Part 4:

How can we optimise the use of resources in delivering criminal justice system services?

This part of the report deals with our inquiry's third term of reference, addressing the question of what should be done to ensure the optimal use of existing and future resources in delivering criminal justice services in Queensland's Indigenous communities.

The crime problem in Queensland's Indigenous communities is both entrenched and endemic. It is also costly. Not only does the crime problem in these communities carry a tragic human cost, but it also imposes a large financial burden that is principally borne by the Queensland Government. These costs continue to increase. For example:

- In recent years, increasing amounts of money have been provided for additional legal aid, additional training and support for community justice groups, and more frequent circuit courts to the Gulf, Cape York and the Torres Strait Islands. For example, in Queensland's 2007–08 Budget, funding of $3.3 million was allocated for these purposes (see Queensland Government 2007d).[302]
- In recent years the Queensland Government has provided record levels of funding to Queensland Corrective Services (QCS), including large amounts devoted to the expansion of those correctional centres that are well known for their high proportion of Indigenous prisoners from Queensland's Indigenous communities. For example:
  - the Townsville Correctional Centre has been undergoing a $142.5 million refurbishment and expansion by over 100 cells, and this is scheduled for completion in 2009
  - a new Townsville Women's Correctional Centre, to accommodate up to 154 offenders and costing $130 million, opened in December 2008
  - a $445 million, 300-bed expansion for the state's most northern correctional centre, Lotus Glen Correctional Centre, is under way, with completion scheduled for 2011 (QCS 2008).

  QCS states that these expansions 'are central to our strategy for managing expected growth in prisoner numbers in the region' (QCS 2008, p. 4). In addition to the cost of facilities, the cost of imprisonment per prisoner per day in Queensland is over $150 (QCS 2008, p. 17).

If Indigenous overrepresentation in the criminal justice system is to be reduced, we must respond to the crime problem faced by Queensland's Indigenous communities more effectively than we have in the past. The crime problem in turn cannot be redressed by a policing and criminal justice system response alone. If we hope to tackle crime in a way that will make a substantial difference, then we must tackle the underlying causes of crime at every opportunity and we must be prepared to be bolder and more rigorous in identifying successes and failures than we have been before.

302 Funds to provide additional support to community justice groups were not allocated exclusively to support groups in Queensland's Indigenous communities but included funds for groups in other regional and urban areas.

In this part of the report we argue that, if the use of criminal justice resources is to be optimised, crime prevention must be an explicit focus of the strategies and resources devoted to Queensland's Indigenous communities in two ways:

1. Outside the criminal justice system, including through various types of early intervention
2. Within the criminal justice system, at all possible stages.

Crime prevention is, however, not the only function of the criminal justice system; resources must also be allocated to ensure delivery of a fair and accessible system of justice, and this is the third key issue considered in this part of the report.

The four chapters of this part consider these matters:

- Chapter 15 examines the research evidence showing that the crime prevention achievements of the criminal justice system are likely to be more limited and less cost-effective than crime prevention work done well *before* a person comes into contact with the criminal justice system, preferably early in life. We consider that two key areas where the strategies for prevention of crime and violence operating in Queensland's Indigenous communities should be strengthened are:
  1. Providing developmental or early childhood interventions to prevent criminal behaviour later in life
  2. Developing media and social marketing campaigns to change social values and behaviours.
- Chapter 16 examines research evidence for the crime prevention effects of aspects of the criminal justice system, and suggests how we might maximise the crime prevention effect of the criminal justice system for Queensland's Indigenous communities.
- Chapter 17 examines the unrealised potential of local justice initiatives to provide an effective response to crime and violence in Queensland's Indigenous communities.
- Chapter 18 considers what is required to ensure that the operation of the criminal justice system in these communities is fair and accessible.

In terms of the crime prevention research discussed in this part, we have relied heavily on two sources. First, Don Weatherburn provided a brief summary of the research evidence regarding crime prevention from an Australian perspective in his book *Law and order in Australia: rhetoric and reality* (2004). More recently, Farrington and Welsh have provided a summary of the research evidence regarding crime prevention in *Saving children from a life of crime: early risk factors and effective interventions* (2007). We have drawn heavily from these works in the material that follows, as well as considering more recent research, particularly Australian research. Of course, any errors are our own and what we present is only a very greatly attenuated version of this complex area of research. For those interested in a greater level of detail, and an introduction to various methodological issues facing research in this area, we suggest they read the works of Weatherburn and of Farrington and Welsh. For more technical research details, we suggest that readers go back to the primary sources.

15

CRIME AND VIOLENCE PREVENTION OUTSIDE THE CRIMINAL JUSTICE SYSTEM

In this report we have outlined our view that in order to improve relations between Indigenous people and police, and in order to reduce Indigenous overrepresentation in the criminal justice system, we must make serious inroads into reducing the levels of crime and violence in Queensland's Indigenous communities. Only by doing so will we be able to optimise the use of criminal justice resources, which will otherwise continue to be in increasing demand.

Efforts to date both outside and within the criminal justice system to prevent crime and violence in communities have let Indigenous people down.

As discussed in Chapter 5, the underlying causes of crime are complex. Crime is not the result of any one factor; it is shaped greatly by the interrelationship of a large number of factors that the criminal justice system does not control (for example, the prevalence of inadequate parenting, and the level of poverty and unemployment). This means that to prevent crime and violence a mix of strategies will be needed.

We will look first at crime prevention outside the criminal justice system. In this chapter we bring together:

- **research evidence about the crime prevention effect of various intervention strategies and programs outside the criminal justice system, including:**
  - **developmental or early intervention strategies**
  - **media and social marketing campaigns, and**
- **information about existing strategies and programs in Queensland's Indigenous communities.**

What is crime prevention outside the criminal justice system?

All crime prevention schemes can be broken down into two broad categories:

1. Opportunity reduction — approaches that concentrate on reducing the situational,[303] physical or environmental opportunities for crime
2. Social crime prevention — approaches that seek to address underlying social causes.

We have drawn a distinction between crime prevention programs and strategies outside the criminal justice system[304] and those that operate within it[305] (which we will discuss in Chapter 16).

303 Situational crime prevention strategies are those that increase the risk of apprehension and reduce the rewards associated with crime. Sometimes 'opportunity reduction' and 'situational crime prevention' are terms used interchangeably in the literature, and sometimes a distinction is drawn between 'situational crime prevention' and 'crime prevention through environmental design', which is also an opportunity reduction strategy (see Sutton & Hazlehurst 1996, p. 436).

304 Such programs and strategies could also be referred to as 'primary' and 'secondary' crime prevention. Primary prevention programs try to ameliorate the social and physical conditions that seem to be causing crime. Secondary prevention programs are interventions aimed at 'at risk' groups.

305 Such programs and strategies can also be referred to as 'tertiary' crime prevention, which comes into effect once a crime has been reported or a criminal career has already become entrenched (Sutton & Hazlehurst 1996, p. 421).

Crime prevention outside the criminal justice system encompasses strategies and programs that are delivered independently of the police, courts and correctional services, and that attempt to stop offending before it begins.

Generally, money spent on effective crime prevention programs outside the criminal justice system will have a greater impact than money spent on programs and strategies within the criminal justice system itself.

What have previous reports suggested?

From the late 1980s onwards, there has been increasing acknowledgment in Queensland and across Australia of the need for crime prevention approaches apart from those provided by the criminal justice system. Many previous reports have highlighted that a range of strategies, beyond the operation of the criminal justice system itself, are needed to prevent crime and to address the underlying causes. For example:

- The Royal Commission into Aboriginal Deaths in Custody recommended a wide range of strategies to address the underlying causes of crime, including through:
  - expanding mental health services
  - limiting the supply of alcohol and providing alcohol treatment programs
  - developing preschool programs for Indigenous children that also involve parents and carers
  - improving employment opportunities (Johnston 1991, vol. 4).
- The report of the Aboriginal and Torres Strait Islander Women's Task Force on Violence recommended that both short- and long-term crime prevention strategies be developed in partnership with communities. It recommended, for example, the introduction of parenting programs for all Aboriginal and Torres Strait Islander communities in Queensland (Aboriginal and Torres Strait Islander Women's Task Force on Violence 1999, pp. 156 & 258).
- The Cape York Justice Study recommended that community-based crime prevention and intervention strategies should be implemented to address the underlying causes of crime, especially the role of alcohol. It also suggested that a developmental approach to crime prevention was needed, focusing on pathways in life that may lead to crime or to positive alternatives. The report argued that a brief 'hit and run' would not be effective — that adequate resources must be devoted to crime prevention and that efforts must be sustained over a long period (2001, p. 123).[306] Although the report stated that such an approach was 'an apparently impossible ideal' at the time, it also stated that developmental crime prevention should be the goal not only for crime and justice agencies but for all other government and non-government departments to move towards.
- The evaluation by Cunneen, Collings and Ralph of the Queensland Aboriginal and Torres Strait Islander Justice Agreement argued that resources must be provided for more rehabilitation centres, healing centres and alcohol counselling (2005, pp. 158–9).

What has been the response?

The Queensland Government has implemented various measures in response to such recommendations about crime prevention; the most substantial of these responses have been:

1. Although alcohol reforms directed toward limiting the 'supply' of alcohol in Queensland's Indigenous communities were introduced in 2003, it is only in recent years that other steps have been taken to reduce the 'demand' for alcohol; funds have now been allocated for treatment and rehabilitation programs to be delivered in these communities.

306 The Cape York Justice Study also suggested that community justice agreements and community justice groups were to play vital roles in crime prevention (Fitzgerald 2001).

2. The trial, from 2008, of the Cape York Welfare Reform initiative and the Family Responsibilities Commission (FRC) in the four communities of Hope Vale, Mossman Gorge, Coen and Aurukun. The trial aims to change local social norms and behaviour and to re-establish local Indigenous authority. A range of support services have been and are being rolled out in these four communities as part of the trial. They include enhanced parenting services, services to deal with problem gambling, and Wellbeing Centres to provide counselling and support for people affected by, and trying to cope with, problems of drugs, alcohol, gambling or violent behaviour.[307]

As we have stated in Chapter 2, other than these two recent initiatives, which are substantial and positive steps, there has been considerable difficulty in translating the rhetoric about crime prevention into reality. Crime prevention has too often remained an 'add on'; crime prevention priorities and strategies remain poorly developed and are often unclear. The emphasis has remained largely on reactive criminal justice.

What crime prevention strategies outside the criminal justice system are in operation?

Crime prevention strategies outside the criminal justice system in Queensland's Indigenous communities have tended to be dominated by strategies designed to limit the opportunities for crime, and by community-based programs such as sport and recreation programs, and camps and support for outstations.

Opportunity reduction

Strategies or programs organised by the community that are designed to limit the opportunities for crimes to be committed, or to increase the risk of apprehension for offenders, include:

- **Night patrols:** Community or night patrols were discussed in Chapter 10 of this report. They operate from time to time in some of Queensland's Indigenous communities and it appears that the Queensland and Australian Governments have been increasingly willing to allocate resources for such patrols in recent years.
- **CCTV:** In some Indigenous communities, CCTV cameras are being used as a crime prevention tool. For example, in Aurukun, the local council in 2008 established a network of CCTV cameras operated by a private security firm to provide surveillance of council property and businesses. Media reports stated that the council was hoping this initiative would 'reduce violence and vandalism' and help police to identify and prosecute offenders, particularly young people committing break and enters (see Guest 2008; Pitt 2008).
- **Safe houses:** Although these are primarily part of the child protection system, the Queensland Government has stated that it has spent around $60 million building safe houses in Indigenous communities to keep children safe in their own communities when they have come to the attention of the Department of Child Safety (now DOC Child Safety Services) (QLA (Keech) 2008a, p. 2). For example, $14.6 million was allocated over four years to the establishment and running of four safe houses at Aurukun, Kowanyama, Napranum and Pormpuraaw.[308]

307 The State and Commonwealth Governments have recently called for tenders to conduct an evaluation of this FRC trial; however, the results are unlikely to be available for a number of years.

308 The Queensland Government has also stated that it is 'committed to moving forward and investing in plans and preventative programs that will help address social issues that cause abuse and neglect' (QLA (Keech) 2008b, p. 3180).

The crime prevention effect of the strategies listed above is largely untested and unknown. That is, although it may appear to be a reasonable assumption that such strategies will lead to a reduction in crime, there is no sound evidence base provided through research to show that these strategies are likely to have a significant crime prevention effect.[309] For example:

- Night patrols are a strategy unique to Indigenous communities and, though it is often suggested that they have a positive crime prevention effect, there has been no rigorous evaluation, so their crime prevention effect must be considered to be unknown. As we have stated in Chapter 9, there is evidence that increasing police patrols can prevent crime, so community patrols in this sense might be a relatively inexpensive strategy worth continuing for a range of reasons, one of which may be their possible crime prevention effect (see Blagg & Valuri 2003; Blagg 2008). Night patrols may also be effective in enhancing local authority, and form one of the local justice elements operating in a community.
- A review of 44 studies that investigated the effectiveness of CCTV cameras in public spaces indicated that the introduction of CCTV may have a modest effect in reducing crime (Welsh & Farrington 2008a). The review noted, however, that CCTV tended to be most effective when it is actively monitored, and when used in car parks and to target vehicle crime. In general, CCTV led to smaller reductions in violent crime and crime in town centres and public housing estates. The studies showing the most positive crime prevention effects also tended to involve a range of other interventions, and few studies involved long-term evaluations of effectiveness. It is possible, therefore, that CCTV cameras used in isolation from other measures may result in only short-lived crime reductions (Welsh & Farrington 2008a; see also Cherney & Sutton 2007). A recent Queensland study that analysed QPS data to assess the effectiveness of CCTV concluded: 'CCTV is effective at detecting violent crime and/or may result in increased reporting as opposed to preventing any type of crime' (Wells, Allard & Wilson 2006, p. 14).
- We are not aware of any evidence regarding the crime prevention effect of safe houses. Although they may not exert a substantial prevention effect, safe houses may in any case be an important or necessary feature of a humane and ethical response to child protection and violence in Queensland's Indigenous communities.

Although opportunity-reduction strategies are a necessary part of the mix of crime prevention strategies needed in Queensland's Indigenous communities, it should be noted:

- All of these opportunity-reduction crime prevention programs are very much a 'back-end' rather than 'front-end' approach to crime prevention. That is, they direct resources and effort to the point at which offending is likely to occur or, in the case of safe houses, to the period after a child protection problem has emerged.
- Approaches that reduce the opportunities and incentives for offending may be most likely to be effective in reducing transient rather than persistent offending (Weatherburn 2004, p. 75). This highlights the importance of including other types of crime prevention strategies for Queensland's Indigenous communities, which may have a high proportion of persistent offenders.[310]

309 It should be noted that such programs may, of course, have other important outcomes in addition to any crime prevention outcome. Such other outcomes may include reducing fear of crime, rebuilding social norms and developing community capacity to respond to crime.

310 In Chapter 4 we presented evidence not about persistence, but suggesting a high proportion of recidivist offenders in Queensland's Indigenous communities.

Community-based social crime prevention

Outstations, camps, arts, after-school sport and recreation programs

A popular form of crime prevention program operating in Queensland's Indigenous communities are community-based programs that may seek to strengthen cultural identity or otherwise engage with young people through outstations, camps, arts, after-school sport and recreation programs. Such programs assume that, by strengthening the social fabric of these disadvantaged communities, or by providing young people with something to do, crime may be reduced. These types of programs appeal for a range of reasons, including that recreational facilities are often in short supply or are poorly maintained. However, such programs are usually small scale, supported by one-off funding and short-lived.

Unfortunately, there is not much evidence to suggest that community-based social crime prevention is effective. For example, one evaluation of an after-school activities program for disadvantaged 5–15-year-olds in Canada showed that arrest rates of those in the program were substantially lower than for a comparable control group, but the effects faded over time and the study has not been convincingly replicated elsewhere (see Welsh & Hoshi 2001).

Weatherburn (2004, p. 190) speculates that:

> Part of the problem may be that it is extremely difficult changing the behaviour of people for whom crime is an important source of income and social standing among their peers. Part of the problem, too, may be that simply keeping young people 'busy' or providing them with better training and social services may not do much to restore their stake in conformity unless these things make a difference to the chance of getting a reasonably well-paid job. It is also possible that social disorder so obvious in crime-prone communities does not stem from inadequate social services, lack of social cohesion or lack of adequate recreational opportunities for young people, but from endemic problems of poor parenting brought on by poverty, substance abuse and unemployment. If this is true, measures designed to strengthen local communities, provide recreational activities for young people or talk them out of involvement in crime are unlikely to exert much effect.

That is, community-based programs which seek to strengthen cultural identity or otherwise engage with young people through outstations, camps, arts, after-school sport and recreation programs may simply not provide the right 'fit' or an adequate 'dose' for the nature and size of the crime and violence problem in these communities.

Community justice groups

The community justice groups that exist in all Queensland's Indigenous communities perform a wide range of functions, including the development and implementation of strategies 'to deal with fundamental social issues which are often the cause of offending behaviour' and to deal with 'the underlying causes of crime' (DATSIPD 1999, pp. 5 & 7; see also Chantrill 1998). Such strategies have included sport and recreational activities for young people, the use of outstations for young people and conducting mediations within the community. We discuss the effectiveness of community justice groups in detail in Chapter 17.

Other community-based social strategies for crime prevention

One innovative strategy that aims to tackle the underlying causes of crime is the Work Placement Scheme established by Cape York Partnerships and Milton James in April 2005.

The Work Placement Scheme helps young Indigenous people from remote northern communities who are willing and able to leave their home and community to work in southern states. The scheme provides them with a placement of at least seven months in mainstream unsubsidised employment, onsite support and supervision, rental accommodation, and transport to and from their place of employment at cost. This scheme provides work, far from

their homes and families, to those with little or no experience of living away from home, family and community, with little or no work experience (and thus assessed as being at high risk for long-term unemployment), or to those dependent on welfare payments. Sutton (2009, p. 53) has noted that such schemes are experimental in terms of Australian Indigenous policy and programs, but that due to the lack of follow-up we cannot know if the scheme was successful.

The evidence of the crime prevention effect of strategies that seek to prevent crime by reducing poverty or increasing employment is scant because policies and programs aiming to reduce poverty, or promoting work over welfare, often do not lend themselves to rigorous experimental evaluation. For example, although long-term unemployment is clearly a risk factor for involvement in crime, according to Weatherburn (2004, p. 194) there are no published evaluations of the effect on crime of programs designed to reduce long-term unemployment. A more recent systemic review of non-custodial employment programs concluded that employment-focused interventions for former prisoners have not been adequately evaluated for their effectiveness and calls for rigorous evaluation to assist policy development in this area (Visher, Winterfield & Coggeshall 2006).

Hence, some have expressed doubts that we can reduce crime through anti-poverty measures.[311] However, one review of the crime prevention effectiveness of various types of programs aiming to increase the levels of employment among young people found that the results of a 30-month evaluation of the US 'Job Corps' program were promising. This program involved disadvantaged young people being enrolled in tailored one-year programs, including classroom training in basic education, vocational skills and a wide range of supportive services (including health care). A comparison of outcomes for program participants and those randomly assigned to a control group revealed that the program was associated with a significant 16 per cent reduction in arrest rates in the two-year follow-up period (Schochet, Burghardt & Glazerman 2001). Significantly more positive outcomes for the Job Corps participants were also found when conviction and incarceration rates for the two groups were examined. Weatherburn argues that 'these kinds of programs deserve serious consideration in Australia, especially in Aboriginal communities' (2004, p. 195).[312]

Because the spatial concentration of poverty appears to exert its own effect on crime, it seems reasonable to assume that preventing this concentration will reduce crime. There are no published evaluations of the crime prevention effect of any such strategies (see Weatherburn 2004, pp. 195–6). However, the Work Placement Scheme referred to above may exert a crime prevention effect by encouraging young people to 'orbit' out of, and into, Queensland's Indigenous communities.

