Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission of Australia

Submission to the United Nations Committee on the Rights of the Child for their Day of General Discussion on the Rights of Indigenous Children, 19 September 2003

Issue 3: Law and public order, including juvenile justice

Introduction

This submission is made by the Aboriginal and Torres Strait Islander Social Justice Commissioner on behalf of the Human Rights and Equal Opportunity Commission (HREOC) of Australia. In recent years the Commissioner has undertaken many activities relating to the rights of Indigenous children. This submission provides an overview of law and justice issues relating to Indigenous children, with a focus on juvenile justice, diversionary programs, public order laws, mandatory sentencing schemes as well as Indigenous community justice mechanisms and partnership agreements in Australia.

Two separate submissions have been made which provide an overview of key issues faced by Indigenous children relating to the recognition of their culture and identity, as expressed by Indigenous youth; and an overview of the inequality and discrimination faced by Aboriginal and Torres Strait Islander children in Australia.

Law and public order issues

In Australia, the contact of Indigenous youth with criminal justice processes has long been recognised as one of the most critical issues facing Indigenous Australians today. One of the most important recommendations of the Royal Commission into Aboriginal Deaths in Custody, which reported in 1991, called on governments and Aboriginal organisations to:

> recognize that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organizations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems, and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families or communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.[i]

The extent of the crisis that faces young Indigenous people is demonstrated by the following statistics:

- Indigenous juveniles are grossly over-represented in juvenile corrections. The rate of over-representation has increased over the past decade. In 2000, Indigenous juveniles were in juvenile corrections at a rate 15.5 times the non-Indigenous rate, compared to 13 times in 1993[ii].

- The most recent data, for 2001, indicates that Indigenous juveniles in detention comprise 43% of the total juvenile detention population despite making up less than 4% of Australia's child population[iii].

The Social Justice Commissioner has highlighted issues of concern at each stage of the juvenile justice system for Indigenous youth, including:

- the exercise of police discretion and over-representation in public order offence categories;
- the targeting of Indigenous juveniles through the imposition of mandatory sentences for particular offence categories; and
- lower rates of referral and disposition through alternatives to incarceration (such as through juvenile diversionary schemes).

There have also been some emerging successes in developing Indigenous community justice mechanisms and negotiating partnerships between Indigenous peoples and governments to address Indigenous contact with criminal justice processes.

a) Public Order offences and police discretion

Research demonstrates that Indigenous people are disproportionately impacted on by 'public order' laws such as provisions allowing police to 'move on' people where they believe that they are obstructing others, causing fear in others or may be in danger; and offences such as offensive language and offensive conduct.

For example, 1998 data for New South Wales indicates that Aboriginal people were grossly over-represented for criminal proceedings for offensive language and offensive conduct, making up over 20% of all prosecutions despite being 1.8% of the NSW population. 14.3% of all Aboriginal people appearing in Local Court in NSW appeared on at least one charge of offensive conduct or language[iv]. This means that they are 15 times more likely to be prosecuted for these charges than non-Indigenous people[v]. In one out of every four cases in which an Indigenous person was charged with offensive language or conduct, they were also charged with offences against the police – either resist arrest or assault police[vi].

The NSW Bureau of Crime Statistics and Research has also shown that the main categories of offences on which Indigenous people are convicted in New South Wales are good order offences (including offensive conduct), as well as offences against justice (such as breach of court order and resist arrest) and violent offences. In the case of good order and justice offences, there is a higher discretion in police as to whether to lay charges in the first place[vii].

Similarly, a review of the operation of the *Children (Protection and Parental Responsibility) Act 1997* (NSW) in two regional centres demonstrated a clearly disproportionate impact on Indigenous people being removed from the street[viii]. Part 3 of the Act provides that in designated towns police have the power to remove unaccompanied young people under the age of 16 from a public place where they determine that the person is 'at risk'. In this context, 'at risk' means that they are in danger of physical harm or abuse, or it is considered that they may be about to commit an offence.

