is acknowledged that there is a need for the program to be more focussed.

The department is currently reviewing its community practice through its Community Integration Project. The project encompasses the development of an effective practice model, the review of training including induction and ongoing training of community based staff and the development of a quality assurance framework for the community. Integral to the development of the effective practice model is a review of existing programs and strengthening existing programs. Mentoring is recognised as an effective part of this project.

Recommendation 12: Aboriginal Programs

It is recommended that the importance of Aboriginal programs be recognised; and that resourcing for the development and operation of Aboriginal programs be provided, including programs for Aboriginal young women. (see Chapter 2.7 – 2.8)

Recommendation 13: Specialist Programs, Post Release Support Program, section 24(1)c

A common issue relating to specialist programs such as Violent Offenders Program and Serious Offenders Program, 24(1)c and community-based programs like the Post Release Support Program (PRSP) was the need to properly 'sell' these programs to ensure Aboriginal young people's participation. It is recommended that specific protocols involving Aboriginal staff be developed to promote Aboriginal participation in programs. (see Chapter 2.8)

Comment

Recommendations 12 and 13 are partially accepted. The department has a position dedicated to developing Indigenous specific programs, and the department is currently reviewing the programs it delivers to Indigenous young people with a view to focussing on those which deliver the best results. For example, the 'No More' Alcohol and Other

Drugs (AOD) program is largely a health program, which may more appropriately be managed by Justice Health. The department will develop an alternative AOD program which reflects current thinking in addressing offending behaviour.

The department is developing and implementing such programs in a culturally appropriate way, while meeting recognised standards and protocols in program development.

Recommendation 14: Police Interventions – Alternative to Arrest and Charge

It is recommended that the Department of Juvenile Justice establish a high level working party (involving New South Wales Police and Attorney-Generals) to develop specific strategies for increasing the use of alternatives to arrest and charge for Indigenous young people. (see Chapter 3)

Recommendation 15: Police Interventions

It is recommended that there be a specific focus on the Northern and Western regions to reduce formal police interventions with Indigenous young people, through targeted strategies that involve both DJJ and police.

To facilitate the development of targeted strategies there needs to be specific further research:

- ◆ on the reasons for the disparities in the type of police interventions between regions (eg why are warnings more frequently used in some regions than others?)
- ◆ on potential regional differences in the type of offences committed by Indigenous young people (ie do offence patterns affect the type of police intervention?) (see Chapter 3)

Comment

Recommendations 14 and 15 are not accepted. The proposed recommendations would result in the replication of forums set up in response to the Two Ways Together initiative and the Justice Plan, which are intended to be the primary vehicles for addressing these cross-agency issues. The department meets on a regular basis with the NSW Police where the practical implications of arrest and incarceration patterns in particular geographic regions can be discussed, however it is not a matter for the Department of Juvenile Justice to research and analyse patterns of police activity across the state.

Recommendation 16: Court Appearances and Court Outcomes

The evaluation has provided a preliminary regional analysis of differences in court processes and sentencing patterns. The analysis suggests that reductions in court appearances and in the incarceration of Indigenous young people could be attained through strategic interventions by DJJ, in cooperation with the Children's Court, which are regionally and court specific. Such a strategy might focus on, for example, reducing the use of control orders for Indigenous young people under 15 years of age, particularly in the Northern and Western regions, or reducing the use of control orders for less serious offences in the Southern region. It is recommended that the Manager of the Aboriginal Unit develop a strategic initiative, including

- ◆ Specific analysis of further DJJ resource requirements to provide courts with alternatives in identified areas
- ◆ Further specific regional research to prioritise locations and the outcomes sought
- ◆ The establishment of a joint initiative between DJJ and the Judicial Commission to monitor juvenile sentencing patterns. (see Chapter 4)

Comment

Recommendation 16 is not accepted. This is more appropriately addressed through the Two Ways Together Justice Cluster. The analyses of court appearances in the report did not refer to the changes in legislation since the evaluation commenced, nor was there any recognition of the role of other stakeholders such as police prosecutors, the Department of Public Prosecutions or Legal Aid.