311 For example, an evaluation of the impacts of the US Job Training Partnership Act (JTPA) — which involved providing job training and job-search assistance to people facing barriers to employment — found *higher* rates of arrest among JTPA participants than among those randomly assigned to a control group (Bloom et al. 1994). Similarly, the US 'War on Poverty' in the 1970s, which involved a massive program of financial aid and job training, was accompanied by a substantial increase in reported rates of many crimes. However, caution must be exercised in interpreting this evidence, as it may simply demonstrate that poverty is not the only cause of crime (see the discussion in Weatherburn 2004, pp. 190–3).

312 A more recent evaluation of the Job Corps program (Schochet, Burghardt & McConnell 2006) indicated that initial earnings gains for program participants were generally only sustained in the long term (5 to 10 years after random assignment) for those participants aged 20 to 24 at the beginning of the program. It is possible that a similar pattern may emerge over the long term for those criminal justice outcomes discussed above. This 2006 evaluation also raised questions about the cost-effectiveness of the program for younger participants, given the disappearance of their earnings gains over time. The authors concluded that rectifying this was a key challenge in need of policy consideration.

What crime prevention strategies outside the criminal justice system are lacking?

There is an obvious and continuing gap in the crime prevention strategies in operation outside the criminal justice system in Queensland's Indigenous communities in the following two areas:

1. Developmental or early childhood interventions; such strategies are aimed at targeting risk and protective factors early in life in individuals, so as to prevent criminal offending later in life.
2. Media and social marketing campaigns; these strategies aim to change social values and behaviours.[313]

There is evidence that some of these types of programs or strategies are able to have a substantial crime prevention effect. What follows is a summary of research regarding 'what works' and 'what's promising' in preventing crime through early intervention programs, and also a description of the evidence regarding the crime prevention effect of media and social marketing campaigns.

Developmental or early childhood interventions

What is the evidence about effective early interventions?

The aphorism that 'prevention is better than cure' is very clearly demonstrated by the research evidence on the effectiveness of early intervention, compared with later criminal justice system processes or treatment, in terms of promoting law-abiding behaviour. Research evidence demonstrates that, although interventions at any point in life may lead to beneficial outcomes, interventions undertaken early on are more effective at promoting wellbeing and competencies than interventions undertaken later in life.

Developmental research also clearly demonstrates that in large part we do not learn to be violent and antisocial — we learn how not to be (Tremblay et al. 2004). This highlights the importance, particularly early in life, of parenting which ensures that young children are taught appropriate behaviours and social skills in order to prevent violent and antisocial behaviour later in life.

Early childhood provides a unique window of opportunity in terms of prevention in that:

- There is considerable continuity between disruptive and antisocial behaviour in childhood and later offending. Programs that have short-term effects on disruptive or antisocial behaviour of children are likely to have long-term effects on offending (Farrington & Welsh 2007, p. 117).
- Risk factors tend to be similar for many different adverse outcomes, including violent and non-violent offending, mental health problems, alcohol and drug problems, school failure and unemployment. Therefore, a prevention program that succeeds in reducing a risk factor for offending will, in all probability, have wide-ranging benefits in reducing other types of social problems as well (Farrington & Welsh 2007, p. 95).

There is now a body of empirical evidence on the effectiveness of early intervention programs designed to tackle the risk factors associated with crime and prevent delinquency and later offending. This body of research shows that the lives of children can be improved by:

- certain kinds of childcare and preschool programs (but not all)
- methods of teaching parents how best to raise their children, and appropriate support for this
- home visitation programs run by professional nurses
- particular school programs that teach students how to achieve greater self-control (Wilson 2007, p. vi).

313 Both of these types of strategies are forms of social crime prevention.

Home visiting

Education and support in the context of home visiting programs for parents and carers of infants have also been shown to be effective in preventing child antisocial behaviour and delinquency (Farrington & Welsh 2007, p. 160). Such programs, delivered by health professionals such as nurses, are typically less behavioural than those discussed above and mainly provide advice and guidance to parents or general parent education. The nurse home visitation model developed by Professor David Olds in the United States has been particularly influential. It has been shown to be an effective early intervention in terms of delinquency and to have other positive outcomes (Olds et al. 1998).

Effective home visiting programs are intensive in the early months, are linked to other resources where appropriate, are initiated by nurse home visitors, are sustained over the first two years, have strategies clearly linked to risk factors and expected outcomes, and have well-trained and mentored staff. Home visiting services appear to be best delivered as part of a broad set of services for families and young children (Government of South Australia 2005).

Parental management training

Another well-known early intervention program to have measured the effects on crime is the Montreal Longitudinal-Experimental Study conducted by psychologist Richard Tremblay and colleagues (1995, 1996). This program was targeted at disruptive boys aged 7–9 from low socio-economic backgrounds. It taught parents how to monitor their child's behaviour and reward them for being good, how to discipline their children effectively without being abusive and how to deal with family crises. The children received daily training sessions designed to teach them how to play and interact successfully with their peers. Later, the boys in the program were given additional sessions with counsellors to boost their problem-solving skills and self-control in conflict situations. The program lasted two years. Annual follow-up to the age of 15 years showed that, when compared with a control group, the boys who participated in the program committed significantly fewer offences (Farrington & Welsh 2007, pp. 114–15).

Consistent with these findings for specific programs, a review by Piquero et al. (2008) of 55 randomised controlled evaluations concluded that early family and parent training programs[314] in general were effective in reducing behavioural problems such as aggression and antisocial behaviour among young children. The authors indicated that such programs may also be effective in preventing delinquency and crime in adolescence and adulthood, although they noted that more long-term evaluations are needed.

Preschool programs

The most famous of the preschool programs shown by research to have a significant crime prevention effect is the Perry Preschool project carried out in Michigan by Lawrence Schweinhart and David Weikart (1980, cited in Farrington & Welsh 2007). This program was targeted at disadvantaged African-American children aged 3–4 years and provided the experimental group with a high-quality, active learning preschool program, supplemented with family support. The children in the program attended preschool lessons designed to teach them such things as reasoning, self-discipline, how to set and achieve goals and how to play and work cooperatively with other children. Once a week, a teacher visited the parents of these children to give advice on parenting and to provide practical and emotional support. Depending on the child, the program lasted between three and five years.

314 These involved a number of approaches, but frequently focused on teaching parents how to appropriately and effectively monitor and discipline their child's behaviour, encouraging parents to become more involved in their child's schooling and improving the parent–child relationship.

The children involved in the Perry project have now been followed-up to the age of 40 years. These follow-up studies show, in the words of one researcher, that 'By almost any measure we might care about — education, income, crime, family stability — the contrast of those who didn't attend Perry is striking' (cited in Farrington & Welsh 2007, p. 112). Compared with the control group, program group members had significantly fewer arrests for violent crime, property crime and drug crimes, and were significantly less likely to be arrested five or more times. A cost–benefit analysis at age 40 found that Perry produced just over $17 of benefit per dollar of cost, with 76 per cent of this being returned to the general public — in the form of savings in crime, education and welfare, and increased tax revenue — and 24 per cent benefiting each program participant (Farrington & Welsh 2007, p. 112).

Other similar preschool programs have also been shown to have positive results over the long term (see Farrington & Welsh 2007, pp. 112–14). However, there is evidence indicating that 'research and demonstration projects' — which are run intensively on a small scale, funded at higher levels and run by more highly trained staff — show stronger evidence of more favourable long-term effects than similar large-scale, routinely provided programs (see Farrington & Welsh 2007, pp. 108–9).

School and community-based programs

Farrington and Welsh conclude that 'a number of school-based interventions have been found to be effective in preventing delinquency among youths in middle school and high school, while after-school and community-based mentoring programs hold promise as efficacious approaches' (2007, pp. 4–5).

The famous Seattle Social Development Project of David Hawkins and his colleagues (1999) is one example demonstrating that early school-based programs can produce benefits. This program combined parent training, teacher training and skills training targeted at Grade 1 children (aged 6). The Seattle program parents were trained to notice and reinforce socially desirable behaviour in a procedure called 'Catch them being good'. Teachers in the experimental classes were trained to teach and manage the students in ways that promoted the attachment between children, their family and their school. The program continued from Grade 1 to Grade 6. Follow-up studies to the age of 18 showed that, in comparison with the control group, the experimental group had higher levels of academic achievement, less heavy drinking and lower rates of self-reported violence.

There is evidence that programs offering coaching and modest cash and scholarship incentives to increase teenagers' motivation to complete Year 12 have worked to produce both higher school completion rates and lower rates of offending. With the Ford Foundation's 'Quantum Opportunity' program in the United States, for example, rates of arrest for those participating in the program were only three-tenths of those of a control group of students. The program has also been shown to be highly cost effective (Weatherburn 2004, p. 186).

Programs that monitor and reward school attendance by students at risk of truancy have also been shown to be effective in preventing truancy and preventing juvenile involvement in crime. For example, one program involved participants meeting with program staff weekly and earning points for attendance that could be exchanged for a class trip of their choosing. An evaluation showed that, five years after the program ended, children in the experimental group were 66 per cent less likely to have a juvenile criminal record than their control group counterparts (Weatherburn 2004, p. 187).

Farrington and Welsh (2007, p. 154) also considered research regarding the effectiveness of after-school and community-based mentoring programs designed to promote prosocial behaviour. Such programs include after-school sports programs and 'big brother, big sister' mentoring programs in the United States. Farrington and Welsh (2007) concluded that there were a small number of high-quality programs that demonstrate evidence of success in preventing delinquency, and that each of these approaches is therefore 'promising'.

Additional support for the effectiveness of mentoring programs was provided by Tolan, Henry, Schoeny and Bass (2008), who reviewed 39 high-quality evaluations of mentoring programs for juveniles 'at risk' or already involved in delinquency. They found that, overall, mentoring had significant positive effects on delinquency, aggression, drug use and academic achievement outcomes. Particularly strong effects were found for delinquency and aggression outcomes, as well as when mentoring involved a focus on providing emotional support and when professional development was a key motivation for mentors. Still, the authors noted that there was a distinct lack of information about what the mentoring programs involved, making it difficult to draw conclusions about what are the most valuable and effective features of mentoring.

To summarise the evidence regarding the effectiveness of early intervention, the largely overseas research described above has shown that, in terms of early intervention, giving support to families and advice on parenting, particularly in the first few years of a child's life, can greatly reduce the risk that they will be involved in crime as teenagers or adults. Weatherburn provides the following summary:

> Successful programs … tend to provide support and training to both the parent and the child. They tend to involve both the family and the school. They require a very substantial amount of direct contact (e.g. 30–40 hours) between the program staff and the family. They also have to be delivered by well-trained staff with personal experience working with children as a parent or a childcare provider. (Weatherburn 2004, p. 183)

How can we build early intervention efforts in Queensland's Indigenous communities?

It is true that, across Australia, governments and others have increasingly responded to the evidence regarding the effectiveness of some early interventions, although information provided in consultations and submissions suggests that there is a lot further to go in Queensland's Indigenous communities. There are some positive recent developments, which we outline below, that provide a sound basis for strengthening such crime prevention approaches in Queensland's Indigenous communities.

Home visiting

The point was strongly made to our inquiry that, by the time children in these communities reach school age, it is in a sense 'too late' to start exerting a powerful positive influence. Yet in Queensland's Indigenous communities there is little provided in terms of proactive support for parents and carers in the earliest years of a child's life.

In South Australia, a family home visiting scheme was introduced in 2004 for families of newborns. The scheme is based on that developed by Professor David Olds referred to earlier and provides a nurse visitation to all families in the first four weeks of an infant's life. Extended family home visiting services are offered on a more targeted basis, including to all Indigenous families, up to the age of 2 years. The South Australian program has been rolled out across that state in phases over a number of years and will be statewide by July 2010. The South Australian family home visiting service is being evaluated in both metropolitan and country areas and outcomes for Indigenous families will form part of this evaluation.

More recently, the Australian Government has also developed a program based on the research of Professor Olds. The government announced that it will fund the nurse home visiting program for Indigenous children at ten sites across the country as part of its allocation of $260 million to closing the life expectancy gap and improving the health of Indigenous women and children. The Wuchopperen Health Service has been funded to provide this service in Cairns and the surrounding regional towns, but this does not include Queensland's Indigenous communities (Roxon 2008).

However, the development of a program to provide similar home visiting services for some Cape York Indigenous communities is in the early stages:

- The Queensland Government announced that a home visiting initiative is being implemented for some Indigenous families as part of a 'trial' of maternal and child health enhancements. It has allocated $1.5 million to deliver 'new intensive home visits' and 'parenting' programs' in four Cape York communities, in partnership with the Apunipima Cape York Health Council (QLA (Bligh) 2008, p. 3175).
- The Australian Government has also provided funds for maternal and child health enhancements to be provided by Apunipima to other Cape York communities, including those that form part of the Cape York Welfare Reform Trial.

The model being developed by Apunipima for home visits in Cape York communities departs from Professor Olds's model of nurse home visiting services. Apunipima proposes to have Aboriginal health workers, rather than registered nurses, at the forefront of any home visiting services (although these health workers may be accompanied from time to time by other health professionals). There are powerful reasons for favouring such an adaptation to the home visiting model; these include that such an approach helps to:

- build Indigenous ownership and control
- build Indigenous capacity
- provide employment to Indigenous people (pers. comm., Apunipima Cape York Health Council, 18 May 2009).

However, there is research evidence suggesting that home visits produce more positive outcomes when they are provided by nurses rather than allied health professionals. For example, a randomised controlled trial of a home visiting program by Olds and his colleagues (Olds et al. 2002, 2004) has generally indicated that more positive outcomes, particularly for children, are found when the program is delivered by nurses rather than paraprofessionals.[315] [316] In the first 24 months after birth, home visits by paraprofessionals significantly improved the responsiveness of mother–child interactions only, while home visits by nurses led to a range of significant effects, including better mental development and fewer language delays among infants, and fewer pregnancies and better employment outcomes for mothers. For most outcomes where home visits had significant effects, the effects produced by the nurses were generally twice as large as the effects produced by the paraprofessionals. When followed-up at the age of 4, significant positive effects for children — including more supportive home environments, greater language ability, better mental control and self-regulation and better behavioural adaptation — were again more likely for those visited by nurses. However, *mothers* who had been visited by paraprofessionals tended to experience a wider range of positive outcomes than those who had been visited by nurses. In particular, they worked more and reported a greater sense of mastery and better mental health. Overall, however, Olds and his colleagues concluded that these

> were isolated effects that, by themselves, do not warrant public investment in the paraprofessional version of this program. Promising findings produced in single randomized trials need to be replicated with other populations before they warrant public investment. (Olds et al. 2004, p. 1567)

315 Generally, people with no formal training in the helping professions. In the trial by Olds et al. (2002, 2004), 'paraprofessionals' all had high-school educations, but no college training in the helping professions and no bachelor's degree in any discipline.

316 Similarly, Sweet and Appelbaum (2004) reported in their meta-analysis of home visiting programs that those involving visits from professionals were associated with better outcomes for children on measures of cognition than those involving visits from paraprofessionals.

The model being developed for implementation in 11 Cape York communities by Apunipima should be carefully considered, as the weight of evidence to date suggests that more positive outcomes have been closely associated with nurse home visits rather than home visits by paraprofessionals. If the Cape York communities are to proceed on the basis of this departure from the nurse model (and such a departure could indeed be justified on a number of grounds), the program should be rigorously evaluated, including to determine its crime prevention effect.

Though the first steps have been taken in Queensland towards providing home visiting services as part of child and maternal health enhancements in some of Queensland's Indigenous communities, governments must recognise the importance of such efforts being:

- sustained rather than a 'trial'
- rigorously evaluated.

Close discussions with those involved in the implementation of the South Australian scheme would provide enormous benefit in Queensland.

Parental management training

In some Indigenous communities it was indicated during our consultations that some kids were 'out of control' or 'running wild'. Comments were also made on a number of occasions that parents and carers were sometimes struggling to find positive ways to influence the behaviour of children without resorting to violence. For example, it was said 'the parents don't know what to do [to control them]. Parents can't even touch those kids any more.' Despite the fact that calls have been made previously for greater support to be provided to parents and carers in this area, little has happened on this front in Queensland's Indigenous communities.

Queensland has conducted a rigorous evaluation of its own parental management program, the Triple P — Positive Parenting Program, and found it to be successful in reducing the risk factors associated with crime (Sanders, Turner & Markie-Dadds 2002; see also Mihalopoulos et al. 2007). The Queensland Government, through Queensland Health, has funded a randomised-control trial evaluating the efficacy of Triple P programs tailored for Indigenous families in South-East Queensland ('Indigenous Triple P') and found that there were significant improvements in some evaluation measures, including that parents[317] who did the program reported lower levels of behavioural and emotional problems in their children and decreased reliance on some dysfunctional parenting practices (Turner, Richards & Sanders 2007). A wider-scale implementation and evaluation of the program have now taken place for Indigenous families accessing Triple P as part of routine service delivery in diverse rural and remote settings across Australia.[318] This evaluation found similar outcomes, including a significant decrease in problem child behaviour, and a significant decrease in dysfunctional parenting practices (pers. comm., Dr Karen Turner, May 2009).

It should be noted that the Family Responsibilities Commission initiative in Aurukun, Hope Vale, Mossman Gorge and Coen has brought a focus to the issue of parenting; the FRC provides support and advice to parents as one of the key interventions available in its case management approach.

It is our view that parents, families and carers in Queensland's Indigenous communities should have increased exposure to programs that provide support and skills for parenting, such as the Triple P — Positive Parenting Program.

317 Although the term 'parent' is used, it refers to carers — for example, grandmothers, aunts and guardians.

318 See <www.pfsc.uq.edu.au/research/current.html>.

Preschool programs

In consultations and submissions it was frequently said that little value was placed on education in these communities and that some children, by the time they reach compulsory school age, are already 'starting way behind' and it was 'already too late' to start engaging them in education (see, for example, individual submission, name withheld, p. 103).

The Queensland Government has committed to having all 4-year-olds in remote communities in early childhood education (now pre-Prep) in five years.[319] In fact, some form of early childhood education has been available in most of Queensland's Indigenous communities for a lengthy period, so it is not clear how this commitment will bring about the amount of change that is needed.

In recent years the Queensland Department of Education and Training has sought to improve the quality and consistency of early childhood education — for example, through its Indigenous 'Foundations for Success' framework and the 'Bound for Success' strategy. In October 2008 the Queensland Premier, the Hon. Anna Bligh, announced that the Queensland Government will invest $40.7 million to enhance the pre-Prep program for Indigenous communities in 2008 and 2009. This money is mostly to be used to improve facilities, although some is also to support the professional development of teachers (QLA (Bligh) 2008, p. 3180).

The pre-Prep program is currently being implemented in all Queensland's Indigenous communities, including Torres Strait Island sites, and is to be provided in a variety of settings such as kindergartens, childcare centres and schools. The pre-Prep program is primarily intended to improve the educational outcomes of Indigenous children in these communities and the curriculum is heavily focused on developing literacy and numeracy skills. Although the current Queensland program aims to involve parents, advice and support to parents is not an explicit and substantial part of the program in the same way as it is in the Perry Preschool model described above, for example.

In our view, to maximise the benefits, the pre-Prep program in Queensland's Indigenous communities should be reviewed and efforts made to innovate by perhaps incorporating aspects of the effective Perry Preschool program and curriculum, including the weekly home visits to parents to provide advice on parenting and practical and emotional support.