In the first six months of operation of the Act in Moree, 95 young people were picked up by the police. In 91 of these occasions, the young person was Aboriginal. The review of the Act's operation found that:

> the Act has impacted almost solely on Aboriginal young people to the extent that it may be grounds for a complaint of indirect racial discrimination to domestic and international bodies. Police are taking young people home during the day as well as in the evening, sometimes while these young people are involved in cultural activities. The Act has sanctioned widespread over-surveillance and control of young people. Young people have been incorrectly told there are curfews in place and areas of town are 'no-go zones'. The Act has significantly changed behaviour patterns of young people and limited their freedom to move around town[ix].

These figures are to an extent the result of a continuation of the history of poor relations between Indigenous people and the police, which are confrontational and which may be linked to the visibility of Aboriginal people in public spaces.

This situation is not unique to New South Wales. Recent analysis of police records in Victoria from 1993 to 1997 showed that public drunkenness and summary offences such as indecent language, resisting arrest and offensive behaviour remain a significant factor in Indigenous over-representation in custody, accounting for almost one quarter of all processings of Indigenous people during the period[x].

Indigenous offenders in Victoria were also more likely to be dealt with through more formal processes such as arrest, rather than through cautioning, across all offence categories[xi]. In relation to summary offences, for example, Indigenous juveniles were arrested 36.1% of the time, compared to just 15.4% for non-Indigenous juveniles; with Indigenous juveniles cautioned just 4.6% of the time compared to 35.6% for non-Indigenous juveniles[xii]. This is despite wide acceptance of the principle that police should give preference to forms of processing other than arrest and the existence of Victorian government instructions to police that alleged offenders should be processed according to the seriousness of the offence, with arrest only to be used in extreme circumstances and as a last resort.

b) Mandatory sentencing laws

One state and one territory of Australia introduced laws commonly referred to as 'mandatory sentencing' laws during the 1990s. In Western Australia, the laws relating to juveniles (defined as offenders aged 10 – 17 years inclusive, not 18 as required under CROC), require a 12 month sentence in a juvenile facility for the third or subsequent strike of home burglary. The laws apply to children as young as ten years of age. Juveniles sentenced under the laws are not eligible for parole until they have served at least six months – or 50 per cent – of their sentence. This is in contrast to adults sentenced to imprisonment under similar laws, who are eligible for parole after serving one third of their sentence. These laws continue to operate in WA.

In the Northern Territory, the laws (which have since been repealed) required that adult offenders (defined as aged 17 and above) found guilty of certain property offences must be sentenced to a mandatory term of imprisonment of 14 days for a first offence; 90 days for a second offence; and 1 year for a third offence. For juveniles

who had been convicted of at least one prescribe property offence, the court was required to sentence them to a minimum sentence of 28 days.

These laws have impacted disproportionately on Indigenous people in both the NT and WA.

- In WA, Aboriginal juveniles account for 81 per cent of all identified 'three strikes' juvenile cases. This compares to comprising a total of 33% of all offenders before the Children's Court.
- In the NT in 2000/2001, approximately 79 per cent of prisoners sentenced for all property offences were Indigenous. Only 28.5 per cent of the NT population are Indigenous.

The Australian Government has argued that these laws are not discriminatory because they apply equally to Indigenous and non-Indigenous offenders. However, racial discrimination includes 'in purpose or effect'. Governments are required to take different impacts on particular racial groups into account. Factors relating to the laws that can lead to disproportionate impacts on Indigenous people include:

- *Selection of offences subject to mandatory detention:* e.g. Targeting offences overwhelmingly committed by Indigenous people, especially young people, while specifically excluding offences generally committed by non-Indigenous people (the NT laws included some forms of property offences while excluding others such as shop-lifting and fraud which are more commonly committed by non-Indigenous youth and tourists).
- *Exercise of police discretion:* Studies have shown Indigenous people are overrepresented at all stages of the pre-court process. The coexistence of mandatory sentencing laws and juvenile diversion programs runs the risk of 'bifurcating' juvenile justice, with first time offenders being diverted and repeat offenders, who are largely Indigenous, being perceived by the courts as 'hard core' juvenile offenders.
- *Socio-economic disadvantage:* Socio-economic factors, such as educational disadvantage and a lack of employment opportunities, play a large role in determining rates of offending. Recognising the social context of young Indigenous offenders is extremely important for crime prevention policy. If detention has become a routine means for marginalised and disadvantaged young Indigenous people to access a different experience, it is questionable whether this functions as a deterrent at all.