Analysis of sentencing patterns is the responsibility of the NSW Judicial Commission and/or the NSW Sentencing Council. The department would therefore prefer to work with the Aboriginal Justice Advisory Committee to bring these issues to the attention of the Justice Cluster, with a view to joint work by the Judicial Commission and other stakeholder agencies.

Recommendation 17: Re-offending

It is recommended that DJJ request the NSW Bureau of Crime Statistics and Research to extend its *Re-Offending Database* to include information from the NSW Police Information System (COPS) information about alternative interventions of warning, cautions and infringement notices. The methods the Bureau has used to date to match identities from the DJJ and adult court databases could be extended to the COPS data. (see Chapter 5)

Comment

Recommendation 17 is not accepted. The report recognises that the department has until 2006 provided Children's Court information to the NSW Bureau of Crime Statistics

and Research (BOCSAR) for the purpose of collecting information on re-offending. Following the development of a Memorandum of Agreement between BOCSAR and the department, signed in March 2006, BOCSAR now has responsibility for collecting and reporting of all court data, including Children's Court data. Extending that database to include police data would be a matter for the NSW Bureau of Crime Statistics and Research and NSW Police.

Recommendation 18: Re-offending

It is also recommended that databases be maintained in a timely fashion so that evaluation studies can be completed with less delay and thus have more relevance. The timeliness of information is especially important in re-offending analyses as longer follow-up periods allow a more complete picture of re-offending. The present study, carried out in late 2005 was only able to access data up to the end of 2004. This restricted both the choice of the original offence period for study and the length of the follow-up period. (see Chapter 5)

Comment

Recommendation 18 is accepted. Please see Recommendation 5 Comment on Corporate Information Framework.

Recommendation 19: Remand, Brokerage and Bail

A systematic approach to dealing with the Bail and remand issue needs to be developed, including identifying the reasons for the specific increase in Indigenous remand. In the immediate period, it is recommended that greater use of brokerage monies be made available to young people on bail requiring supported accommodation and that under 15 year olds be prioritised.

It is also recommended that the issue of bail advocacy by the Department be prioritised and greater resources be made available to achieve more effective advocacy. The work of the temporary appointments of bail intake officers in the Northern region should be monitored for possible expansion in other regions.

(see Chapter 6)

Comment

Recommendation 19 is accepted. The department already directs significant resources towards removing obstacles to young people being granted bail, and assists young people remanded in custody to meet the conditions for release on bail.

Whilst the Report mentions recent legislative changes which have removed the presumption in favour of granting bail in respect of many offences, a full consideration of how this impacts on Aboriginal young people and the department's ability to influence

these impacts is not taken into account. It must be recognised that the department is affected by the actions of external agencies.

The department is in the process of developing an enhanced bail support service for young people for the 2006/2007 financial year and onwards. The department has received additional funding to bolster its work in the community. The department recognises that a significant proportion of the detention population is young people on remand. A number of community based programs to offer alternatives to remanding young people in custody are currently being developed.

The goal of these programs is to maximise opportunities for young people to be:

- granted bail; and
- able to comply with bail conditions.

Two services the Department can provide to young people on bail are:

Conditional Bail Program

This program will provide intensive support to young people who would otherwise be considered an unacceptable risk by courts to be granted bail. A young person on Conditional Bail is to be engaged in a supportive program based on their assessed needs, designed to reduce the risk of offending and to assist their compliance with bail conditions. The young person agrees to participate in all elements of the support program, which is included as a condition of bail.

This service will provide a young person with the support and assistance of a juvenile justice practitioner/youth worker. Please note the details of the program are currently being developed however it is envisaged that such support and assistance will constitute a significant number of hours per week supporting the young person. The practitioner's role will be to assist the young person to comply with the conditions of their bail. The young person may also (if required) be assisted in developing skills and accessing services that will help them in the future, such as educational, employment and health services, as well as cultural development and life skills programs.

Bail Support Service

The Bail Support Services are being designed to provide the support which enables a young person to maintain stable accommodation so that they can meet their bail conditions.

The program is to provide intensive support to families of young people, community based accommodation options and services to young people themselves.

Specific service delivery models are being developed to address particular needs throughout the state; these include various Brokerage models and the Family Support model.