Given the important potential of the pre-Prep programs in Queensland's Indigenous communities to lead to improved outcomes, the Queensland Government must ensure they are of the highest quality. The focus on enhancing the quality of these programs must be sustained in the long term, including by:

- ensuring that investment is adequate to provide training and other support to the teachers and any local community members involved in the program
- encouraging maximum attendance at pre-Prep; this should be publicly reported on to ensure that an appropriate focus on attendance is maintained
- using incentives (for attendance) and disencentives (for non-attendance) to encourage parents and families to engage with such programs to the fullest extent
- providing the highest-quality teachers (those with considerable experience and excellent reputations, or the top graduates) to undertake such programs for a number of years.

319 This is one of the COAG targets for closing the gap agreed in December 2007 (Queensland Government 2008e). It is relevant to one of the Bligh Government's Toward Q2 targets, that all children will have access to quality early childhood programs by 2020 so they are ready for school. This is based on the knowledge that children who benefit from a quality early childhood education program are less likely to have contact with the criminal justice system or mental health services, or to require family support (see Queensland Government 2008h).

In Napranum there is an example of a non-government initiative to set up this type of program — a private sector and community partnership to improve readiness of young children for formal schooling. The Napranum Parents and Learning Program (PaL) is a community owned and managed partnership funded by Rio Tinto Ltd who have a bauxite mining operation based in Weipa. It is a two-year home-based program, involving local people trained as tutors, which actively engages parents with their children in educational activities outside the school (Shepherd & Walker 2008).[320]

School and community-based programs

As we have noted, our inquiry frequently heard that 'education is not valued' in Queensland's Indigenous communities. In both submissions and consultations it was also stated that Queensland's state laws do not provide an effective response to truancy. Such laws were described as being 'unworkable', overly 'cumbersome', 'of no practical benefit' and 'fatally flawed' (see, for example, the submission of the CYIPL, p. 9; individual submission, name withheld, pp. 99–100).[321] In contrast, some submissions and also our examination of data on the use of community by-laws indicate that in some communities 'law and order' by-laws on truancy have enabled more direct action to be taken to fine parents and carers for non-attendance of children at school (see the submission of the CYIPL, p. 9; individual submission,name withheld; see also by-law data presented in Chapter 17).

The area of achieving crime prevention outcomes through school and community-based programs remains underdeveloped in Queensland's Indigenous communities.

In schools in these communities, there are no systemic programs combining parent training, teacher training and skills training targeted at young school children, comparable to the famous Seattle Social Development Project of David Hawkins and his colleagues (1999) referred to above.

There has certainly been an improved focus on problems of school attendance and performance in Queensland's Indigenous communities over recent years, which reflects agreed COAG targets and the reporting measures (see COAG 2008). For example, regarding school attendance:

- Programs that monitor and reward school attendance by students at risk of truancy have been increasingly implemented in Queensland's Indigenous communities. For example, there have been a variety of 'no school, no pool'-type programs, programs where students are rewarded for good attendance at school by being provided with an excursion at the end of semester, or efforts by teachers to do an 'all kids to school drive' by walking around the community in the mornings (see DOC 2009).
- The Welfare Reform Trial initiative in Aurukun, Hope Vale, Mossman Gorge and Coen also reinforces the focus on the importance of school attendance by including, as a trigger for FRC intervention for parents and carers, the non-attendance of children at school.

Although there are still significant gaps, there are also a variety of efforts to improve the school performance of children and young people in Queensland's Indigenous communities.

We did find during our consultations that in many communities steps have been taken in recent years to increase the number of young people from the communities able to attend boarding school elsewhere. Often these efforts appeared to be the initiative of particular individuals (for example, in Aurukun and Mornington Island), but it was clear that good interagency support had since developed, including from police. In these locations, for example, police

320 The Australian Government has more recently funded this program in Hopevale and Mapoon for an initial period of two years (Shepherd & Walker 2008).

321 Queensland's state laws on truancy provide a staged process by which action regarding truancy can be taken against parents and carers, and which may ultimately result in them being fined. See Chapters 9 and 10 of the *Education (General Provisions) Act 2006*.

played an important role in facilitating communication by informing families of the safe arrival of young people at boarding school or providing videoconferencing facilities to help families keep in touch with young people away at school.

Police in some communities also stated that they played a role in trying to make sure that the community send-off for children going to boarding school 'was better than the send-off when kids go off to detention'. It was noted that when 'practically the whole community' turns out at the airport to see someone off when they are going to a detention centre, or even returning from detention centre with minor articles of clothing issued there, this could act as an incentive for juvenile crime. Some police and community members mentioned that children in these communities were 'good at cutting each other down' in relation to educational achievement, and that peer pressure often discouraged children from doing well at school.

We did not find any evidence of formalised mentoring schemes operating in Queensland's Indigenous communities,[322] except for that provided through the Cape York Institute for Policy and Leadership 'Higher Expectations' program (see below).

Noel Pearson, the Cape York Institute for Policy and Leadership, and Chris Sarra and his Indigenous Education Leadership Institute have highlighted the importance of 'high-quality, high-expectation' teaching in Queensland's Indigenous communities (see Karvelas & Toohey 2009). The Cape York Institute has provided several innovations in this area:

- a 'Teach for Australia' program (with the assistance of the philanthropic organisation Social Ventures Australia), which includes a proposal for substantial tax-free incentives to attract and retain experienced teachers and the top graduates (see Ferrari 2008)
- a Higher Expectations Program, which operates to identify and support academically talented Indigenous secondary students from throughout the Cape York, Palm Island and Yarrabah communities so that they can complete secondary education and progress to university studies. The program is sponsored by the private sector, through the Macquarie Group Foundation, and funds are also provided by the Australian Government.
  - Funding provided during 2008 and 2009 has covered tuition and boarding fees so that the identified students can attend one of nine high-performing boarding schools in Queensland.
  - Funding also supports the development of individual leadership planning and leadership workshops, tutoring, mentoring, orientation activities, extracurricular activities and study tours.
  - The program also provides cultural awareness sessions for all staff in direct contact with Indigenous students to help alleviate the culture shock and transition difficulties that occur with young people who are used to life in small, remote communities and involvement in extended families.

  There are about 36 students involved in the program, from 15 communities. In 2006, the first student on the program from Aurukun graduated from Year 12, with 6 other students graduating since, all of whom are currently undertaking tertiary studies (see the CYIPL website).

The crime prevention value of improving the attendance and performance of Indigenous children at school cannot be overestimated. Several police officers suggested to us that the most effective, and probably the cheapest, crime prevention strategy for these communities would be for the government to offer to fully fund any child from Queensland's Indigenous

322 The Queensland Department of Education has a Queensland Community Mentoring Program (QCMP), which provides funds for programs to mentor 'at-risk' 15–17-year-old youth. We did not find evidence of the QCMP being applied to any substantial extent in Queensland's Indigenous communities. We are aware that Social Ventures Australia is also involved in a mentoring program, the Australian Indigenous Mentoring Experience, which for a number of years has operated in NSW to link university students in a one-on-one relationship with high school Indigenous students. This program does not operate in areas other than where there is a university campus.

communities who would like to take up the opportunity to attend a boarding school. To achieve crime prevention outcomes, further improvements are needed in terms of school attendance, curriculum and performance in Queensland's Indigenous communities.[323] Options include:

- providing programs for the primary school years that include parent training, teacher training and skills training for children as provided in the Seattle Social Development Program, which had the philosophy of 'catching them being good'
- encouraging mentoring schemes for young people in these communities
- involving parents and carers more — for example, by providing them with incentives for their child's attendance at school or disincentives for non-attendance
- providing more effective disincentives for parents and carers for the non-attendance of children at school (perhaps by using mechanisms available in the FRC initiative in other communities, or using community 'law and order' by-laws on truancy)
- improving attendance and performance by developing programs that offer coaching, and a cash scholarship to increase teenagers' motivation to complete Year 12
- developing, with private sector partners, rewards for attendance and educational attainment
- developing public and private sector partnerships to ensure that funding and support are available for any young person from these communities who wants to take up the opportunity to attend a boarding school
- introducing social marketing campaigns focused on changing parental attitudes to the importance of school (see the further discussion below).

Efforts should be made to engage the private and university sectors in developing and offering such programs wherever possible. For example, a university partner may be ideal for the development of a program in the primary school years to provide parent training, teacher training and skills training for children. There may be opportunities to involve the private sector, including the advertising industry, in the development and provision of incentive-based programs for parents and children, and social marketing campaigns aiming to increase the value placed on school education. One submission to our inquiry reported that the Century Mine was eager to support the provision of incentives to children for consistent attendance at school as part of its support of the Gulf community (individual submission, name withheld, p. 112).

The success enjoyed in a relatively short space of time by Cape York Partnerships and the Cape York Institute for Policy and Leadership in forming partnerships in this area should provide a positive model. In this era of increasing corporate social responsibility, and with evidence of such successful partnerships being established, more support for such ventures should be sought from the private sector and efforts directed toward engaging the private sector in such partnerships.

323 The Queensland Department of Education has a range of relevant initiatives and pilot programs, but these pilot programs are not operating in Queensland's Indigenous communities. For example:

- identifying Indigenous students with high learning potential to participate in learning camps or programs that aim to convert their potential into performance and build on this knowledge for application in the classroom; a pilot project commenced in late 2006 across 23 schools in the Sunshine Coast South District
- programs focused on working with Indigenous students, teachers and families to improve student attendance, achievement and school completion levels — for example, a pilot Indigenous Education Support Structures (IESS) four-year program to address Indigenous students' educational outcomes, in Mt Isa, Cairns, Rockhampton, Ipswich and Cunnamulla-Charleville.

Media and social marketing campaigns

What's the evidence about media and social marketing campaigns?

One more innovative method of preventing crime may be through the mass media and social marketing campaigns, which typically focus on facilitating 'the acceptance, rejection, modification, abandonment, or maintenance of particular behaviours' by a target group (Grier & Bryant 2005, p. 321). Such campaigns are particularly prevalent in the area of public health — in Australia, for example, campaigns discouraging smoking, promoting behaviours to prevent skin cancer, promoting safe sex and encouraging people to engage in increased physical activity are very well known.

Importantly, evidence from the public health area suggests that such campaigns can be effective in changing social norms, values and behaviours — even those that may be considered relatively entrenched, such as smoking and drinking. For example, a meta-analysis of 48 public health campaigns conducted in the United States between 1974 and 1997 found that, on average, 9 per cent of the population changed their behaviour after the campaign (Snyder & Hamilton 2002).[324] Similarly, a meta-analysis of 72 published and unpublished studies of media campaigns focused specifically on curbing youth substance use indicated that such campaigns had positive effects on knowledge, attitudes and behaviour (Derzon & Lipsey 2002, cited in Noar 2006). Such findings suggest that similar campaigns to change attitudes and behaviours that contribute to crime may be useful.

Mass media and social marketing campaigns have previously been used to target particular types of crime directly — most notably drink driving, sexual violence and domestic violence. Some specific programs in these areas have been found to have highly positive effects. In particular:

- Elder et al. (2004) systematically reviewed eight studies that examined the effectiveness of mass media campaigns in Australia, New Zealand and the United States in reducing drink driving and alcohol-related road accidents. Although they noted that no study provided unequivocal evidence of the campaign's effectiveness, the consistently positive results across the studies led the authors to conclude that there was strong evidence that

  > mass media campaigns that are carefully planned, well executed, attain adequate audience exposure, and are implemented in conjunction with other ongoing prevention activities … are effective in reducing alcohol-impaired driving and alcohol-related crashes. (Elder et al. 2004, p. 65)

  More importantly, cost–benefit analyses for three of the campaigns indicated that their benefits to society greatly outweighed their costs of implementation. The Victorian Transport Accident Commission's 'Drink drive — bloody idiot' campaign, for example, was estimated to have saved $8 324 532 per month in medical costs, lost productivity, pain, suffering and property damage, while costing just $403 174 per month to run (Elder et al. 2004).
- A social marketing campaign in California focused on preventing sexual violence has reportedly had positive effects on related attitudes among young people (see Lee et al. 2007). The 'MyStrength' campaign was developed by the California Coalition Against Sexual Assault, with support from the California Department of Health Services, to reposition 'the concept of male strength to encourage, motivate, and enable young men to take action to prevent sexual violence' (Lee et al. 2007, p. 19). The campaign has as its central theme 'My Strength Is Not for Hurting', and involves
  - paid advertising in the form of radio ads, billboards and cinema ads
  - peer-to peer-contact in the form of MyStrength clubs, where young males explore over 16 weeks ways in which they can stop sexual violence

324 Effect sizes ranged from $M_r = 0.01$ to $M_r = 0.41$, with an average of $M_r = 0.09$. The authors noted that, 'reassuringly', this average effect size was comparable to those found for a range of other preventive interventions, including school-based drug programs and clinic-based education for cardiac patients (Snyder & Hamilton 2002, p. 375).

  - a supportive school environment, including the distribution of campaign materials in high schools
  - campaign ambassadors to promote the MyStrength message in local communities.

  Preliminary evaluations of the program indicate that those young men who participate in the MyStrength clubs are more likely to say that they would intervene to stop sexual harassment (Lee & Lemmon 2006, cited in Lee et al. 2007). Surveys of high school students also show that those who are exposed to the campaign are somewhat more likely to have 'respectful and equitable attitudes' than those who are not (Kim 2006, cited in Lee et al. 2007, p. 19).
- A social marketing campaign in Western Australia — the 'Freedom from Fear' campaign — has had considerable success in motivating male perpetrators of intimate partner violence to voluntarily attend counselling (see Donovan, Paterson & Francas 1999; Gibbons & Paterson 2000). Launched in 1998, the campaign involves advertising to raise awareness of the Men's Domestic Violence Helpline among perpetrators and potential perpetrators, and to encourage these men to use it. The Helpline is staffed by trained counsellors who assess the callers, provide telephone counselling and refer suitable callers to free, government-funded counselling. Initial results from 2000 showed that awareness of domestic violence advertising within the general population increased from 29 per cent to 88 per cent 21 months after the campaign. More importantly, over 3840 members of the target audience used the Helpline, including 2543 self-identified perpetrators. Of these self-identified perpetrators, 53 per cent (1352 men) accepted a voluntary referral to an appropriate counselling program (Gibbons & Paterson 2000). The campaign has won a number of awards, including the 1999 Novelli Prize for Excellence and Innovation in Social Marketing and the 1999 Australian Violence Prevention Award (Western Australian Government n.d.).

A recent social marketing campaign in New York has shown early signs of success in improving school attendance and performance.

The 'Million' campaign — Droga5, New York

Droga5 was one of six New York advertising agencies challenged in 2007 to come up with a campaign that would improve attendance and achievement among that city's 1.1 million public school students, many of whom are poor and disadvantaged. Other agencies came back with more predictable ideas: a graffiti campaign, celebrity endorsements. Droga5 focused on what motivates kids.

Its 'Million' campaign is based on that unmissable status object, the mobile phone. It began with a pilot program of 2800 students in seven schools. Students were each given a mobile phone, which switched between School's In and School's Out mode. When the children were in school, the calling and text functions were deactivated. But that didn't mean the phone was out of action. Educational software loaded onto the phone meant students could use it for research. It was also a platform for tests.

Teachers scored students in key areas such as attendance, behaviour and class performance. Based on those scores, students earned Million points that could then be converted into free talk time, text messaging, music downloads and discounts at stores. These could be used in School's Out mode.

The program initially met with some resistance. New York City had banned mobile phones in schools in 2006. And some parents were concerned that their children were being offered a phone as a kind of foot-in-the-door policy for branded advertising.

After the pilot program, 75 per cent of the students who took part said they were working harder and interacting more with teachers. Sixty-five per cent of parents noted that their children were doing better in school and doing more homework.

Droga5 and the US Department of Education are waiting for the results of a comprehensive assessment of the success of the pilot. Pending funding, their hope is to expand the program.

Million won the Titanium Integrated award at Cannes in 2008, advertising's equivalent of the Best Film Oscar.

(Source: information adapted from that provided on the ABC website, ABC TV, *The Gruen Transfer*, 22 April 2009, see <www.abc.net.au/tv/gruentransfer/stories/s2549912.htm>).

Although successful campaigns are encouraging, it is important to recognise that a link between mass media and social marketing campaigns and *behaviour* change is not necessarily well established in many cases (Harvey, Garcia-Moreo & Butchart 2007). For this reason, campaigns aimed at changing behaviours should be implemented in conjunction with other strategies. Furthermore, the effectiveness of campaigns in general can vary considerably depending on a range of factors. Snyder and Hamilton (2002), for example, found that mass media campaigns were generally better at getting people to adopt new, positive behaviours than getting them to stop or prevent problem behaviours. Other factors related to the development, implementation and evaluation of a campaign can also affect its outcome. Research in the areas of both public health and crime prevention has identified a number of such factors that are likely to enhance the chances of a program's success (see, for example, Grier & Bryant 2005; Harvey, Garcia-Moreo & Butchart 2007; Noar 2006; Randolph & Viswanath 2004; Snyder & Hamilton 2002). These include:

- extensive formative research with the target audience to develop a comprehensive understanding of both the audience and the problem to be addressed; this was a key aspect of the 'Freedom from Fear' campaign, and helped to identify a campaign message (focused on arousing feelings of guilt and remorse about the effects of domestic violence on children) that was relevant and effective for the target audience (Donovan, Paterson & Francas 1999)
- pre-testing marketing messages with the target audience to ensure that the messages will be suitable and effective
- grounding the campaign in appropriate theories — including those relating to commercial marketing, media advocacy, behavioural analysis and behaviour change — to ensure that campaign messages target the determinants of the attitudes or behaviours to be addressed, in a way that is most likely to produce change
- developing creative messages and aiming these at specific segments of the target audience
- ensuring maximum exposure of the campaign message in channels widely and frequently viewed by the target audience
- conducting a thorough process evaluation that monitors the implementation of the campaign
- providing a supportive environment for the campaign to operate in — as in the case of the Men's Helpline in the 'Freedom from Fear' campaign, it is vital that the necessary services and resources are in place to enable people to make the recommended changes
- conducting rigorous outcome evaluations to enable confident conclusions to be drawn about the effectiveness of the campaign in changing attitudes and behaviours.

Incorporating these principles into the design and implementation of mass media and social marketing campaigns will be important in ensuring that they provide the greatest benefits in terms of attitude and behaviour change (see also Homel & Carrol 2009).

How can we build on our efforts to use media and social marketing campaigns?

To date, there has been some sporadic use of media and social marketing campaigns in Queensland's Indigenous communities.

Most recently, in Normanton a project tackling Indigenous family and domestic violence has achieved some prominence and success. The Normanton Building Safer Communities Action Team committee and the Normanton Stingers Rugby League Football Club ran a social marketing campaign on domestic violence that won the annual Australian Crime and Violence Prevention Awards in October 2008.

The slogan 'Domestic Violence — It's Not Our Game' was adopted by the team and team members agreed to become role models in the community. By agreeing to be role models, all team members accepted that the penalty for violence was exclusion from games and ultimately the team. The slogan has been promoted widely throughout the community on television advertisements, car stickers, wristbands, banners at games and community events, and the

players' and supporters' jerseys. The purpose of the campaign was to create a culture in which domestic and family violence is not the accepted norm. The project has seen a 55 per cent decrease in the prevalence of domestic and family violence in Normanton (AIC 2008).[325]

More use, and more creative use, of social marketing campaigns in Queensland's Indigenous communities could be useful in reducing crime. Campaigns may relate to issues such as:

- the inappropriateness of violence as a means to resolve disputes
- non-violent parenting and modelling non-violent behaviours
- school attendance and performance.

The development of any such campaigns could involve private and public sector partnerships. For example, they may involve the expertise of advertising agencies, public health professionals and the university sector. Obviously, to be effective, any such campaign must be appropriately researched and designed for the target audience and there must be community involvement. It may also be possible that such campaigns can be entirely developed 'from the ground up', as was the case in Normanton.