The WA Government reviewed the operation of the mandatory sentencing provisions in 2001. In relation to juveniles, the review of the Western Australian law admitted that 'while it is likely that for the most part juveniles sentenced to detention would have gone into detention anyway, *a few would not and for others shorter terms may have been considered more appropriate*'. The review also found in relation to juveniles that the mandatory detention provisions have a degree of arbitrariness and unfairness due to the calculation of strikes and the exercise of discretion to divert some juveniles but not others. The WA government has refused to repeal the laws.

The following concerns relate to the imposition of mandatory minimum terms of detention for juveniles. They apply equally to the NT and WA laws:

- Best interests of the child as a primary consideration (article 3.1, Convention on the Rights of the Child (CROC))
- Children require special measures of protection (article 24, International Covenant on Civil and Political Rights (ICCPR))
- Detention of children as a measure of last resort (article 37(b), CROC)
- A variety of dispositions must be available for child offenders (article 40.4, CROC)
- Rehabilitation and reintegration of a child offender should be the essential aim. A child offender should be treated in a manner which takes into account his or her age (article 40.1, CROC)

The following concerns relate to the imposition of mandatory minimum terms of detention for juveniles *and* adults. They apply equally to the NT and WA laws:

- Sentence must be reviewable by a higher tribunal (article 40.2 (b), CROC; article 14.5, ICCPR)
- Detention must not be arbitrary (article 37(b), CROC; article 9.1, ICCPR)
- Laws and policies must be non-discriminatory and ensure equality before the law (article 2, article 26, ICCPR; article 2.1(a), (c) and 5(a) International Convention on the Elimination of All Forms of Racial Discrimination (CERD))
- Physical and mental condition must be taken fully into account (Principle 5, Declaration on the Rights of Disabled Persons; Principle 6, Declaration on the Rights of Mentally Retarded Persons)
- Ensuring consistency of international obligations across all levels of government (article 50, ICCPR; article 2, CERD)

c) Juvenile diversionary schemes

Diversion is the term applied to measures to 'divert' offenders from the formal criminal justice system. Options for diversion include verbal and written warnings, formal cautions, victim-offender or family conferencing, or referral to formal or informal community-based programs.

All Australian states and territories offer some form of diversionary programs for juveniles, and some offer diversion for adults. The *Social Justice Report 2001* assessed juvenile diversion schemes in NT and WA against human rights principles contained in CROC, ICCPR and other international instruments.

The Social Justice Commissioner developed the following checklist of human rights standards relating to diversion of juveniles, with a particular emphasis on recognising Indigenous cultural needs.

Best practice principles for juvenile diversion and Indigenous youth [xiii]

1. Viable alternatives to detention.
Diversion requires the provision of a wide-range of viable community-based alternatives to detention. Diversion programs should be adequately resourced to ensure they are capable of implementation, particularly in rural and remote areas. Diversion should be adapted to meet

local needs and public participation in the development of all options should be encouraged. There should be adequate consultation with Indigenous communities and organisations in the planning and implementation stages.

2. Availability

Diversionary options should be available at all stages of the criminal justice process including the point of decision-making by the police, the prosecution or other agencies and tribunals. Diversion should not be restricted to minor offences but rather should be an option wherever appropriate. The decision-maker should be able to take into account the circumstances of the offence. The fact that a juvenile has previously participated in a pre-court diversionary program should not preclude future diversion. A breach of conditions should not automatically lead to a custodial measure.

3. Criteria

Agencies with the discretionary power to divert young people must exercise that power on the basis of established criteria. The introduction, definition and application of non-custodial measures should be prescribed by law.

4. Training

All law enforcement officials involved in the administration of juvenile diversion should be specifically instructed and trained to meet the needs of young people. Justice personnel should reflect the diversity of juveniles who come into contact with the system.

5. Consent and participation

Diversion requires the informed consent of the child or his or her parents. Young people should be given sufficient information about the option. They should be able to express their views during the referral process and the diversion process. Care should be taken to minimise the potential for coercion and intimidation of the young person at all levels of the process.

6. Procedural safeguards

Diversionary options must respect procedural safeguards for young people as established in CROC and the ICCPR. These include direct and prompt information about the offences alleged, presumption of innocence, right to silence, access to legal representation, access to an interpreter, respect for privacy of the young person and their family and the right to have a parent or guardian present. A child should not acquire a criminal record as a result of participating in the scheme.

7. Human rights safeguards

CROC also requires that the best interests of the child be a guiding factor; the child's rehabilitation and social reintegration be promoted, with attention to their particular vulnerability and stage of maturation; the diversionary option applies to all children without discrimination of any kind, including on the basis of race, sex, ethnic origin and so on; the diversionary option is culturally appropriate for Indigenous children and children of ethnic, religious and cultural minority groups; and the diversionary option is consistent with prohibitions against cruel, inhuman or degrading punishment.

8. Complaints and review mechanisms

The child should be able to make a complaint or request a review about the referral decision, his or her treatment during the diversionary program and the outcome of his or her participation in the diversionary option. The complaint and review process should be administered by an independent authority. Any discretion exercised in the diversion process should be subject to accountability measures.

9. Monitoring

The diversionary scheme should provide for independent monitoring of the scheme, including the collection and analysis of statistical data. There should be a regular evaluation conducted of the effectiveness of the scheme. In reviewing options for diversion, there should be a role for consultation with Indigenous communities and organisations.

10. Self-determination

The right to self-determination is also central for Indigenous peoples in the context of criminal justice issues. Article 1 of the ICCPR and Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) assert that all peoples have the right to self-determination. RCIADIC prescribed self-determination as being necessary for Indigenous people to overcome their previous and continuing, institutionalised disadvantage and domination.[xiv] The *Bringing them home* report recommended that self-determination in relation to juvenile justice issues be implemented through national framework and standards legislation.

The full explanation of these principles is online at:
www.hreoc.gov.au/human_rights/briefs/brief_5.html

The Social Justice Commissioner's evaluation of the newly introduced Northern Territory diversionary scheme commended the scheme overall, while expressing some concerns about its practical operation. Concerns that arose about the NT scheme were:

- the limited range of community based diversionary options, due in part to the poor level of infrastructure and service networks in many remote communities;
- the lack of a systematic approach to encouraging Indigenous participation in designing and delivering diversionary processes;
- lack of transparency of the scheme, with many matters left to police discretion. Early statistics, however, indicated that the NT scheme was being accessed at equitable rates for Indigenous juveniles;
- absence of procedural safeguards such as access to legal advice before a juvenile agrees to a diversionary option. There is, however, an extensive interpreter service available;
- lack of independent monitoring processes and complaints mechanisms; and
- piecemeal and uncoordinated involvement of Indigenous communities, with police retaining primary control over the processes.

The review of the WA scheme found that it was the worst scheme in Australia and had significant problems for Indigenous juveniles in particular. Concerns expressed about the WA scheme were:

- diversion was not available as an alternative to detention in rural areas, with cautioning and referral processes more prevalent in the capital city;
- an absence of community based programs for Indigenous people in country areas;
- rates of diversion were high at the Court level, rather than by the police (ie, juveniles were not diverted at the earliest possible stage);

- Indigenous juveniles have not benefited sufficiently from diversionary processes, and tend to be dealt with more harshly by police;
- police training is inadequate to deal with decision-making relating to diversion;
- there are no safeguards such as the provision of legal advice and an interpreter if necessary, which has the potential to undermine the informed nature of the consent given;
- the outcomes of diversion processes are able to be used as evidence in cases where the offender later appears in court. This contradicts the purpose of diversion and has the effect of 'up-tariffing' young people when decisions are made regarding punishment (i.e., it results in higher level dispositions for an offence);
- The WA diversionary options were not culturally appropriate and were discriminatory in their impact. The most significant issue is that of net widening - the failure of Indigenous youth to benefit from diversion through the exercise of police or court discretion combined with increased contact with police;
- there is currently no mechanism for young people to appeal against decisions made in relation to cautions or diversionary decisions and outcomes;
- monitoring mechanisms are poor, with a significant failure to report ethnicity or Aboriginality in the record system of the Children's Court; and
- lack of involvement of Indigenous communities in designing and delivering programs, and in contributing to a re-orientation of the system towards rehabilitation.