Implementing improved crime prevention strategies outside the criminal justice system

Even with appropriate recognition of the importance of crime prevention efforts outside the criminal justice system, and support for such efforts, there will remain significant bureaucratic and jurisdictional barriers to their effective development and delivery. By their nature, crime prevention efforts outside the criminal justice system often require a degree of multi-agency cooperation. Health, community development, education and justice systems all have a stake in the outcomes that such programs can bring.

It is also notoriously difficult for government to strike the right balance in terms of the size and nature of its role in crime prevention efforts. Though crime prevention outside the criminal justice system in Queensland's Indigenous communities must have government support and leadership if it is to be successful, Indigenous people must remain central in solving the problem, and real success depends on action at the local level. Government ideally should be a junior partner, limited to playing a supporting role. Where this is not possible, government should seek to pursue strategies to ensure its 'inbuilt obsolescence' — that is, government should aim to retreat over time, leaving behind sustainable community-run crime prevention efforts.

Queensland has within its borders 'national treasures' in the field of crime prevention and parenting programs, such as:

- Professor Ross Homel, Foundation Professor of Criminology and Criminal Justice at Griffith University, and Director of the university's Strategic Research Program in the Social and Behavioural Sciences. Ross Homel is the co-director of a large early intervention project in a disadvantaged area of Brisbane (the Pathways to Prevention Project). In 2004, this project, which he developed in partnership with Mission Australia, won equal first prize in the National Crime and Violence Prevention Awards.
- Professor Matthew Sanders, Queenslander of the Year 2007, Professor of Clinical Psychology, Director of the Parenting and Family Support Centre at the University of Queensland and Founder of the Triple P — Positive Parenting Program. He is a leader in the field of population-level approaches to providing parenting and family support.

325 The success of the Normanton program echoes the success of a similar program at Woorabinda in the 1990s, which focused on domestic violence issues through the rugby league team, the Wadja Warriors (see Cunneen 2001b, p. 64).

Governments must support and engage the involvement of such expertise if we are to address the crime problem in Queensland's Indigenous communities. Governments should be applauded for supporting initiatives such as Cape York Partnerships, the Cape York Institute for Policy and Leadership and the Indigenous Education Leadership Institute, which can provide innovative thinking (such as the FRC trial developed by the Cape York Institute, which has been given substantial support by the Queensland and Australian Governments).

Better engagement of the university sector, particularly the crime prevention expertise at Griffith University and the parenting program expertise at the University of Queensland, may assist. There could also be increased involvement of private sector expertise, especially by getting those in the advertising industry to work with Indigenous communities to develop social marketing campaigns (perhaps with mining industry support) relevant to preventing crime and violence. Such campaigns should be evaluated to determine their effectiveness.

Summary and conclusions: stemming the flow of offenders to the criminal justice system

Despite previous recommendations highlighting the importance for Indigenous communities of broad approaches to crime prevention that extend beyond the criminal justice system, there has continued to be a heavy focus on dealing with offending and offenders by allocating resources to the criminal justice system.

A multiplicity of crime prevention approaches in Indigenous communities is needed, to address the underlying causes of crime. To date, initiatives outside the criminal justice system in Queensland's Indigenous communities remain heavily 'back-end' focused — that is, they concentrate on preventing offending through opportunity reduction at the point at which offending may occur. Other programs outside the criminal justice system, such as outstations, camps and sport and recreational activities for young people, are small scale and are provided only sporadically. Largely they also lack an evidence base to suggest that they will be effective in reducing crime.

There continues to be a significant gap between what we know can be done and what is being done in the area of early intervention. Some early intervention programs have been shown to have a very substantial crime prevention effect, far greater than other interventions that may be provided later in life when offending has commenced.

Given what is known about:

- Indigenous overrepresentation in the criminal justice system
- the disruption to Indigenous parenting and families that has been caused:
  - by processes of colonisation, including the past policies that caused the removal of many children from their Aboriginal parents, and the proof available about the intergenerational effects of such removal
  - by sickness and premature death, and
  - by the large number of Indigenous people, including parents and carers, in prison
- the link between inadequate parenting and involvement in crime

it is tragic that, despite previous recommendations, greater efforts have not been made to urgently address the need to provide support and advice to Indigenous families, parents and carers within Queensland's Indigenous communities (see Aboriginal and Torres Strait Islander Women's Task Force on Violence 1999, pp. 156 & 258; see also HREOC 1997; Zubrick et al. 2005, pp. 571–5).

Although it can be argued that more should have been done sooner in terms of implementing early intervention approaches to crime prevention in Queensland's Indigenous communities, there are some positive steps occurring in Queensland on which we can build — in terms of parenting programs and home visiting services, for example. The Welfare Reform Trial initiative,

and particularly the case management approach taken by the FRC and the associated programs and services, provides an important step in four communities to address the underlying causes of crime and to rebuild social norms.[326]

To date, Cape York Partnerships and the CYIPL have proven to be effective in developing innovations and partnerships in this area. Their example illustrates that government should not be in the front line of developing innovative crime and violence prevention strategies and partnerships with Indigenous communities, but rather government can have a useful role as a supporting partner for Indigenous organisations, which are better connected at the regional and local levels. This is likely to be especially true for programs that include a component of advice and support to parents; there is a clear danger that the provision of advice and support to Indigenous parents and families could be imposed by governments in a paternalistic or ethnocentric manner that would doom any effort to failure from the outset.

This being said, the Queensland Government, especially through ATSIS, needs to develop a stronger understanding of and focus on what the evidence can tell us about what might work in terms of preventing crime and violence.

We see a key part of the Queensland Government's role as being to support and facilitate the development of a range of partnerships in this area. Importantly, efforts should include:

- engaging the expertise available in the university sector, such as that at Griffith University regarding developmental approaches to crime prevention, and at the University of Queensland regarding parenting programs
- recognising and encouraging the contribution of the private sector (both 'not for profit' and 'for profit' agencies), such as the examples we have seen in the work of Cape York Partnerships, the CYIPL and corporate bodies such as the Macquarie Group and Rio Tinto Ltd
- capacity building in Indigenous communities to develop a better understanding of the evidence regarding parenting practices and outcomes later in life, for example.

➡ Action

That the Queensland Government facilitate partnerships and provide support to them, to encourage innovation in the area of the development and implementation of crime prevention strategies for implementation on the ground in communities. Local and regional organisations such as Cape York Partnerships, CYIPL and the Apunipima Cape York Health Council, should be supported to develop innovations and partnerships in this area.

➡ Action

That:

- **The Queensland Government and ATSIS ensure that an appropriate mix of crime prevention strategies outside the criminal justice system is implemented in each of Queensland's Indigenous communities, with a particular focus on the implementation of evidence-based early intervention strategies.**
- **Along with its role in coordinating government, ATSIS assist where necessary in facilitating the development of partnerships with communities, community organisations, the private sector, universities and others to ensure that the best expertise is applied to the problems.**

326 Depending on the results of the evaluation of this trial, consideration should be given to adapting the JP Magistrates Courts in other communities to incorporate some of the key elements of the FRC, such as case management and the use of a range of incentives and disincentives to change behaviour (see Chapter 17).

Successful efforts made in this regard, which for our purposes are focused on achieving important outcomes in preventing crime and violence, will also help government to achieve the COAG *Closing the Gap* targets for Indigenous people and to meet the commitments made under the National Partnership Agreement Between the Commonwealth of Australia and the State and Territory Governments Regarding Indigenous Early Childhood Development (2008) (Australian Government 2009; COAG 2008).

➡ Action

Support to parents and carers in Queensland's Indigenous communities should include nurse home visits for new mothers and carers, based on the Professor Olds model. Similar home visiting services that depart substantially from the model shown to be effective elsewhere must be rigorously evaluated so that we can build a body of evidence about what is effective in these communities.

➡ Action

That parents, families and carers in Queensland's Indigenous communities should have increased exposure to programs that provide support and skills for parenting, such as the Triple P — Positive Parenting Program.

➡ Action

The pre-Prep program in Queensland's Indigenous communities should be reviewed and efforts should be made to incorporate aspects of the effective Perry Preschool program, including the weekly home visits to parents to provide advice on parenting and practical and emotional support.

➡ Action

Efforts should be made to engage the private and university sectors in developing and offering school and community-based programs to provide incentives for school attendance and achievement, and disincentives also. The success enjoyed in a relatively short space of time by Cape York Partnerships and the Cape York Institute for Policy and Leadership in forming partnerships in this area should provide a positive model.

➡ Action

More use, and more creative use, of social marketing campaigns in Queensland's Indigenous communities could work to reduce crime. Campaigns may relate to issues such as:

- the inappropriateness of violence as a means to resolve disputes
- non-violent parenting and modelling non-violent behaviours
- school attendance and performance.

The Queensland Government should engage the expertise of advertising agencies, public health professionals and the university sector to develop and trial such a campaign with appropriate community involvement.

16

CRIME AND VIOLENCE PREVENTION WITHIN THE CRIMINAL JUSTICE SYSTEM

As we have stated, the first step towards optimising the use of criminal justice resources in Queensland's Indigenous communities must be giving a higher priority to reducing the size of the crime and violence problem in these communities.

We talked in the previous chapter about the importance of having a mix of crime and violence prevention strategies outside the criminal justice system, including those designed to reduce the opportunity for crimes to be committed, as well as those that seek to address the underlying social causes. In that discussion we argued for a stronger focus on 'front-end' approaches to crime prevention, particularly in relation to those types of interventions early in life shown through research to be effective. Although the criminal justice system is at the 'back end' of the crime prevention continuum, it also plays an important (if more inherently limited) crime prevention role.

The crime prevention role of the criminal justice system can be said to lie at the 'hardest' end of the problem — many of those most deeply involved in the criminal justice system are individuals who face multiple and complex challenges such as addictions, mental impairment, developmental deficits, poor education, and long-term unemployment. Providing effective interventions to change the trajectories of such individuals after they have begun offending is certainly possible, but difficult. The criminal justice system is an important way of intervening in the lives of offenders and preventing further crimes being committed; this is particularly important in terms of dealing with chronic or persistent offenders, who we know account for a large proportion of offences.

Because of the importance of implementing effective crime prevention for the future of Queensland's Indigenous communities, the criminal justice system in these communities must seek to maximise its crime prevention effect. Unfortunately, understanding of the evidence for the crime prevention potential of aspects of the criminal justice system remains underdeveloped and is often confused in government policy. In the past, for example, many policies and practices that were said to be focused on reducing Indigenous overrepresentation in the criminal justice system were policies and practices that were likely to have little if any crime prevention effect. Having a sound understanding of the evidence about the crime prevention effectiveness of the various aspects of the criminal justice system enables us to develop policies and strategies that will maximise the effectiveness of this important, but limited, role of the criminal justice system.[327]

This chapter considers the evidence regarding the crime prevention effectiveness of the following aspects of the criminal justice system:

- **the police**
- **diversionary options**
- **courts**
- **corrections.**

327 It should be noted that, even if the research suggests that an aspect of the criminal justice system does not have any crime prevention effect, it may have other important outcomes.

In this chapter we also consider information on the availability of those responses of the criminal justice system that may have the greatest crime prevention effect in Queensland's Indigenous communities, and what needs to be done to maximise the crime prevention effect of the criminal justice system in these communities.

What can the police do to prevent crime?

In Chapter 9 we provided a detailed outline of various policing strategies most relevant to Queensland's Indigenous communities and we discussed the evidence relating to their effectiveness in reducing crime. We do not repeat these details here but briefly summarise our conclusions about the role that police have to play in crime prevention in Queensland's Indigenous communities.

1. First, there is clear evidence that individuals are less likely to offend when there is a credible threat of apprehension for offending. For example, there are a large number of studies that show the close relationship between the perceived risk of apprehension and people's self-reported degree of willingness to engage in crime.[328]
2. Second, police play a crucial role in limiting the opportunities and incentives for involvement in crime. For example, there are a number of research studies which provide evidence that police crackdowns or patrols can be very effective, at least temporarily, when they target crime 'hotspots'.[329] This kind of strategy, which aims to reduce the opportunity for offending, is likely to be particularly effective in reducing transient offending.
3. In Queensland's Indigenous communities, the police must play a crucial additional crime prevention role by firmly entrenching the philosophy of problem-solving and partnership policing strategies (such as the QPS POPP framework) in these communities. Accordingly, the role of the police in Queensland's Indigenous communities should be seen as substantially different from that of officers in other locations; in particular, police must see their role as far more extensive than mere law enforcement — problem solving in partnership should be central to police work in these communities.

What role can diversion play in crime prevention?

What is diversion?

Diversion is 'the process of keeping offenders and other problem populations away from the institutional arrangements of criminal justice or welfare' (McLaughlin & Muncie 2008, p. 141). There are numerous opportunities throughout the criminal justice process for diversion to occur. The police, juvenile justice services and the courts can all provide diversionary opportunities.

Diversion has played an increasing role in the criminal justice system, not just in Indigenous communities, but across Queensland, Australia and elsewhere, especially for juveniles. The impetus for the move toward diversionary options arises from:

- the failure of the prisons to stem the tide of repeat offenders, which means that different strategies for dealing with offenders are worth exploration
- the sheer costs of formal courtroom processes and of maintaining prison buildings and programs

328 Although there is evidence of this close connection, such survey research designed to identify factors that influence compliance with the law also finds that most people are inhibited from crime by their sense of personal morality rather than the threat of being apprehended and prosecuted (cited in Weatherburn 2004, p. 117).

329 See, for example, McGarrell et al. (2001) and Sherman (1990); cf. the Kansas City Patrol Experiment (cited in Weatherburn 2004, p. 95).

- concerns about the negative impact of conventional methods of conflict resolution and punishment on the rehabilitation of offenders and of the negative labels on the re-integration of offenders into society (White & Perrone 1997; McLaughlin & Muncie 2008).

The rationale for diversionary options is that they provide a more positive way to deal with crime and offending behaviour than the formal criminal justice processes because they tend to operate in a less intrusive manner and they are community based. Another rationale commonly offered for increasing the use of diversionary options is that the criminal justice system itself has a stigmatising and criminalising effect on offenders, particularly young offenders.[330] On this basis it is said that, the earlier young people become involved in the criminal justice system, the harder it is for them to get back onto a positive pathway (see, for example, Queensland Government 2006a).

The notion of 'restorative justice' plays an important role in diversionary strategies such as mediation and dispute resolution, and youth justice conferencing. Restorative justice carries with it an:

> acknowledgment that crime is an offence against the victim, not the state, and that the injury caused by crime impacts not only on that victim, but also in families of both the victim and the offender and on their respective communities; that these broader injuries can only be resolved by involving all of the key protagonists in the decision-making process; and finally, that offenders must be given the opportunity to make good the damage they have caused, thereby bringing about reconciliation between victims and offenders and the restoration of community harmony. (Van Ness 1990, p. 99)

The restorative justice philosophy is also said to accord strongly with Indigenous approaches to justice and has been an approach endorsed and encouraged by many previous reviews (see, for example, Aboriginal and Torres Strait Islander Women's Task Force on Violence 1999; Fitzgerald 2001).

Unfortunately there is a great deal of definitional ambiguity associated with the term 'diversion'. An important distinction is sometimes drawn between two types of diversionary options:

1. 'Diversion from' custody, court or the criminal justice system. For example, in Chapter 13 we discussed the range of diversionary options available to police in order to divert people from custody or the criminal justice system, such as by taking no action, issuing a caution, issuing a notice to appear rather than relying on the process of arrest, taking a drunken person to a place of safety, or discontinuing arrests in a range of circumstances, such as for drunkenness.
2. 'Diversion to' treatment or intervention programs. For example, in some limited circumstances police and the courts can divert:
   - juveniles to youth justice conferences
   - offenders to mediation or other alternative dispute resolution
   - juveniles to a bail support program
   - minor drug offenders to a 'drug assessment program'.

   Courts can also 'divert' people into treatment programs as a condition of the court orders made when sentencing a person.

The importance of the distinction between 'diversion from' and 'diversion to' becomes clear when the evidence of the crime prevention effectiveness of various diversionary options is examined and considered alongside the pattern of crime in Queensland's Indigenous communities.

330 It should be noted that there is some debate about the interpretation of research findings that, with each successive court appearance by a juvenile, the likelihood of another court appearance increases. On one hand, such findings may indicate that bringing juveniles to court is counterproductive, in that it seems to increase the risk of re-offending. On the other hand, the proportion of persistent juvenile offenders may grow with each successive court appearance simply because those who are less likely to re-offend drop out of the system (see Weatherburn 2004, p. 59).

The continuing focus on increasing the use of diversionary strategies

As we have outlined in Chapter 2, particularly since the time of the Royal Commission into Aboriginal Deaths in Custody, great store has been placed on the notion that increasing diversionary options will be effective in reducing Indigenous overrepresentation in the criminal justice system. The Queensland Government has repeatedly made commitments to increasing its use of diversion in this context, such as in relation to the Queensland Aboriginal and Torres Strait Islander Justice Agreement (see Queensland Government 2006a, pp. 19–22).

The continuing focus on increasing the use of diversion can be seen in:

- The Queensland Government's recent allocation of resources to Indigenous criminal justice issues, which includes commitments to increasing the use of alternatives to arrest and other diversionary measures. In the 2007–08 State Budget, $21.3 million over four years was allocated to target 'diversionary centres, cell visitor services and other diversionary measures' (Queensland Government 2008e, p. 74). The 2008–09 State Budget's Indigenous Alcohol Rehabilitation Support Program allocated $15.04 million to deliver 'diversionary initiatives' (and a further $29.61 million for alcohol and drug detoxification and rehabilitation programs, and to refurbish and enhance alcohol and drug treatment facilities) (Queensland Government 2008g, 2008i).
- The Acting State Coroner's comments in the Mulrunji inquest regarding diversion included that Queensland's laws and the QPS OPM should be amended to reflect the principle of arrest as a last resort and to strengthen the demands on police to use alternatives to police intervention for intoxicated persons by way of arrest,[331] including the use of diversionary facilities and community patrols (Clements 2006).[332]
- Submissions to our inquiry urged expansion of diversion, especially for young people in Indigenous communities (see submissions of the Department of Communities, p. 3; Queensland Health, p. 4; Sisters Inside, p. 5; Department of Emergency Services, p. 1; Department of Child Safety, p. 4; QPS, p. 16). A number of submissions to the inquiry also argued for strengthening legal demands on police to use arrest only as a last resort, especially for public order offences and juveniles; they also argued for more facilities and health and community services to support police efforts to divert, especially to divert intoxicated people (individual submission, Ashby, p. 1; LAQ, pp. 3 & 5; ATSILS (Qld Sth), pp. 4, 7–8; JCU Law School, pp. 14, 25 & 29; Queensland Health, p. 4).

What is the evidence regarding the crime prevention effectiveness of diversionary options?

Weatherburn, Fitzgerald and Hua (2003, p. 70) have argued that there is limited evidence that diversion effectively reduces crime rates. That is, studies that adequately control for the type of offence involved, and the proportion of offenders likely to desist from offending anyway, show that few diversionary options can demonstrate a substantial crime prevention effect. This may

331 It should be noted that the coronial comment refers to a broad category of 'intoxicated persons' rather than the current statutory duty, which requires police to consider diversion for a more limited category — those 'arrested for being drunk in a public place' (see s. 378 of the *Police Powers and Responsibilities Act 2000*). Despite the Queensland Government giving its support to implementing the changes suggested by the Acting State Coroner in November 2006, no changes have been made to the relevant legislation and only some minor changes have been made to the QPS OPM in this regard (Queensland Government 2006c). The comments of the Acting State Coroner in the coronial inquest into the death of Mulrunji triggered a review of all police training regarding the exercise of police discretion to arrest. The review was said to identify some gaps in training to be rectified, but did not identify any major changes required (Queensland Government 2006c; Clements 2006).