These reviews demonstrate the value of analysing programs for diverting Indigenous juveniles away from detention within a human rights framework, and in particular by reference to the principles contained in the Convention on the Rights of the Child.

d) Indigenous community justice mechanisms

The current criminal justice system has a deleterious effect on Indigenous communities through over-representation of Indigenous people in custody, in large part due to historically derived disadvantage and ongoing systemic discrimination. Processes of separation through the criminal justice, juvenile justice and care and protection systems, combined with dysfunctional behaviour such as violence and abuse in communities are indicative of the inequality and extreme marginalisation of Indigenous people in Australian society. This is combined with the lack of attention the justice system gives to the high rate of Indigenous victimisation, particularly through violence and abuse in communities.

Reform to criminal justice processes, including through community justice initiatives, must be responsive to these factors. Improved community justice mechanisms have the potential to make a significant contribution to addressing the inequality and disadvantage experienced by Indigenous people and to do so in a way that is culturally appropriate and more effective that current processes.

There are numerous new initiatives in Australia developing community based justice mechanisms for dealing with juvenile and adult offending by Indigenous people. Some examples follow.[xv]

- ***Community Justice Groups in Queensland***

The Community Justice Group project was started in Kowanyama, Hopevale and Palm Island in 1993 as a pilot project of the Queensland Corrective Services Commission. The Community Justice Group model aims to provide Aboriginal people with a mechanism for dealing with problems of justice and social control which is consistent with Aboriginal Law and cultural practices as well as utilising aspects of the Anglo-Australian legal system. The justice groups have no statutory authority. The source of authority for the group is based on the collective and personal authority of group members deriving from the place of individuals within kinship systems and the personal respect they are accorded by others. Ultimately the group's authority lies in Aboriginal Law and cultural practices.

The Community Justice Groups use traditional structures and cultural principles to develop and apply their own system of justice and social control. They seek to restore social order by curbing anti-social behaviour and by creating a more positive and supportive environment. Group actions that they handle within the existing legal framework include family-related dispute settlement, crime prevention and community development projects, co-ordination with government and community agencies and providing information and advice to the judiciary, Community Corrections Boards and other government decision making bodies.

Perceived positive outcomes for the model include: decline in crime rate and level of violence; an effective community corrections program at Palm Island that has kept people from appearing before court and from possible incarceration; dramatic decrease in juvenile crime at Kowanyama; changes in social patterns; more effective government service delivery, leading to savings in time and money for government and community agencies, courts, law enforcement agencies and correctional centres.

Perceived negative outcomes for the model include: harsh punishments; potential drain on the community's resources; acting without statutory authority; and a lack of indemnity for justice group members.

The Community Justice Panel (CJP) now works with clan groups on Cape York. The CJP model is an evolutionary process, with options at each stage to be trialled before the justice groups go on to the next stage.

The CJP model is supplemented by monthly programs run by the Department of Corrections and the Department of Family and Community Services in substance abuse and anger management. There are also women's shelters in all communities. Greater support is needed however for people on the alcohol management program in terms of counseling and support. Without better infrastructure, such programs will fail over the long-term.

- **The Kurduju Committee Law and Justice Strategy**

The Aboriginal Law and Justice Strategy of the Northern Territory seeks to provide a whole-of-community and whole-of-government approach to addressing community justice issues within a law and justice planning process. It was originally implemented

at Ali-Curung in 1996 and in Lajamanu in 1999. Both these communities now have their own law and justice plans and are engaged in peer modeling with Yuendumu community.

In each community a law and justice committee has been established. These committees have a wide range of responsibilities and comprise key community representatives from the Tribal Council, Community Elders, Safe House Committee, women's group, traditional owners, outstation representatives and other community organisations. Representatives from the Ali-Curung, Lajamanu and Yuendumu communities also sit on the Kurduju Committee, which provides an opportunity for information-sharing and peer modeling, and also to address a perceived deficit in policy and program knowledge, and expertise in regard to remote communities.

The aim of the law and justice plans was 'to facilitate the empowerment of the local community to assume a greater role in law and justice, and to address law and justice concerns through local dispute resolution where practical.' There was a perceived need for low-level intervention by Aboriginal communities in early crime prevention and more productive participation in the justice system.

At Ali-Curung, Lajamanu and Yuendumu, individuals and community organisations had largely lost their capacity to resolve their own law and justice issues through the introduction and consequential reliance on external dispute resolution. Subsequently, the Law and Justice Strategy sought to incorporate Aboriginal dispute resolution principles into community law and justice processes. This was not a straightforward revival of customary law but an innovative adaptation of traditional decision making in a contemporary situation through the merging of mainstream community based dispute resolution with mainstream law and justice. The process is negotiated and agreed to between community organisations and government agencies.

The Ali-Curung and Lajamanu law and justice committees are involved in diversionary programs, pre-court conferencing, victim offender conferencing, community service orders, and the operation of night patrols and safe houses. Ali-Curung, Lajamanu and Yuendumu have adopted an approach to family violence that involves local dispute resolution and healing methodology.

As in the case of the community justice panels in Queensland, the experience of the Law and Justice Strategy to date indicates that any initiatives seeking to formalise an interface between aspects of customary law and the western legal system should be organic, evolutionary and holistic. In order to be effective, any community justice initiatives will also involve a considerable investment in community consultation, participation and education: the emphasis should be on devolving power to the communities. A one-size-fits-all approach or the top-down application of a preconceived model is unlikely to yield long-term results and could even be counterproductive in resolving law and justice issues.

- **South Australia: Ngunga court**

South Australia's Ngunga court was commenced in Port Adelaide in June 1999. In collaboration with the Aboriginal community, South Australian Magistrate Christopher Vass developed the idea of the court which incorporates the Aboriginal traditional

customary law approach to the sentencing of Aboriginal offenders within the framework of existing legislation. Aboriginal Elders sit with the magistrate to advice on sentencing options which may include community sanctions and punishment. The Elder and magistrate sit at eye level to the offender and not elevated by the bench. Members of the offender's family, as well as the victim and the victim's family, and other interested community members have the chance to speak during the sentencing hearing. An Aboriginal Justice Officer is present to guide the offender through the court process.

Aboriginal Justice Officers also go into Aboriginal communities to speak on the criminal justice system. The Ngunga court is available to any Aboriginal offender who pleads guilty to an offence, and has not committed a violence or sexual offence. Prior to the commencement of the Ngunga court in South Australia the court attendance rate for Aboriginal offenders was well below 50 per cent. The Ngunga court has an attendance rate ay over 80 per cent. There are now four Ngunga courts operating in South Australia. A Murri court now operates in Brisbane (capital of Queensland) on the same model as the Ngunga court.

- **New South Wales: Circle sentencing**

Circle sentencing has been trialled in Dubbo, Walgett and Brewarrina in New South Wales. A further trial was commenced in Nowra, New South Wales in February 2002. The circle consists of the magistrate, offender, victim, family members and Aboriginal elders. The participants sit in a circle, it is not usually held in a formal court setting. The circle attempts to achieve consensus on the sentence and the circle reconvenes, a few months later, to review the progress of the offender or status of the sentence. A support group for the offender is established at the sentencing circle, who report to the Community Justice Group, on the progress of the offender. The Community Justice Group, in turn, reports the progress to the magistrate. To date, the trial has achieved great success with only 1 person committing further offences.

- **Victoria: Koori Court**

In March 2003 Victoria established a Koori Court. The court, a two-year pilot project, will operate from the Broadmeadows Magistrates Court and the Shepparton Magistrates Court. Like other similar courts operating in Australia, it also aims to provide an informal approach to the sentencing procedure. It provides for greater participation by the Aboriginal community. It aims to reduce perceptions of cultural alienation and tailors sentencing orders to the cultural needs of Koori offenders.

Aboriginal defendants who plead guilty to an offence (with the exception of sexual or family violence offences) can elect to have the matter heard in the Koori Court. Included in the sentencing procedure are offender's legal representative, the offender and any family members or other people, including the victim, associated with the offence. The court provides a forum where Indigenous elders as well as an Aboriginal Justice worker have input in the sentencing process by advising the magistrate on matters of cultural significance. The magistrate will confer with a community elder and discuss the most appropriate sentence or conditions to be placed on the sentence. The Magistrate and the community elder may also confer with the Aboriginal Justice Worker in deliberation of the sentence.

e) Partnership agreements with Indigenous peoples

A focus of Indigenous representative organisations and Australian governments in recent years has been the entering into partnership agreements for service delivery to Indigenous peoples. Agreements or communiqués have been entered into by most States and Territories setting out the principles that underpin the relationship between Indigenous people and the relevant government, and specific Justice Agreements have been developed in a number of States. For example:

- An Aboriginal Justice Agreement has been signed by the NSW Attorney-General which seeks to reduce Aboriginal people's involvement in the criminal justice system and improve community safety for Aboriginal people. An Aboriginal Justice Plan, setting out key priority areas and commitments is being finalised following consultation and negotiation with Indigenous peoples.