332 The Queensland Government's response supported these recommendations and said that expanding diversionary measures on Palm Island would be a 'priority'. The government said that the Department of Communities would consult on the development of an 'integrated approach to diversionary services on Palm Island including a community patrol, Cell Watch Visitors program and diversion facility' (Queensland Government 2006c). The Queensland Government (2008b, 2008c) has subsequently reported that it provides funding for a cell watch program on Palm Island.

be particularly true for those diversionary options that can be described as providing merely 'diversion from' custody or the criminal justice system.[333] For example:

- Though the introduction of notices to appear may have effectively reduced the rate of arrest made by police, there has been no evaluation of the impact of the introduction of notices to appear to assess their effectiveness in comparison with arrest in deterring future offending (Weatherburn 2004, p. 32).
- There is little evidence that restorative justice conferencing is effective in reducing re-offending among adults (see Jones 2009).
- Although not conclusive, existing evidence suggests that police cautioning and referral to conferencing for juvenile offenders may be associated with greater crime prevention effects than is the case with court processing (Challinger 1981; Cunningham 2007; Dennison, Stewart & Hurren 2006; Luke & Lind 2002; Sherman, Strang & Woods 2000; Vignaendra & Fitzgerald 2006; see also Snowball 2008). In particular:
  - Thirty-one per cent of young Queensland offenders who received a caution for their first offence had further contact with the criminal justice system as a juvenile, compared with 42 per cent of those offenders whose first offence was dealt with by way of a court appearance (Dennison, Stewart & Hurren 2006).
  - Around 20 per cent of juveniles in the Northern Territory who initially received a warning or caution re-offended within the following year, compared with 39 per cent of juveniles who appeared in court (Cunningham 2007).
  - Over a longer follow-up period of five years, fewer juveniles who received a caution (42%) or participated in a conference (58%) had a subsequent court appearance for a proven offence than those processed through court (68%) after eight years (in Chen et al. 2005; Vignaendra & Fitzgerald 2006).
  - Juveniles dealt with through the court process tend to re-offend more quickly than those juveniles diverted away from it (Cunningham 2007; Vignaendra & Fitzgerald 2006).

  However, it has been found that these rates and patterns of re-offending may be influenced by a number of factors. The research evidence suggests that cautions and conferencing may be less likely to reduce future contact with the criminal justice system for:
  - male compared with female juveniles (Cunningham 2007; Dennison, Stewart & Hurren 2006; Vignaendra & Fitzgerald 2006)
  - Indigenous compared with non-Indigenous juveniles; Vignaendra & Fitzgerald (2006), for example, reported that 81 per cent of Indigenous juveniles who completed a conference re-offended within five years, compared with 56 per cent of non-Indigenous juveniles (see also Cunningham 2007; Dennison, Stewart & Hurren 2006)
  - juveniles who have been the subject of child maltreatment notifications compared with those who have not (Dennison, Stewart & Hurren 2006).

  This highlights the importance of taking multiple risk factors into account, and the inadequacy of cautioning as a crime prevention strategy when these other factors are present.[334]

333 It should be noted that such diversionary options may be effective in achieving outcomes other than crime prevention; for example, they may be effective in reducing the number of people in custody.

334 There is also some evidence to suggest that the likelihood of re-offending is affected by the type of offence being dealt with, but the exact nature of the relationship is unclear. For example, Vignaendra and Fitzgerald's (2006) findings indicate that cautioning may be more effective for juveniles who have committed offences against the person, compared with those who have committed property offences, while conferencing may be more effective for juveniles who have committed property offences, compared with those who have committed offences against the person or 'other' offences. These findings contrast with those of Sherman and Strang (2007), however, who suggest that conferencing programs for juveniles work better with more serious offenders, such as those convicted for violent crimes. Vignaendra and Fitzgerald (2006) concluded in their study that the impact of offence type 'was negligible in most instances' where a range of other factors were controlled for, and that its relationship with re-offending 'was ambiguous at best' (p. 13).

- There has been limited evaluation of diversion through bail-based support programs in Australia (Denning-Cotter 2008); in Queensland, the Conditional Bail Program, which commenced in 1994 and provides intensive youth worker support to young people on bail, was evaluated in 1999 and 2002–03 but these evaluations did not consider the program's impact on recidivism (see Venables & Rutledge 2003).
- There is a range of both police and court-based diversionary initiatives that involve drug assessment and education programs for offenders:
  - There is limited information about the effectiveness of such police diversionary initiatives. One recent study found that the evidence regarding the extent to which they are instrumental in reducing drug use and related offending behaviour at this stage is inconclusive. The study states: 'because of their positioning in the system and the relatively limited extent of intervention provided, [these initiatives] are more about diversion from the criminal justice system than about impacting on behaviour' (Wundersitz 2007, p. 60). The study concludes that we need to be realistic about our expectations of such programs, especially in terms of dealing with entrenched offenders (Wundersitz 2007, p. 60).
  - A recent study noted that such court-based drug diversion initiatives are still in an early period of operation and concluded that the evidence regarding the effectiveness of a number of Australian jurisdictions' court-based drug diversion initiatives is ambiguous and too limited to allow conclusions to be drawn (Wundersitz 2007, p. 74).[335]

Diversionary strategies, particular those strategies that are merely 'diversion from' the criminal justice system rather than 'diversion to' some more substantial treatment or intervention, have a limited ability to address the underlying causes of crime.

It should not be concluded, however, that the appropriate policy response to this evidence is to abandon or reduce support for diversionary strategies. Maximising the use of diversionary options should remain a fundamental policy objective for a range of reasons, such as to minimise the number of people in custody and thus reduce the risks associated with holding people in custody, or simply on the basis that for many offenders a diversionary strategy may provide the most cost-effective response (as many offenders are likely to desist from offending anyway).[336]

However, the important conclusion that must be drawn from consideration of this evidence is that relying on diversionary options to reduce Indigenous overrepresentation in the criminal justice system in Queensland's Indigenous communities is unlikely to be effective. In order to maximise the crime prevention effect of diversionary options in Queensland's Indigenous communities, we must be seeking to ensure that there is an appropriate level of focus on 'diversion to' treatment and intervention, rather than 'diversion from' the criminal justice system.

What role can the courts play in crime prevention?

There are two ways in which the courts may be able to exert a crime prevention effect — through the impact of:

1. The process itself
2. The sanctions imposed.

Again we consider the evidence regarding the crime prevention effectiveness of each.

335 We have dealt with the evidence regarding Drug Courts separately below.

336 It is generally true of offenders that only a small proportion of offenders making their first appearance in court ever re-appear in court again. So there is a persuasive argument that there is little point spending large sums of taxpayers' money on interventions designed to reduce re-offending among those who will stop offending of their own accord (see Weatherburn 2004, p. 138).

What is the evidence regarding the crime prevention effectiveness of court processes?

There have been a number of attempts to modify the court process itself; in part, such efforts hope to have a greater crime prevention effect. For example, in Chapter 6 we have referred to the JP Magistrates Courts that operate in some of Queensland's Indigenous communities.[337] In many jurisdictions, court processes have been modified specifically to meet the needs of Indigenous offenders. For example, the Murri Court has been implemented in Queensland, primarily in Brisbane and other large regional centres, but is now also operating at Cherbourg and Coen, and is being considered for extension to other Indigenous communities (Queensland Government 2009a). In NSW, circle sentencing provides a similar process. Each of these innovations involves the offender's community in the sentencing process.

Again there is limited evidence about the crime prevention effectiveness of such modified courts. However, a recent impact evaluation of the NSW circle sentencing courts found that it did not reduce the risk of re-offending by Aboriginal offenders (Fitzgerald 2008).[338] The AIC is currently conducting an evaluation of Queensland's Murri Court which may provide further evidence regarding the crime prevention effectiveness of the Queensland process.

The limited evidence that does exist suggests that modified court processes might not be sufficient in themselves to reduce recidivism; rather it is likely that a substantial crime prevention effect is exerted by the treatment or other interventions that may be imposed by the court as part of its sanctions.

What is the evidence regarding the crime prevention effectiveness of court-imposed sanctions?

In terms of sanctions imposed by the courts, the research evidence about their crime prevention effect is not entirely clear. For example:

- Fines are the most commonly imposed penalty in the criminal justice system. Though they may be a low-cost sanction and have other advantages, we know little about the effectiveness of financial penalties in reducing recidivism rates of convicted offenders. Few studies have been conducted in the area and those that have been conducted have produced equivocal findings (Moffatt & Poynton 2007).
- There is research also which shows that the introduction of tougher sanctions tends to have little effect on patterns of re-offending. One NSW study showed no change or only very slight change in results for recidivism of drink drivers after a well-publicised doubling of maximum penalties (Briscoe, cited in Weatherburn 2004, p. 119). However, survey research designed to consider the impact of sanctions on the likelihood of offending shows that people self-report that they would be less likely to offend when there are tougher sentences, but only when the perceived risk of apprehension is also high (Weatherburn 2004, p. 120).

There is evidence to suggest that court-ordered treatment programs such as drug treatment programs can be effective in preventing crime. For example, innovations such as Drug Court programs have become a popular approach to reducing re-offending among those whose crimes are drug related. Drug Courts place drug-dependent offenders on a program of coerced treatment and provide close judicial monitoring to ensure that offenders are complying with the program conditions and are not using illicit drugs. Drug Court programs may also include:

- incentives for progressing on the program (such as cinema tickets)

337 We discuss Queensland's JP Magistrates Courts in some detail in Chapter 17.

338 This evaluation did not find that re-offending worsened for offenders who proceeded through the circle sentencing process. This is significant as some criticise such special courts because of a perception that they are 'softer' than traditional court processes. This evaluation also did not seek to assess the effectiveness of circle sentencing against its many other objectives in addition to the reduction of recidivism of offenders.

- disincentives for non-compliance with the program (such as more restrictive program conditions, or removal from the program, or imprisonment)
- provision of social support designed to encourage them to adopt a more law-abiding way of life (such as assistance to find a job) (Weatherburn et al. 2008).

Evidence on the effectiveness of Drug Courts in reducing recidivism is generally favourable and suggests that Drug Court programs are more effective than the conventional sanctions (see Latimer, Morton-Bourgon & Chretien 2006; Lind et al. 2002; Payne 2008; Wilson, Mitchell & Mackenzie 2006; Weatherburn et al. 2008).

There is also evidence suggesting that courts can exert a crime prevention effect by imposing sanctions of imprisonment. Such sentences may prevent crime through their incapacitation effect or through the provision of effective treatment programs in prison (see the further discussion below).

What role can corrections play in crime prevention?

Incarceration

The evidence about the effectiveness of prison in terms of deterring crime is controversial and there is a variety of research results.

Studies, for example, that consider the specific deterrent effect of imprisonment on individuals (that is, which compare the re-offending rates for offenders given non-custodial sentences with re-offending rates for offenders given custodial sentences) generally find little difference in the rates of re-arrest, re-conviction or re-imprisonment.[339] Other studies, however, that consider a more general deterrent effect of imprisonment (that is, by considering a correlation between crime and imprisonment rates) generally claim to show that higher rates of imprisonment are associated with less crime (see Weatherburn 2004, pp. 122–3; Weatherburn, Vignaendra & McGrath 2009).[340]

Though there is doubt about the deterrent effect of imprisonment, there is less doubt about its incapacitation effect. Weatherburn (2004, p. 123) explains:

> The criminal justice system acts like a big filter. Those who offend seriously, and often, penetrate more deeply into the system than those whose involvement in crime is just transient. As a result, those who end up in prison tend to be among the most frequent and persistent offenders. This suggests that, even if only a small proportion of all offenders end up in prison, it may still be possible to influence crime rates through prison.

Although research tends to show that there is an incapacitation effect of imprisonment, it does not follow that longer sentences for those in prison, or imprisoning more offenders, will further reduce crime. Using imprisonment to incapacitate offenders who are less serious offenders or less criminally active, or increasing the length of sentences beyond the age at which most offenders are likely to stop offending anyway, provides diminishing, marginal returns and adds significant financial costs (see Weatherburn 2004, pp. 124–6).

Once again, engaging offenders in treatment programs while in prison can be an effective crime prevention strategy. Although the overall evidence in relation to this is mixed, research suggests that programs delivered in secure correctional facilities can be effective in reducing re-offending among certain kinds of offenders.

339 There are limits to this kind of research and difficulties in controlling for factors other than the penalty that may influence the rate and speed of re-offending. Results of particular studies vary.

340 There are also difficult methodological issues and debates associated with these studies.

Garrido and Morales (2007), for example, found that interventions for persistent and/or violent juvenile offenders — including behavioural, cognitive and cognitive-behavioural programs, group treatments, peer-to-peer support strategies, and education programs aimed at improving juveniles' basic academic skills — generally had significant, positive effects on post-release recidivism rates. These programs were found to be especially effective in reducing rates of serious recidivism,[341] although general recidivism was also typically reduced.

Community-based corrections

Corrections (including youth justice services) also have a substantial role to play in providing supervision and support to offenders serving community-based sentences, such as probation and intensive corrections orders, and also play a key role in helping prisoners to transition back into their communities after a period of imprisonment. Some non-custodial programs have been shown to be effective in reducing recidivism and to be considerably less expensive than a custodial sentence (Aos, Miller & Drake 2006). The following is a brief summary of the relevant evidence:

- Multi-systemic therapy has been shown to be very effective in reducing juvenile crime rates in the United States. Multi-systemic therapy is an intensive family-based treatment program directed at improving parental management of teenagers and helping teenagers cope with family, peer, school and neighbourhood problems. The treatment (which usually lasts four months and is provided by a specially trained counsellor) involves a variety of counselling techniques designed to encourage more effective parenting, greater family cohesion, lower levels of contact (or no contact) with delinquent peers and better school performance. Five rigorous evaluations of multi-systemic therapy have been conducted and all of them show success. One evaluation showed that, four years after treatment, there was a 28 per cent reduction in arrests and a 48 per cent reduction in rates of detention in custody (cited in Weatherburn 2004, p. 181). Western Australia and New South Wales are currently trialling an intensive supervision order program which uses the multi-systemic therapy approach that has been shown in the United States to be effective. The trials are being evaluated by the NSW Bureau of Crime Statistics (Weatherburn, Vignaendra & McGrath 2009, p. 10).
- There is some evidence that prisoners released into the community with supervision are less likely to offend than those released without supervision. One recent study conducted in NSW, however, showed no difference between the crime prevention outcomes for those on supervised or non-supervised good behaviour orders in the community. This study also found that a large number of offenders placed on supervised orders were not receiving the services, support and supervision needed for effective rehabilitation, especially in country areas (Weatherburn & Trimboli 2008). Another study found no effect of intensive supervision, but about a 17 per cent reduction in re-offending for offenders placed on treatment-oriented intensive supervision programs (Aos, Miller & Drake 2006; Weatherburn & Trimboli 2008). This evidence seems to suggest that the level of supervision and support provided to offenders is crucial to reducing re-offending.
- Evidence from the United Kingdom evaluating a 'prolific offender program' (which targets persistent offenders on the basis that the risk of offending is much higher for repeat offenders and that this small proportion of offenders account for a large proportion of offending) also points to the effectiveness of combining supervision strategies (daily monitoring by police and weekly monitoring by a corrections officer) with the provision of considerable social support (including access to treatment, assistance in obtaining housing and employment, help in looking after children and life skills training). Re-offending rates among those on the program were found to be substantially lower than those in a comparison group (cited in Weatherburn 2004, p. 136).

341 Serious offences that result in re-incarceration or re-institutionalisation

A recent AIC study (Willis 2008) of the re-integration of Indigenous prisoners on their release showed that Indigenous offenders are re-admitted to prison sooner and more frequently than non-Indigenous offenders. It recommends improved support during transition back into the community through the involvement of family and community, and increased capacity to undertake throughcare,[342] especially in remote settings.

In general, the evidence we have summarised points to the conclusion that the criminal justice system is most effective at preventing crime when it provides appropriately intense supervision, support and treatment for offenders. This appears to be true for those on diversionary options, on sanctions imposed by the courts, in prison and on community-based orders. The evidence also suggests that innovations such as Drug Courts, which use incentives and disincentives, can be effective in leveraging changes in behaviour.

Unfortunately, it appears that in the past too much reliance was placed on diversion — particularly 'diversion from' the criminal justice system — to reduce Indigenous offending, without ensuring that such diversion was going to provide the necessary 'fit' or 'dose' appropriate to the pattern of Indigenous offending. It is only by improving this match that we are likely to substantially reduce Indigenous overrepresentation. MacKenzie's (2002) review of what works to reduce recidivism among known offenders provides a reminder of the importance of getting this match correct. MacKenzie notes, for example, that merely increasing referrals to community-based services and treatment programs does not work to reduce offending; instead, the evidence suggests that effective treatment programs have to be 'structured and focused, use multiple treatment components, focus on developing skills … and use behavioural (including cognitive-behavioural) methods … and provide for substantial, meaningful contact between the treatment personnel and the recipient' (2002, p. 385).

Availability of effective crime prevention responses of the criminal justice system

There has been a long history of criticism of the failure of government to provide some criminal justice services in Queensland's Indigenous communities. We have already said in Chapter 6 that many criminal justice agencies, including those providing corrective services and youth justice services, have had a limited presence in Queensland's Indigenous communities, and this has adversely affected the provision of effective crime prevention interventions for offenders. The absence of any, or adequate, treatment and support services for offenders has been heavily criticised. Such criticism includes:

- the failure to provide an adequate range of non-custodial sentencing options, including the lack of adequate community-based supervision and treatment programs for alcohol to be used as a sentencing option (Aboriginal and Torres Strait Islander Women's Task Force on Violence 1999; Cunneen, Collings & Ralph 2005, pp. 107, 112–13; Fitzgerald 2001, pp. 161 & 166; Johnston 1991, vol. 3; Peach 1999; Previtera & Lock 2006; see also submission of LAQ, p. 9)
- the lack of youth justice services (Cunneen, Collings & Ralph 2005, pp. 107–8; Previtera & Lock 2006)
- the limited availability of mediation and dispute resolution programs (Cunneen, Collings & Ralph 2005, pp. 102 & 108).

Diversionary options available to the court for alcohol-related offenders are also limited in Queensland's Indigenous communities; again, they are mostly available in regional centres. For example, the Cairns Alcoholic Offenders Remand and Rehabilitation Program was developed in 2003 by Cairns magistrates to provide treatment for offenders charged with public drunkenness and other public order offences. The program targets persistent offenders

342 Throughcare refers to the continuing provision of programs for offenders from prison to the community, that is, it includes support provided during incarceration, during the transition period and post-release.

who are likely to otherwise be sentenced to serve a prison term. It gives offenders an opportunity to address their alcohol-induced offending behaviour through residence at a rehabilitation facility for a period of up to one month. The program now also operates in Townsville, but it is not a diversionary option available to police in Indigenous communities (Joudo 2008, p. 35).

Because of the limited range of treatment and support programs in these communities, 'intermediary' and community-based non-custodial responses to offending behaviour have largely been absent for offenders from Queensland's Indigenous communities. A familiar pattern in these communities is that offenders are often responded to repeatedly in ways that are unlikely to have any sustainable crime prevention effect, such as:

- 'diversion from' custody or the criminal justice system
- minimal sentences of unsupervised orders, including fines (which often go unpaid)

until some point at which a custodial sentence becomes 'unavoidable' — for example, because of the seriousness of their offending behaviour or the length of their criminal history (see Cunneen, Collings & Ralph 2005, pp. 107–8; Previtera & Lock 2006).

Despite the recent improvement in the provision of treatment and support services in Queensland's Indigenous communities that we describe below, examination of the Magistrates Court sentencing data from these communities confirms that there continues to be a limited use of intermediary sentences in Queensland's Indigenous communities.

Table 16.1 shows the number and proportion of the various types of sentences imposed by the Magistrates and Childrens Courts sitting in Queensland's Indigenous communities for the two-year period 2006–07 and 2007–08.