- The Northern Territory Government recently signed a communiqué committing the Government to work in partnership with peak Indigenous organisations and communities through the development of an Aboriginal justice plan to reduce overrepresentation in the criminal justice system. The justice action plan is to address the following objectives: Preventing crime; Improving community safety; Improving access to justice related services, including services for victims of crime; Improving access to bail; Improving access to diversionary programs; Increasing community based sentencing options and non-custodial sentencing options; and Increasing the rate of participation of Indigenous people in the justice system.

- The Queensland government has established the Ten Year Partnership. It commits the Government to work with Aboriginal and Torres Strait Islander peoples to improve standards of living over the next ten years. Under the partnership, there are eight key areas to be addressed, namely: Justice; Family violence; Reconciliation; Human services; Service delivery; Economic development; Community governance; and Land heritage and natural resources.

- The Victorian government has signed an Aboriginal Justice Agreement, developed through negotiation with Indigenous people. The Agreement is supported by an Aboriginal Justice Forum, where senior members of the Koori communities sit with the most senior Victorian Government agency representatives in monitoring, evaluating and steering the implementation of the Justice Agreement.

Conclusion

This overview of issues provides examples of difficulties faced by Australia in compliance with the Convention in relation to Indigenous juveniles, as well as best practice solutions for approaching the systemic issues faced by Indigenous juveniles with the full participation and involvement of Indigenous communities. Further information on each of the issues discussed is available from the Commissioner's website.

Endnotes

[i] Royal Commission into Aboriginal Deaths in Custody, *National Report, Volume 2*, AGPS, Canberra, 1991, Recommendation 62, p252.

[ii] Australian Institute of Criminology, *Persons in juvenile corrective institutions 1981-2000*, AIC Canberra 2001, Table 3 and Figure 2. This over-representation rate reached as high as 17 times the non-Indigenous rate in 1997: Australian Institute of Criminology, *Australian crime – facts and figures 2000, op.cit,* Figure 59.

[iii] Australian Institute of health and Welfare and Australian Bureau of Statistics, *The health and welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, Commonwealth of Australia, Canberra 2003, p109.

[iv] Aboriginal Justice Advisory Council NSW, *Policing public order, offensive language and behaviour, the impact on Aboriginal people*, AJAC, Sydney 1999, p3.

[v] *ibid*, p4.

[vi] Aboriginal Justice Advisory Council NSW, *Policing public order, offensive language and behaviour, the impact on Aboriginal people*, AJAC, Sydney 1999.

[vii] Baker, J, *The scope for reducing indigenous imprisonment rates*, NSW Bureau of Crime Statistics and Research – Crime and Justice Bulletin Number 55, Sydney 2001, p3.

[viii] Aboriginal Justice Advisory Council NSW, *A fraction more power – review of the impact of the Children (Protection and Parental Responsibility) Act on Aboriginal people in Moree and Ballina*, AJAC NSW 2000.

[ix] *ibid*, p19.

[x] Gardiner, G, *Indigenous people and the criminal justice system in Victoria: Alleged offenders, rates of arrest and over-representation in the 1990s*, *op.cit.,* pp 92-93**.**

[xi] *ibid*, pp78-79.

[xii] *ibid*, p50.

[xiii] For further details see: Human Rights and Equal Opportunity Commission, *Human Rights Brief No.5, Best practice principles for the diversion of juvenile offenders*, HREOC, Sydney, 2001.

[xiv] RCIADIC, *op.cit,* Vol 1, para 1.7.6.

[xv] These issues are discussed more fully in: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Northern Territory Law Reform Committee inquiry into Aboriginal Customary Law in the Northern Territory*, 14 May 2003, www.hreoc.gov.au/social_justice/customary_law/nt_lawreform.html.