Table 16.1: Orders imposed by specified Magistrates Courts and Childrens Courts* in 2006–07 and 2007–08

Type of order	2006–07 Magistrates Court	2006–07 Childrens Court	2007–08 Magistrates Court	2007–08 Childrens Court	Total	% of all orders	
Custodial order (imprisonment)	273	34	249	31	587	7.3%	12.0%
Custodial order (intensive correction order)	21	26	19	10	76	0.9%	
Custodial order (wholly suspended sentence)	143	–	160	–	303	3.8%	
Community service	226	131	183	125	665	8.3%	17.5%
Probation	240	103	303	97	743	9.2%	
Fines†	2095	9	2735	11	4850	60.3%	60.3%
Good behaviour bond/ recognisance order	121	55	123	71	370	4.6%	10.1%
Other (including licence disqualification and forfeiture order)	60	150	73	163	446	5.5%	
Total	**3179**	**508**	**3845**	**508**	**8040**	**100%**	**100%**

Source: Queensland Wide Interlinked Courts (QWIC) system data.

Notes: *These data include all sentences ordered for guilty defendants by the Magistrates Court (including the Childrens Court) sitting in these locations: Aurukun, Badu Island, Bamaga (which also services the other NPA communities of Injinoo, New Mapoon, Umagico and Seisa), Cherbourg, Doomadgee, Hope Vale, Kowanyama, Lockhart River, Mornington Island, Palm Island, Pormpuraaw, Thursday Island, Weipa (which services the communities of Napranum and Old Mapoon), Umagico, Woorabinda and Yarrabah. The data do not include any orders made by the Magistrates Court for Wujal Wujal, which are heard in Cooktown. They also do not include any sentence orders made by JP Magistrates Courts sitting in Queensland's Indigenous communities. The data include sentences imposed on guilty defendants for finalised matters whether resulting from a guilty verdict, guilty plea, or found guilty ex parte.

† A small number of these may be other monetary orders.

As shown in Table 16.1, sentences imposed by the Magistrates Court in Queensland's Indigenous communities include:

- fine orders for most defendants (60%)
- community-based probation or community service orders for a small proportion of defendants (18%)
- imprisonment as the next most common sanction (7%)
- wholly suspended sentences of imprisonment for only a small percentage of defendants (4%) (these orders impose a sentence of imprisonment but allow the offender to stay in the community until such time as they commit another offence; the orders provide no treatment or support)
- very rarely, intensive correction orders (1%) (these orders provide that a person sentenced to a period of 12 months imprisonment or less may serve that sentence by way of intensive correction in the community and not in a prison; for example, the offender must report to and receive visits from a corrective services officer at least twice weekly, and must also attend counselling and other treatment programs, or perform community service, for up to 12 hours a week).

The limited use and availability of intensive correction orders and probation orders, which offer the greatest opportunity to provide offenders with treatment and support outside prison, is an ongoing concern. The lack of services to support community-based sentencing options exacerbates the heavy reliance on imposition of fines for most offending behaviour in Queensland's Indigenous communities.

We heard that the reliance on fines, and their apparent ineffectiveness, was a great source of frustration to police and some magistrates. Many police commented that fines provided 'no consequence' for offenders. In some communities, the number and amount of unpaid fines accumulated through the criminal justice system is considered to be a badge of honour and apparently provides little or no deterrent to offending.[343]

The provision of programs for young offenders on community-based orders, which is the responsibility of Youth Justice Services within the Department of Communities (DOC), continues to be lacking in many of Queensland's Indigenous communities. Suspended sentences, probation and intensive supervision orders require suitable programs and intensive support and this is not available in many of the communities.

Youth justice conferencing has been available in Queensland's Indigenous communities on only a very limited basis. As we stated in Chapter 6, the DOC is responsible for the provision of youth justice services. In its submission to this inquiry, the DOC reported that in many of Queensland's Indigenous communities it only has a 'fly-in, fly-out' presence. It states that, on a six-monthly basis, non-Indigenous youth justice conference convenors visit communities to facilitate the conference referred to them. The submission also notes that under these conditions it is difficult for convenors to establish relations with the local community and ascertain which adults are best to invite to each conference (those with whom the young offender has a strong relationship) (submission of the DOC, pp. 23, 26–7). In Chapter 13 we presented QPS data indicating that, in Queensland's Indigenous communities, police only rarely refer young people to youth justice conferences. During consultations, police indicated to us that this was primarily because the inability to access conferencing to provide a swift response to offending behaviour meant that it was not an effective option.[344]

343 In Queensland unpaid fines are transferred to the State Penalties Enforcement Register (SPER), which is responsible for their collection and enforcement.

344 The courts are also able to refer young people in appropriate circumstances to a youth justice conference. We did not obtain data from the Childrens Court about the number of referrals made to youth justice conferences for defendants in Queensland's Indigenous communities, but these numbers are likely to be low for the same reason — the lack of timely availability of such conferences.

Our inquiry was told by police officers in a number of communities that they will sometimes provide informal mediation and dispute resolution services in order to deal with family and kinship-based tensions in particular. One OIC noted that he would get people together and mediate a dispute, and that things would then 'be quiet for five or six months before it might blow up again'. We also heard of some community justice groups performing a similar role from time to time.

Several submissions to our inquiry expressed the desire to see more restorative justice approaches such as community conferencing and more local mediation of disputes in these communities (submissions of the LAQ, p. 5; QPS, p .14; DOC, pp. 5–6, 23 & 26–9). For example, the QPS submission expresses its support for the expansion of restorative approaches. It suggests that the current court diversion strategy of referral of matters to mediation through the Dispute Resolution Branch of the Department of Justice and Attorney-General should be expanded within remote Indigenous communities and that consideration ought to be given to providing QPS officers with the ability to directly refer minor offences (p. 15). The advantage of such mediation as explained by the QPS is that it:

> complements traditional ways of settling disputes in Aboriginal and Torres Strait Islander communities … enabling Indigenous communities to keep ownership of disputes, to use elements of customary law and practice, and to find solutions that are in keeping with cultural values. The effect on the community can be very empowering. (QPS submission, p. 15)

What recent efforts have been made to improve the availability of treatment and support services?

Despite the allocation of substantial funding in the most recent state budgets, which has led to some programs being rolled out, there continues to be only limited availability of treatment and support services in Queensland's Indigenous communities.

Diversionary options

The limited availability of diversionary options for dealing with offenders with alcohol or drug problems has been a significant policy focus for government.

At the time of our visits, the majority of communities had no 'safe place' facilities that accept and care for people who are intoxicated or affected by drugs or volatile substances.[345] (There are few such facilities elsewhere in Queensland.)[346] The QPS submission (p. 12) notes the practical difficulties that police face in diverting intoxicated people in Queensland's Indigenous communities:

> the diversion of drunken people … to a place of safety such as a care centre or the home of a relative or friend requires the presence of a suitable environment and competent carer. Unfortunately, in the experience of police, this cannot be assured in many Indigenous communities.

When offenders are taken to a diversionary sobering-up centre by police, they are not under any compulsion to stay there and many police have told us that they have little success in diverting people to such facilities as they often simply leave. The difficulties in implementing such a strategy in Queensland's Indigenous communities, where taking a person to a 'safe place' often means taking them to their or a family member's home, have been previously

345 During our consultations, local police and community members advised the inquiry team that the local community medical centres do not generally provide 'sobering-up' beds for intoxicated people (but, of course, provide care for those in need of medical attention).

346 The Diversion from Custody Program aims to reduce the rate of Indigenous incarceration and the number of deaths in custody by providing diversionary options for intoxicated people. The program seeks to provide an intoxicated person with access to a Diversion from Custody Centre, which is a non-custodial sobering-up facility. Centres are located in Townsville, Brisbane, Cairns, Mount Isa and Rockhampton (Joudo 2008, p. 35).

documented. For example, criticism of the Management of Public Intoxication Program in a Cape York community that established a mini-bus service to take intoxicated people from the canteen to a 'safe place' describes the strategy as a 'farce'. It has been stated that the strategy provided a 'free taxi service' for intoxicated people that ended up taking people to the canteen as well as away from it, and took drunks to the homes of sober family members, immediately turning their 'safe place' into an 'unsafe place' (Alcohol and Drugs Working Group 2002).

As we have already described early in this chapter, in the last two Queensland budgets large amounts of money have been allocated as part of the most recent alcohol reforms, including to provide diversionary centres and sobering-up facilities in many of Queensland's Indigenous communities.

Caution should be exercised in devoting large amounts of money to strategies that merely provide 'diversion from' custody options in these communities rather than options that seek to provide (perhaps with some degree of compulsion) treatment programs which could more reasonably be expected to prevent a substantial amount of crime.

In terms of those kinds of programs that we described as 'diversion to' treatment or intervention, such programs in Queensland's Indigenous communities are limited. For example, there is limited access to bail support programs and there are very few local rehabilitation programs or facilities (see Queensland Government 2006a). There is one police diversionary program that is accessible to three of Queensland's Indigenous communities. The QPS's Queensland Indigenous Alcohol Diversion Program is a bail-based treatment program that is being piloted in Cairns, Townsville and Rockhampton over a three-year period from 2007. These sites offer outreach to Yarrabah, Palm Island and Woorabinda. The program is for those Indigenous people who have committed relatively minor alcohol-related offences and are alcohol dependent. Participants are diverted from further contact with the criminal justice system into treatment and case management that may involve withdrawal management, counselling, residential rehabilitation, and employment and accommodation support (Joudo 2008, p. 29; Denning-Cotter 2008). The program is to be independently evaluated, including assessment of its effect on re-offending by program participants, by the end of 2009 (Queensland Government 2009a).

As we have previously stated, the Queensland Government in recent years, particularly with the announcements of further alcohol reforms in 2008, has allocated large amounts of money to try to make alcohol and drug treatment and rehabilitation programs available in many of Queensland's Indigenous communities. Efforts to get such programs up and running have been most intensive in the four Welfare Reform Trial communities, so that the FRC is able to refer those conferenced to appropriate services in an attempt to intervene effectively in people's lives and re-establish functional social norms in these communities.

The submission of the DOC notes that improved youth conferencing services were planned, including training a number of local Indigenous conference convenors (two such convenors were said to have been trained in Cherbourg) and the creation of a number of Indigenous Conference Support Officer positions to support the role of convenor and improve conferencing outcomes for Indigenous clients (submission of the Department of Communities, pp. 27–30).

One substantial community-based project that is currently under way is the Mornington Island Restorative Justice Project, which aims to enhance the capacity of the community to deal with and manage its own disputes without violence, by providing ongoing training, support, supervision and remuneration for local mediators. This project is a three-year pilot project that has received both Commonwealth and Queensland Government support. The project completed its initial consultation and development phase in January 2009 and has conducted one community mediation (see JAG 2009b). It has now received funding for its second phase until June 2010. The evaluation of this project should be viewed with interest in order to learn more about how the potential of mediation and restorative approaches might be applied in Queensland's Indigenous communities.

Other treatment and support: Corrections and Youth Justice

Although there are continuing deficits in some areas, QCS has made notable efforts to improve the delivery of necessary support and supervisory services in Queensland's Indigenous communities in recent years. Since 2006, QCS has made significant changes away from delivering services of probation and parole officers on a 'fly-in, fly-out' basis. At this time QCS established permanently staffed reporting offices at Doomadgee, Mornington Island, Normanton and Thursday Island. In 2008, permanently staffed reporting centres were established at Aurukun and Weipa also. In 2009, a permanent staff presence was established in Cooktown, in order to service the communities of Wujal Wujal, Hope Vale and Laura (QCS 2009). It has been noted that, with staff on the ground, QCS is able 'to get a clearer picture of each offender's personal circumstances and a better understanding of family and community dynamics' (QCS 2009, p. 7). The improved information and understanding have in turn been said to have helped QCS to improve the quality and frequency of the rehabilitation programs it delivers and to provide better support to prisoners on their release. For example, QCS now provides specialist programs such as a two-day 'Ending Offending' program and a four-day 'Ending Family Violence' program at Aurukun, Pormpuraaw, Weipa and Thursday Island (QCS 2009; see also QCS 2008, pp. 28–9).

In addition to the long-term focus on developing youth justice conferences, and a more recent focus on tackling the demand for alcohol, the DOC is piloting two new youth justice initiatives in Far North Queensland — the Young Offender Community Response Service and the Bail Support Service, which are described as 'an integrated and culturally appropriate approach that targets the risk and protective factors contributing to young people's offending'. The department provided $0.6 million to ACT for Kids (formerly the Abused Child Trust) to deliver these services from July 2008, targeting factors that contribute to a young person's offending behaviour. It will provide family therapy and material support such as food and money, and help young people with educational opportunities and work skills.

ACT for Kids will receive an additional $1.2 million per year for the next three years to help young people charged with offences to maintain stable accommodation and comply with bail conditions. It is not clear to what extent these services will apply to offenders in or from the Indigenous communities (DOC 2008, pp. 27–8).

An Early Intervention Coordination Panel has commenced at Woorabinda in Central Queensland 'to reduce the number of young people in the youth justice system'. With representatives from government and community organisations, the panel links young people and their families to existing service providers (DOC 2008, p. 27).

Summary and conclusions: reducing crime and violence through criminal justice interventions

In this report we have already identified the need to focus on 'front-end' strategies outside the criminal justice system, particularly those known to be effective early in life, in order to prevent crime. In Queensland's Indigenous communities — where there are high levels of contact with the criminal justice system — it is also vital that the 'back end' of the crime prevention continuum, which is provided through the criminal justice system, is also positioned to exert the maximum possible crime prevention effect.

In this chapter we have outlined the available evidence that can inform the task of ensuring that the criminal justice system exerts its maximum crime prevention effect. Often, a poor understanding of the evidence appears to be reflected in policies and programs that aim to reduce Indigenous overrepresentation in the criminal justice system. For example, we think it is unlikely that a substantial reduction in overrepresentation of those from Queensland's Indigenous communities will be brought about by increased use of strategies that provide 'diversion from' custody or the criminal justice system alone, or through the expanded use of Murri Courts, as responding to the underlying causes of crime is not the focus of such strategies.

The available research suggests that in Queensland's Indigenous communities, in order to maximise the crime prevention effect of the criminal justice system, it needs to focus more heavily on providing a particular type of diversion — 'diversion to' treatment and support that may provide an effective intervention in the lives of offenders — rather than mere 'diversion from' custody or the criminal justice system.

It must be said, however, that increasing the use of 'diversion from' custody or the criminal justice system is not only justifiable, but to be encouraged, throughout Queensland on grounds other than those relating to crime prevention. For example, 'diversion from' strategies are likely to be very effective in reducing the number of people in custody and reducing the risks associated with keeping people in custody; they may also be the most cost-effective response for many offenders. We must also remember that research on offender trajectories generally suggests that most people desist from offending quickly anyway, without the need for interventions based on treatment and support. What we are saying is that in Queensland's Indigenous communities, where offending behaviour is common, often violent and relatively widespread, strategies that only 'divert from' custody or the criminal justice system are unlikely to provide any meaningful contribution to reducing Indigenous overrepresention. In these communities we need to develop a greater level of understanding about what particular types of diversionary strategies can be reasonably expected to achieve, especially in terms of their potential for crime prevention.

Murri Courts may also serve other important ends, but they should not be relied on to reduce Indigenous overrepresentation in the criminal justice system.

➡ Action

That the Queensland Government (especially ATSIS, the Department of Justice and Attorney-General, Youth Justice Services (Department of Communities) and Queensland Corrective Services (Department of Community Safety)), ensure that the criminal justice system in Queensland's Indigenous communities is organised to exert the strongest possible crime prevention effect based on the existing evidence about what works to prevent crime.

To reduce crime in these communities, serious efforts must be made to change the offending behaviour of those who end up in the criminal justice system, particularly repeat offenders.[347] The research into the crime prevention effectiveness of various aspects of the criminal justice system points to the need to make the provision of effective levels of supervision, treatment and support available:

- to the courts in sanctioning
- for those serving community-based orders
- in detention centres and prisons
- for prisoners on release back into the community.

Increasing the availability of intensive interventions for serious, repeat and persistent offenders from Queensland's Indigenous communities is likely to be money well spent in the sense that it is these offenders who account for a disproportionate amount of crime, and for whom the likelihood of re-offending is the highest.

347 Our conclusions in this regard fit very much with the approach underpinning the work of the FRC — the FRC conferences and case manages those referred to it, and either by agreement or order has that person access appropriate services and programs. In this way the FRC seeks to ensure that an effective intervention is provided to those who come before it. As described in Chapter 6, compliance with the agreement or order is monitored and as a last resort the FRC may make a Conditional Income Management order under which 60 or 75 per cent of welfare payments are managed by Centrelink for up to 12 months (FRC 2008; see also CYIPL 2007) (see also the *Families Responsibilities Act 2008*).

➡ Action

That, as a matter of priority, the Department of Communities and Queensland Corrective Services continue to increase the allocation of resources to improve:

- community-based support, supervision and treatment programs for offenders in Queensland's Indigenous communities
- programs within prisons and detention centres to provide treatment and intervention for offenders from Queensland's Indigenous communities.

The rule that the criminal justice system needs to provide treatment and support in order to reasonably expect to exert a crime prevention effect does not apply, however, to the process of conferencing (and perhaps some other restorative justice processes). The research evidence suggests that conferencing does have potential for preventing crime. Further, restorative justice processes may have particular resonance in Queensland's Indigenous communities for the following reasons:

- because of the prominent role played by family and kinship matters in many disputes
- because such processes can help to rebuild local authority by having local people as central to the issues to be resolved.

Because of this potential for crime prevention, the greater use of conferencing and other restorative processes involving local people in the resolution of disputes in Queensland's Indigenous communities should be supported.

➡ Action

That the Queensland Government provide greater support to restorative justice services in Queensland's Indigenous communities:

- That the Department of Communities urgently provide a sustained and sustainable youth justice conferencing program able to provide timely diversion to a process that addresses offending within a restorative justice framework.
- That the Department of Justice and Attorney-General continue to support the trial and evaluation of community-based mediation and dispute resolution processes in Queensland's Indigenous communities.

17

THE UNREALISED POTENTIAL OF LOCAL JUSTICE INITIATIVES

The criminal justice system in Queensland's Indigenous communities is especially complex. The broad model has mainstream criminal justice processes operating together with local justice components that may include the following:

- **community justice groups**
- **local community courts constituted by local Justices of the Peace (JP Magistrates Courts)**
- **local laws (community 'law and order' by-laws)**
- **local police (community police or QATSIP).**

Local justice components of the criminal justice system in Queensland's Indigenous communities continue to face challenges despite numerous recommendations and commitments made for improvements over the years. Although efforts have recently been made to improve the functioning and sustainability of these local justice initiatives, problems continue to be apparent, especially in terms of the need for better resourcing and training to support these initiatives (see Cunneen, Collings & Ralph 2005; Loban 2006; O'Connor 2008).

In this chapter we consider the question of whether local justice components in Queensland's Indigenous communities have been successful in developing effective forms of local authority to deal with crime and violence, and what more could be done to improve their effectiveness. We suggest that a fundamental change is needed and that governments must demonstrate their willingness to support the further development of local justice components so that they can have a real influence on crime and violence in these communities.

As we have dealt extensively with the issues relating to local police in Chapter 10, we focus in this chapter on other local justice elements, particularly the community justice groups, the JP Magistrates Courts and the role of community by-laws.

Support for a model incorporating local justice components

These local justice initiatives have been important in Queensland's Indigenous communities for a range of reasons:

- because it is the members of Indigenous communities themselves who are best placed to plan and implement effective strategies to deal with their crime and justice problems
- as a strategy designed to reduce the overrepresentation of Indigenous people in the criminal justice system, particularly in custody
- to increase the scope for culture or local knowledge to be taken into account in justice processes
- to fill gaps in criminal justice service delivery in Queensland's Indigenous communities (Chantrill 1998; Cunneen, Collings & Ralph 2005; Fitzgerald 2001; Limerick 2002; O'Connor 2008).

A long series of reports and government commitments have supported building local justice initiatives so that they are important components of the criminal justice system in Queensland's Indigenous communities. For example:

- The Cape York Justice Study provided probably the most comprehensive discussion of the criminal justice system in Indigenous communities and it supported a model incorporating local justice components so that justice services could be provided in a way that is sensitive and responsive to Indigenous needs and circumstances. For example, the report proposed:
  - heavy reliance on community justice groups, which were seen to have the potential to intervene in justice issues through the use of Aboriginal law and traditional dispute resolution, as well as to be involved in the formal criminal justice system
  - greater use of JP Magistrates Courts, which were seen to be an important way to increase involvement of members of communities in sentencing (Fitzgerald 2001, p. 156)
  - exploring the potential of locally developed 'law and order' by-laws to respond to local issues of concern and the possibility of issuing infringement notices for by-law offences (Fitzgerald 2001, p. 137)
  - enlisting the assistance of the QPS to train community police to enforce the by-laws and to have QPS officers enforce them (Fitzgerald 2001, p. 137).
- The independent evaluation of the Queensland and Torres Strait Islander Justice Agreement (Cunneen, Collings & Ralph 2005) and the more recent reviews of criminal justice services in the Torres Strait (Loban 2006) and Cape York (O'Connor 2008) have also promoted a system integrating local justice elements with the conventional criminal justice system.

The Queensland Government's policy, as represented in its response to the Cape York Justice Study (Queensland Government 2002), in the Queensland and Torres Strait Islander Justice Agreement (Queensland Government 2001) and in its response to the evaluation by Cunneen, Collings and Ralph of that agreement (Queensland Government 2006a), would appear to provide consistent support for a broad model of criminal justice system services in Queensland's Indigenous communities that includes local justice initiatives.

Although difficulties with particular aspects were noted, consultations and submissions generally supported such a model in which the local justice components featured in these communities.

Community justice groups

Community justice groups have been supported for a wide range of reasons — most fundamentally, that they provide a community-based response to local issues and therefore it was hoped they could be more effective than conventional criminal justice system responses in reducing Indigenous overrepresentation in the criminal justice system. It has also been suggested that they provide a valuable way in which Aboriginal law and traditional dispute resolution mechanisms can be used (ALRC 1986a; Johnston 1991, vol. 4; Fitzgerald 2001; Limerick 2002).

Community justice groups were first piloted at Palm Island, Kowanyama and Pormpuraaw from 1993. Based on the reports of initial success, the initiative has grown across the state and community justice groups now exist in many regional and urban areas also. Community justice group members are volunteers (often they are mostly women and mostly elderly), although a small amount of funding (between $83 000 and$97 000) pays for a full-time coordinator for each group and some basic operational expenses such as travel (O'Connor 2008).

Community justice groups perform a variety of roles

Administrative arrangements to support community justice groups have changed a number of times during the period of their existence. These changes may reflect that there has been a degree of uncertainty about how best to develop the role of community justice groups and how best to support them.

- Initially, community justice groups were supported by the then Corrective Services Commission, and their roles were closely linked to the need for community-based supervision of offenders.
- From the mid-1990s, administrative support for the initiative was provided by the Office of Aboriginal and Torres Strait Islander Affairs, and its later incarnations (for example, as the Department of Aboriginal and Torres Strait Islander Policy). In this period the roles of community justice groups were conceived very broadly, with a focus on developing strategies to address underlying issues relating to antisocial and unlawful behaviour (see Kristiansen & Irving 2001; Limerick 2002).
- In 2006, responsibility for community justice groups was transferred to the Department of Justice and Attorney-General (JAG) (Limerick 2002; O'Connor 2008). In consultations with senior officers of JAG involved in providing support to the groups, it was suggested that JAG is encouraging community justice groups to focus more narrowly on providing support to justice processes, such as by providing submissions at sentencing.

Despite variations in the operation of community justice groups across the different communities, and the suggestion from JAG that they should re-focus on supporting the justice system, the possible roles of the groups continue to be very broad. Community justice groups in Queensland's Indigenous communities have been, and may still be, involved in:

- assisting in court hearings (particularly in relation to sentencing[348] and bail processes)
- encouraging police to divert offenders
- supporting victims and offenders through the court process
- visiting the watch-house or prison to support offenders
- helping to supervise community-based sentences
- developing and implementing crime prevention initiatives such as night patrols and sport and recreation programs for juveniles
- providing dispute resolution.

In consultations and submissions we heard a wide range of views in relation to the roles of community justice groups. For example, we were told that community justice groups should be involved in the monitoring of detainees (submissions of the Department of Child Safety, p. 3; Napranum Aboriginal Shire Council, p. 1; individual submissions, names withheld), and that community justice groups should be involved in diversion of people who have committed minor offences (submission of the Department of Child Safety, p. 4). We heard that community justice groups should be closely involved with police in developing a 'Local Community Safety Plan' to broadly tackle the underlying causes of crime (submission of LAQ, p. 4), but it was also suggested to us in consultation that the roles of community justice groups should be restricted to supporting the criminal justice system and that they should not try to tackle social issues more broadly.

348 See s. 9(2) of the *Penalties and Sentences Act 1992* and s. 150 of the *Juvenile Justice Act 1992*.

The courts have acknowledged, in particular, the value of the input often provided by community justice groups on sentencing matters (Queensland Magistrates Court 2008, p. 88). However, it has also been acknowledged that the demands on the time of circuit courts impose constraints on the time that can be spent hearing from the community justice groups, either generally or in relation to particular matters (Previtera & Lock 2006, p. 5; Queensland Magistrates Court 2008, p. 88). Davis and Eberhardt's review of 71 cases involving Indigenous sex offenders from Cape York communities sentenced in the District Court in Cairns or Cape York showed that there were often no submissions made by the community justice groups to the court (2008, p. 10).[349]

It is possible for community justice group members to be involved in conflicting roles, such as providing support to victims and taking victim impact statements (see O'Connor 2008), as well as providing support to offenders and making submissions on sentences to be imposed on offenders.

Community justice groups in Queensland's Indigenous communities were also given a key role in the development and implementation of Alcohol Management Plans (AMPs). This role in relation to the AMPs has caused tension in some communities between the group and the council, and we heard that this tension continues. Relations between some community justice groups and the local council were described as 'hostile', and we were told that in some communities members of the groups had been intimidated and threatened because of their role in supporting alcohol restrictions. We also heard that, in some communities, drinkers and those who were opposed to alcohol restrictions had tried to gain membership and control of the community justice group (see also O'Connor 2008).

Are community justice groups effective?

Our inquiry detected that there was a large degree of support in general for the idea of community justice groups; it was frequently stated that they have a great deal of 'potential'. Others have made claims about the 'success' of community justice groups, but there has been little rigorous consideration of the effectiveness of the groups. For example:

- An early evaluation, the *Interim assessment of community justice groups* (DATSIPD 1999, pp. 6–9), stated that community justice groups had 'enormous potential', including in terms of their ability to 'make a lasting impact on levels of over-representation in the justice system'. It found that community justice groups were 'developing innovative and successful strategies for tackling community justice issues by working within the formal justice system and within the community itself'.[350]
- The Cape York Justice Study noted that many people testified to the effectiveness of community justice groups and stated that they had 'successfully undertaken crime prevention strategies targeting issues such as youth boredom, lack of support and recreational opportunities, truancy and alcohol' (Fitzgerald 2001, p. 23).
- In 2002, community justice groups were described as an initiative of 'fundamental significance' for 'self-determination and a vehicle for community empowerment'. It was claimed that 'in addressing deep-rooted justice issues, community justice groups are succeeding where mainstream justice is not' (Limerick 2002; see also Fitzgerald 2001, p. 23; Cunneen 2001a, p. 193; Kristiansen & Irving 2001).

349 Possible explanations for this low level of participation are that it may be more difficult for the community justice groups from Cape York to make submissions to the court sitting in Cairns, and it has been reported that community justice groups may be reluctant to become involved in matters involving sexual offences.

350 It appears that a great deal of reliance has been placed on the positive conclusions of the *Interim assessment of community justice groups* (DATSIPD 1999); the interim assessment looked at their operation from September 1997 to February 1998 and concluded that it was too early to make a full assessment. It recommended that a further evaluation be conducted after the community justice groups had been operating for three years.

In addition to many observers noting their potential, or claiming the initiative to be a success, there has also been a great deal of concern expressed about the actual operation of many of the groups. For example, in our consultations senior JAG officers involved in providing support to the groups said that it was generally true that they 'are not all functioning at a level that you would want for the task that we're expecting them to do' and that they were in need of capacity building.

Questions have long been raised about the ability of the largely elderly, unremunerated members of the groups to function effectively, especially given the substantial pressure imposed on them because of their conflicting roles in the community (see Chantrill 1998, p. 176; Fitzgerald 2001; Cunneen, Collings & Ralph 2005, p. 137). The need for legal protection to be provided to community justice group members has been noted on a number of occasions[351] (Fitzgerald 2001; Alcohol and Drugs Working Group 2002) and concerns have also been raised about the sustainability of many of the groups in light of the age of members and the lack of succession plans (Cunneen, Collings & Ralph 2005).

Effectiveness of the groups often depends heavily on the skills, ability and commitment of the members and of the coordinator. It has previously been identified that many of the group members are inadequately skilled and resourced for the work they are required to do and many of the groups are heavily reliant on one or more key people to carry out their functions.

Need for training and support

The need for more resourcing and improved training for community justice groups has been an ongoing theme. For example:

- Fitzgerald's (2001) Cape York Justice Study described improved support and capacity building of the groups as being 'essential' to their effectiveness (p. 118).
- Cunneen, Collings & Ralph (2005) recommended that resourcing of the groups be improved and that the groups be funded by all justice agencies that use their services.
- O'Connor (2008) more recently recognised the myriad competing demands and functions imposed on members, and recommended that the roles and activities of community justice groups be prioritised and that their training program reflect the needs of individual members and their communities.
- Loban's (2006) report noted that there was only one community justice group funded in the Torres Strait Islands, on Thursday Island, so many communities did not have an avenue for formal input into the court's sentencing process (p. 27).

A number of submissions to our inquiry also argued that community justice group members should be paid and that more support for the groups was needed (submissions of Queensland Health, p. 3; Queensland Corrective Services, p. 3; individual submission, name withheld, p. 2; LAQ, p. 3; JCU Law School, p. 18).

Some progress has been made in recent years towards improving the resourcing and training of community justice groups since their transfer to JAG. For example:

- Funding was provided to expand their activities in the Torres Strait Islands and to train members from the outer islands about their role in supporting local people facing charges.[352]
- A number of community justice group coordinators and members across the state have been trained in business governance to improve their groups' operations. Training in mediation and dispute resolution has also been provided.

351 To some extent this issue has been addressed by amendments subsequently made to the relevant legislation (see s. 19 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*).

352 This role has become especially important since the expansion of the court circuits to Torres Strait islands beyond Thursday Island and Badu Island (see Chapter 18).

- A Statewide Community Justice Reference Group has also been established from May 2008 to enable Indigenous input into the ongoing implementation and monitoring of the Queensland Aboriginal and Torres Strait Islander Justice Agreement, and to provide a mechanism for the provision of advice to government on Indigenous community justice issues.[353] At their second meeting in November 2008, the Reference Group considered ways to improve the functioning and outcomes delivered by community justice groups and a subcommittee has been established to analyse the roles and activities of community justice groups to better inform suitable funding arrangements (JAG 2009a).

How can the potential of community justice groups be realised?

Though they may have had some successes, it seems likely that community justice groups have had little substantial effect in terms of reducing the overrepresentation of community members in the criminal justice system. For more than a decade, community justice groups have been central to the efforts made in Queensland to reduce Indigenous overrepresentation, yet it remains very high and crime and violence problems in these communities do not appear to be abating. This raises the question of whether community justice groups can be said to have failed, or whether their potential simply remains unrealised.

Certainly, though one of the key roles of community justice groups — providing community input on sentencing options to the court — may be important, it is only likely to exert a marginal effect, at best, on reducing crime and violence. It is our view that community justice groups generally have not been supported by a bold enough vision, have not been adequately resourced or provided with the capacity-building efforts needed, and have not had the real power (or incentives and disincentives) available to them in order to be able to substantially influence the behaviour in their communities.

It was clear to our inquiry that there are ongoing issues about the role of community justice groups and the level of support provided to them. Given the extent of criticism about their resourcing and support, and the continuing uncertainty about their roles and purpose, we believe that it is time for the roles and powers of community justice groups to be revisited — both to clarify how potentially conflicting roles should be dealt with, and to develop innovations in order to:

- Provide greater support so that they can take a leadership role in setting the standards that are to apply to behaviour in their communities.
  - It has previously been suggested that, for example, they should be given the power to promulgate local 'law and order' by-laws (Alcohol and Drugs Working Group 2002).
  - It has also previously been suggested that they play the key role in terms of the negotiation of the crime prevention and criminal justice components of local-level plans (see, for example, Fitzgerald 2001).
- Otherwise support the development of authority and influence for this group of leaders within the communities. For example, it has previously been suggested that community justice groups should be given the power to issue formal orders to compel[354] people to:
  - attend mediation and dispute resolution
  - attend counselling in cases of family violence and relationship problems
  - attend conferencing, in the case of children

353 The Reference Group consists of two community justice group representatives from each of six regions in Queensland, together with representatives from the judiciary, Aboriginal and Torres Strait Islander Legal Services, Legal Aid Queensland, JAG and other Queensland Government departments.

354 It has been suggested that it should be an offence for people not to comply with such an order made by the community justice group.

- attend conferencing, in the case of parents and guardians, where their children are involved in offences and disputes
- make arrangements for the management of income support payments, where it is in the best interests of dependants
- attend rehabilitation.

Depending on the results of the evaluation of the Welfare Reform Trial and the Family Responsibilities Commission, it may be the case that the community justice groups (in isolation or in conjunction with other local justice components such as the JP Magistrates Courts) could be adapted to incorporate elements of the Family Responsibilities Commission model.

JP Magistrates Courts

JP Magistrates Courts are constituted by community members who are specially trained justices of the peace and who can deal with guilty pleas for by-law offences and some criminal offence matters. JP Magistrates Courts have been developed since 1997. They do not operate exclusively in Queensland's Indigenous communities, but are now established in 14 of these communities, although they are not all active. Recent legislative amendments allow for a small daily sitting fee to be paid to JPs when constituting a Magistrates Court in Indigenous communities.[355] The JP Magistrates Courts program receives administrative support from the Department of Justice and Attorney-General.

There has been a lot of support expressed for local courts to play an important role in the administration of criminal justice in Queensland's Indigenous communities for reasons such as the following:

- They are community driven; therefore they are able to provide justice in a way that is more relevant and responsive to community needs and can contribute to a greater sense of community ownership and involvement in the justice system and in sentencing (see, for example, Cunneen, Collings & Ralph 2005).
- They are also seen as having considerable potential to provide more regular court sittings and help to overcome the delays associated with waiting for the Magistrates Court circuits (see, for example, O'Connor 2008).[356]

The Cape York Institute for Policy and Leadership submission to our inquiry expressed its strong support for locally constituted JP Magistrates Courts enforcing local laws as a sound model for overcoming law and order problems in Indigenous communities (submission of the CYIPL, p. 4; see also individual submission, name withheld, p. 110).

A number of previous reports have recommended the expansion of the availability of JP Magistrates Courts (see Fitzgerald 2001; Loban 2006; O'Connor 2008). In response, in recent years JAG has applied resources to deliver an extensive training program with the aim of establishing more regular sittings of these courts across the communities. For example:

- progress has been made to expand the JP Magistrates Courts services in the Torres Strait Islands, with JP Magistrates Court training provided at Thursday Island, Badu Island and Mer Island and the swearing-in of five additional JP (Magistrates) from Thursday Island and seven from Mer Island (Loban 2006)

355 See 2007–08 amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991* (see also JAG 2008, p. 39).

356 O'Connor (2008) suggests that they have considerable scope for reducing the workload of the Magistrates Courts by taking on more of the relatively 'minor' matters such as public nuisance offences. As explained in Chapter 4, many such 'minor' matters are likely to involve violence or threats of violence. However, we do agree that there is scope to use the JP Magistrates Courts to relieve some of the burden on the Magistrates Courts.

- in 2007–08 training was delivered to communities at Palm Island, Cherbourg, Bamaga (Northern Peninsula Area), Lockhart River, Aurukun, Coen, Hopevale and Woorabinda (JAG 2008, p. 47)
- there is a continuing focus by JAG on training and capacity building for JP Magistrates Courts in the four Welfare Reform Trial communities of Aurukun, Hope Vale, Coen and Mossman Gorge (JAG 2009a).

Are JP Magistrates Courts effective?

In the past, data have not been available to determine the numbers and types of matters dealt with, or the penalties imposed by, these courts. Because the impact of these courts has been largely unexamined, we sought and received data from JAG on the types of matters heard by the Magistrates Courts and the JP Magistrates Courts in Indigenous communities and on the penalties imposed by those courts. Table 17.1 shows the number of defendants proven guilty in specified Magistrates Courts in the 2006–07 and 2007–08 financial years by offence category and judicial officer type.

As Table 17.1 shows, in those communities with active JP Magistrates Courts and 'law and order' by-laws, JP Magistrates Courts do appear to relieve some of the burden from the Magistrates Court circuit, although the extent of that relief is not clear. For example, Kowanyama JP Magistrates Courts dealt with:

- 461 (76%) of the 608 defendants who were proven guilty of offences in the Magistrates Court in 2006–07, including all 293 defendants proven guilty of by-law offences
- 269 (56%) of the 485 defendants who were proven guilty of offences in the Magistrates Court in 2007–08, including all 209 proven guilty of by-law offences.

Although at first glance these data suggest that the Kowanyama JP Magistrates Court is shouldering a significant proportion of the work that would otherwise be done by the Magistrates Court, further examination of the 2006–07 by-law offences revealed that 200 of these were truancy-related offences — that is, people charged with failing to ensure that a child attended school — which would otherwise be unlikely to proceed to prosecution in the Magistrates Court under Queensland's state laws (see the discussion in Chapter 15).[357] Though this may suggest that the JP Magistrates Court is able to provide a response to local issues that may otherwise be lacking, it does suggest that it may not be relieving as much of the Magistrates Court workload as at first appears. However, leaving aside the by-law offences,[358] the data for 2006–07 still show that the Kowanyama JP Magistrates Court is hearing more than half (n = 168, 53%) of the Magistrates Court matters in which a defendant is proven guilty.

357 Pers. comm., JAG officer, 6 May 2009. Although we did not examine these data in more detail, it is likely that the 2007–08 data also include a number of truancy offences, reflecting the pattern displayed in the previous year.

358 We discuss this further later in the chapter under the section on by-law offences.

Table 17.1: Number of defendants proven guilty in specified Magistrates Courts, Childrens Courts and JP Magistrates Courts* in the financial years 2006–07 and 2007–08 by offence category and judicial officer type

Financial Year	Location	Childrens Court Magistrate			Magistrate			Justice of the Peace			Total		
		By-law offences	Other	Total	By-law offences	Other	Total	By-law offences	Other	Total	By-law offences	Other	Total
2006–07	Aurukun	–	84	**84**	–	301	**301**	–	49	**49**	–	434	**434**
	Badu Island	–	3	**3**	–	68	**68**	–	–	**–**	–	71	**71**
	Bamaga	–	48	**48**	–	152	**152**	–	–	**–**	–	200	**200**
	Cherbourg	–	42	**42**	4	125	**129**	103	8	**111**	107	175	**282**
	Doomadgee	–	26	**26**	–	215	**215**	–	15	**15**	–	256	**256**
	Hope Vale	–	–	**–**	–	–	**–**	–	–	**–**	–	–	**-**
	Kowanyama	–	6	**6**	–	141	**141**	293	168	**461**	293	315	**608**
	Lockhart River	–	5	**5**	–	172	**172**	–	–	**–**	–	177	**177**
	Mornington Island	–	23	**23**	–	250	**250**	–	109	**109**	–	382	**382**
	Palm Island	–	55	**55**	7	435	**442**	–	–	**–**	7	490	**497**
	Pormpuraaw	–	4	**4**	–	141	**141**	–	–	**–**	–	145	**145**
	Thursday Island	–	16	**16**	–	220	**220**	–	12	**12**	–	248	**248**
	Weipa	–	80	**80**	0	402	**402**	–	–	**–**	–	482	**482**
	Woorabinda	11	84	**95**	2	220	**222**	51	68	**119**	64	372	**436**
	Yarrabah	–	21	**21**	25	299	**324**	29	–	**29**	54	320	**374**
	Total	**11**	**497**	**508**	**38**	**3141**	**3179**	**476**	**429**	**905**	**525**	**4067**	**4592**
2007–08	Aurukun	–	90	**90**	–	565	**565**	–	7	**7**	–	662	**662**
	Badu Island	–	3	**3**	–	36	**36**	4	–	**4**	4	39	**43**
	Bamaga	–	38	**38**	–	186	**186**	–	–	**–**	–	224	**224**
	Cherbourg	–	103	**103**	5	174	**179**	76	24	**100**	81	301	**382**
	Doomadgee	–	20	**20**	–	268	**268**	–	–	**–**	–	288	**288**
	Hope Vale	–	1	**1**	–	20	**20**	–	–	**–**	–	21	**21**
	Kowanyama	–	6	**6**	–	210	**210**	209	60	**269**	209	276	**485**
	Lockhart River	–	24	**24**	–	195	**195**	–	11	**11**	–	230	**230**
	Mornington Island	–	19	**19**	–	380	**380**	–	176	**176**	–	575	**575**
	Palm Island	–	32	**32**	5	368	**373**	–	–	**–**	5	400	**405**
	Pormpuraaw	–	1	**1**	1	138	**139**	86	–	**86**	87	139	**226**
	Thursday Island	–	16	**16**	–	264	**264**	–	4	**4**	–	284	**284**
	Weipa	–	51	**51**	–	375	**375**	–	–	**–**	–	426	**426**
	Woorabinda	10	62	**72**	9	259	**268**	57	11	**68**	76	332	**408**
	Yarrabah	–	32	**32**	3	384	**387**	23	–	**23**	26	416	**442**
	Total	**10**	**498**	**508**	**23**	**3822**	**3845**	**455**	**293**	**748**	**488**	**4613**	**5001**

Source: Queensland Wide Interlinked Courts (QWIC) system data.

Notes: *These data include all matters for guilty defendants by the Magistrates Court, Childrens Court and JP Magistrates Court sitting in the following locations: Aurukun, Badu Island, Bamaga (which also services the other NPA communities of Injinoo, New Mapoon, Umagico and Seisia), Cherbourg, Doomadgee, Hope Vale, Kowanyama, Lockhart River, Mornington Island, Palm Island, Pormpuraaw, Thursday Island, Weipa (which services the communities of Napranum and Old Mapoon), Umagico, Woorabinda and Yarrabah. The data do not include any orders made by the Magistrates Court for Wujal Wujal, which are heard in Cooktown. The data include all guilty defendants for finalised matters whether resulting from a guilty verdict, guilty plea, or found guilty ex parte. As we noted in Chapter 6, the JP Magistrates Courts only deal with people pleading guilty to offences.

The data also confirm information received during our consultations that the contribution of these courts varies greatly within communities, over time and across communities. For example:

- The JP Magistrates Court in Pormpuraaw did not appear to sit at all in 2006–07 and then dealt with 86 (38%) of the 226 defendants proven guilty in the Magistrates Court in 2007–08. These were all by-law offences and constituted all but one of the defendants proven guilty of by-law offences that year (the other one was dealt with by the Magistrates Court).
- In Aurukun, which does not have 'law and order' by-laws, the JP Magistrates Court dealt with 49 (11%) of the 434 defendants proven guilty in the Magistrates Court in 2006–07 but only 7 (1%) out of 662 in 2007–08.[359]
- Mornington Island is another community which, although it has no 'law and order' by-laws, has an active JP Magistrates Court, dealing with nearly a third of the matters proven guilty in the Magistrates Court (n = 109, 29% of the matters in 2006–07 and n = 176, 31% in 2007–08).
- Woorabinda JP Magistrates Court dealt with 27 per cent (n = 119) of the defendants proven guilty in 2006–07, most of which involved offences other than by-laws, while in 2007–08 this dropped to around 17 per cent (n = 68), most of which involved by-law offences.

It is clear from the data presented in Table 17.1 that the courts are very active in some communities and virtually inactive in others. Our consultations revealed some possible explanations for the variability — including lack of interested or suitable[360] community members to qualify as JPs, people's unwillingness to sit on the court for fear of retaliation, lack of administrative support to schedule and organise the courts, lack of suitable offences (such as by-law offences) to be heard by the courts, and unwillingness of police to list simple offences before the courts — but there has been no proper evaluation of the courts to establish the extent to which these or other factors inhibit their operation.

During our consultations, other concerns were expressed about the operation of the JP Magistrates Courts. People who appear before the JP Magistrates Court rarely have access to legal advice and are rarely legally represented. Some people were concerned about the 'quality of justice' being administered in JP Magistrates Courts where it is possible for people to be sentenced to periods of imprisonment without having had legal advice or representation. As we stated in Chapter 6, the advice provided to us by JAG was that the JP Magistrates Courts, although empowered by the legislation to impose penalties including imprisonment, were discouraged from imposing custodial penalties and therefore were not making such orders.[361] Our examination of the data provided by JAG for 2006–07 and 2007–08 revealed that there were no defendants whose matters were heard by those courts who had any of the following orders imposed:

- custody in a correctional institution
- custody in the community
- a wholly suspended custodial sentence.

The orders that were imposed on defendants proven guilty by specified JP Magistrates Courts are set out in Table 17.2.

359 The QPS has started to list simple offence matters before the JP Magistrates Courts, and Aurukun plans to hold monthly JP Magistrate Courts in 2009 (Queensland Government 2009a, p. 13).

360 That is, community members without disqualifying criminal convictions to qualify as JPs.

361 Matters serious enough to warrant imprisonment would be adjourned to the next Magistrates Court circuit.

Table 17.2: Orders imposed by specified JP Magistrates Courts

Order imposed by JP Magistrates Court	For by-law offences		For other offences	
	2006–07	2007–08	2006–07	2007–08
Community service order	–	–	3	5
Probation order	1	–	15	–
Monetary order	246	309	652	593
Good behaviour/recognisance order	–	–	1	–
Other[362]	229	146	234	150

Source: QWIC system, provided by JAG.

Notes: These data include all orders imposed in the JP Magistrates Courts sitting in the same locations as in Table 17.1, although, as can be seen from Table 17.1, only a limited number of these locations had active JP Magistrates Courts.

How can the potential of JP Magistrates Courts be realised?

It is disappointing that no thorough evaluation of JP Magistrates Courts has been conducted to date to help determine how these local courts can most effectively contribute to reducing crime and violence in Indigenous communities and how best to resource the program. This is particularly disappointing given that the possible difficulties with JP Magistrates Courts have been highlighted (Fitzgerald 2001, p. 158) and that it appears an evaluation has been planned for some time but has not yet been conducted.

- The Cape York Justice Study reported that JAG would:
  - evaluate outcomes relating to Indigenous JP Magistrates, particularly with respect to recidivism, culturally appropriate processes, and other community justice issues
  - examine the issues of conflict of interest, legal representation, appeals against sentences, the recording of evidence and future resource implications (Fitzgerald 2001).
- The evaluation by Cunneen, Collings and Ralph (2005, p. xxviii) of the Queensland Aboriginal and Torres Strait Islander Justice Agreement noted that JAG's Indigenous Justice Strategy made a commitment to evaluate the outcomes of the JP Magistrates Courts with respect to recidivism, culturally appropriate processes and other community justice issues. Cunneen, Collings and Ralph also called for an independent evaluation of the outcomes of the JP Magistrates Court, and the government's response included a commitment to conduct the evaluation in the 2006–07 financial year (Queensland Government 2006a).
- JAG recently transferred responsibility for the JP Magistrates Courts from its JP Branch to the Courts Innovation Program and at this time announced that in the future it would 'evaluate the Justices of the Peace (Magistrates Court) program' (JAG 2008, p. 53).

An evaluation is needed to determine whether JP Magistrates Courts are achieving their aims and delivering quality, accessible justice to these communities. This evaluation needs to be conducted as a matter of priority so that funds directed towards training and resourcing these courts are optimally applied. The results of the evaluation are likely to have implications for resourcing other aspects of the system such as access to legal advice, court administration support from police and clerks of the court, an information hotline or help desk for JP court members (as proposed by O'Connor in 2008), and educating police and community police about the by-laws.

362 'Other' includes the following order types — convicted not further punished, admonished and discharged, reprimanded and cautioned.

The evaluation should be premised on the notion that local justice components, including the JP Magistrates Courts, have the potential to make an important contribution to dealing with the crime and violence problems in Queensland's Indigenous communities, but that we may need to be more innovative in our approach if this potential is to be realised. For example, consideration could be given to making a range of incentives and disincentives available to the court to encourage offenders to comply with orders (see Chapter 16). As we have stated above, if the Family Responsibilities Commission is shown to be successful, the JP Magistrates Court model (in isolation or together with other local justice components) could be adapted to include some of the elements of that model.

'Law and order' by-laws

We have already explained that some communities have 'law and order' by-laws co-existing with the state's criminal laws. The main reasons such 'law and order' by-laws were originally developed were to provide enforcement powers to community police and to enhance the self-management of these communities by local people and leaders.

We have also already described the variability in the existence of community 'law and order' by-laws (see Chapter 6) and we have seen the variability in the extent to which existing by-laws are enforced and used instead of, or in addition to, state criminal law offences in our discussion of the JP Magistrates Courts above. In some communities, especially those that have had or have community police or QATSIP officers and operative local courts, by-laws have been a significant element of the system, allowing offences of a relatively 'minor' nature to be dealt with at the local level by local courts.

Are 'law and order' by-laws effective?

In general our consultations revealed that many communities strongly supported the 'law and order' by-laws and it appears that this support was intertwined with the support for community police or QATSIP and, to a lesser extent, the support for local courts and local justice. A number of previous reports have noted the importance of 'law and order' by-laws:

- The Cape York Justice Study referred to the potential for community by-laws to be an effective community-based intervention to deal with local crime and justice problems, citing information that councils and community justice groups initiated campaigns targeting issues such as school attendance through use of the by-laws. However, it also noted that, although many communities had by-laws and could initiate campaigns to enforce the by-laws through the community police and the JP Magistrates Courts, in practice such campaigns were rarely sustained for significant periods (Fitzgerald 2001).
- The more recent review of Cape York justice services considered that 'law and order' by-laws provide an important local mechanism to attempt to modify behaviour and focus attention on issues that are important to each community. It recommended strengthening the applicability and content of local laws. For example, the report highlighted the potential of using by-laws to respond to petrol sniffing problems when they arise (O'Connor 2008, pp. 20–1).

The submission of the Cape York Institute for Policy and Leadership to this inquiry strongly supports the continued existence and enforcement of by-laws, arguing that local laws provide one more mechanism to assist in improving law and order when the state justice system is failing Indigenous communities. The submission argues that 'law and order' by-laws have advantages such as:

- they can be tailored to the needs of Indigenous communities in a way that state laws cannot be, even when these try to address the same subject matter; it has been suggested that by-laws could be used to respond to problems such as foetal alcohol syndrome, petrol sniffing, gambling and truancy (submission of CYIPL, pp. 4–7)

- they could be promulgated simply by establishing a set of model local laws (to avoid unsatisfactory delays in the state process approving local laws) (submission of CYIPL, pp. 4–7; see also individual submission, name withheld, p. 110).

We have said in Chapter 15 that feedback we received during our inquiry was that the state laws for dealing with truancy are virtually unworkable and we have seen some evidence of by-laws being used to respond to the problem of truancy — the data we referred to above on Kowanyama JP Magistrates Courts provide a good example of how the local justice mechanisms can work together to be responsive to a community problem. Interestingly, the Queensland Government Quarterly Reports show that Kowanyama for the same 2006–07 and 2007–08 period had one of the better rates of average school attendance of all of the communities (about 78%), although it was still below the state average rate for the same period (91%) (Queensland Government 2008d, p. 52).

However, though they may have potential, there are also problems associated with the use of 'law and order' by-laws in Queensland's Indigenous communities:

- Sporadic use of the by-laws and uncertainty about their enforcement. In the past it has been noted that difficulties have arisen in relation to the high turnover in state and community police and consequent lack of awareness among police of the range of by-laws and appropriate processes for their enforcement (Fitzgerald 2001, p. 136). The Cape York Justice Study recommended that police assist in training community police in relation to by-laws and that they assist in enforcing the by-laws (2001, p. 137).
- Loban's (2006) review of the Torres Strait Island justice services noted that there were 15 local councils at that time that had 'law and order' by-laws. However, she reported considerable confusion within the communities about the by-laws — what they were and who could enforce them — resulting in considerable under-use. Loban suggested that there should be increased training and awareness-raising for councils, community members and community police about the substance of by-laws and their operation.
- O'Connor (2008) reported that local laws had received a mixed response from councils.

There are possible consequences arising from the inconsistent application of by-laws across Queensland's Indigenous communities. For those communities without such by-laws, the police can exercise their discretion to divert some offenders from the formal criminal justice process using mediation or dispute resolution processes (depending on the capacity of community justice groups or others to provide this), cautioning or electing to take no further action. In those communities with 'law and order' by-laws, police have the further option of charging a person under the by-laws for behaviours that would otherwise constitute criminal offences, such as public drunkenness, property damage and assault. This means that:

- a person in one community may have a criminal conviction recorded for an offence that is based on the same behaviour for which a person in another community may be found guilty of a by-law offence and not have a criminal conviction recorded
- the crime statistics for the communities are not entirely comparable, as the use of by-laws in some communities may hide the true extent of crime, including violence and threats of violence that may be dealt with under the by-laws
- fine amounts paid go to council rather than into the state's general consolidated revenue; it was suggested by some during consultations that this puts greater pressure on offenders to pay their fines.

With the phasing out of community police and QATSIP officers, it is likely that the confusion about the use of by-laws may have grown and that their use may decline or become more sporadic.

We were made aware during our consultations that, in the past, communities had sometimes become frustrated at their inability to promulgate the 'law and order' by-laws because of the state interests checks that were conducted to ensure that there was no inconsistency between the by-laws proposed and existing state laws. The accompanying text box provides some details of this in relation to past attempts too impose 'curfews'.

Community proposals to control juvenile offending and antisocial behaviour through curfews

We were made aware during our inquiry of various attempts made in a number of communities, usually led by the council, to impose a curfew on the 'frightening' situation of young people 'running wild' and offending on the streets at night. Both Aurukun and Woorabinda, communities known to have a serious juvenile crime problem (see Chapter 4), have proposed such a curfew in the past for example. In Woorabinda we were told a by-law was drafted in 2007 to impose a curfew to 'get parents to take responsibility for their young people'. It was hoped that the curfew would be enforced by police and the community justice group. However, after the draft by-law was provided to the Queensland Government for advice, the curfew was not proceeded with.

How can the potential of 'law and order' by-laws be realised?

The Queensland Government has been in the process of reviewing local laws for some time, including problems associated with the use of 'law and order' by-laws in Indigenous communities and the possibility of formulating a set of model 'law and order' local laws. It is currently in the process of reviewing and amending the legislative framework governing Queensland's Indigenous communities as part of a policy shift towards mainstreaming the Indigenous local governments. Most recently, we understand that the Department of Infrastructure and Planning (formerly the Department of Local Government, Planning and Sport and Recreation) will be working with ATSIS to undertake a review of the legislative provisions relating to the 'law and order' by-laws within the next 12 months.[363]

In the meantime, it appears that much of the training for the JP Magistrates Court members provided by JAG is focused on the hearing of by-law offences as part of a capacity-building approach to support a local justice system. In its response to the O'Connor (2008) report, JAG (2009a) indicated that it supports its recommendation to strengthen the content and applicability of local laws and stated that it will consult with the Department of Local Government, Planning, Sport and Recreation (now the Department of Infrastructure and Planning) to look at 'law and order' local laws.

No decision should be made to abolish or wind back the 'law and order' by-laws. We encourage the continuing commitment, or re-commitment, to providing a criminal justice model in Queensland's Indigenous communities that incorporates local justice elements, including 'law and order' by-laws. However, we also acknowledge that improvements must be made (on the basis of evaluative evidence where appropriate, or to simply trial innovations).

363 This will form part of the review of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, which will also review the community police provisions contained in that Act (pers. comm., Project Manager, Local Government Act Review Team, 20 July 2009).

When it is conducted, we propose that the evaluation of the JP Magistrates Courts must also consider the extent to which the community 'law and order' by-laws contribute to the effective delivery of local justice in these communities. This evaluation should be designed in a way that can, among other things:

- compare the operations of the courts in those communities that have local 'law and order' by-laws, and/or local Indigenous police (community police or QATSIP), with the operations of courts in those that do not
- assess the extent to which the JP Magistrates Courts can reduce the demands on the circuit courts
- recommend ways of enhancing the ability of the JP Magistrates Court to deal creatively and responsively with local problems.[364]

This evaluation will need to be undertaken in close consultation with the Department of Infrastructure and Planning and ATSIS in relation to the development of a clearer strategy to support local 'law and order' by-laws. The evaluation of the JP Magistrates Courts then should provide a better evidence base to be used to clarify and develop the approach to 'law and order' by-laws.

Has commitment to a criminal justice system model incorporating local justice components wavered?

It is clear that the role and operation of the 'law and order' by-laws is closely connected to JP Magistrates Courts and to the other local justice components of the criminal justice system in these communities. Despite widespread support for, and the apparent numerous government commitments to, implementing a model for delivering criminal justice system services that incorporates these local justice initiatives, we have seen that there is a great deal of confusion surrounding this framework. This is of particular concern, given that the effective operation of various elements of this 'system' is interdependent with the effective operation of other aspects. For example:

- local 'law and order' by-laws allow enforcement action to be taken by local police (community police and QATSIP officers)
- local 'law and order' by-laws allow offences of a relatively minor nature to be dealt with at the local level by local courts (JP Magistrates Courts).

The lack of a clear policy framework — or whole-of-government commitment across the various agencies involved — can result in considerable energy and resources being wasted as, for example, a gap in the system may reduce the effectiveness of other elements. In terms of local laws, local courts and local police, the 'system' in recent years appears to be in something of disarray, as:

- In response to the recommendations of various reviews, JAG has for several years devoted resources and effort to continuing to expand and improve the training for JP Magistrates Courts, encouraging those courts to sit regularly, with a focus on hearing offences under the by-laws (see, for example, JAG 2009a).
- In 2006, however, the government in its response to the evaluation of the Aboriginal and Torres Strait Islander Justice Agreement decided to abolish QATSIP and phase out community police, apparently without considering how this might affect other elements of the 'system' such as local laws and local courts (see Queensland Government 2006a).
- There has been growing uncertainty about the role of by-laws. The Department of Infrastructure and Planning is now undertaking a further review of 'law and order' by-laws.

364 It is possible that the operation of the JP Magistrates Courts can be improved and informed by the experience of the Family Responsibilities Commission in the Welfare Reform Trial communities. In particular, offenders could be provided with a range of programs and services designed to intervene to break the cycle of offending more effectively than is done through fines.

Despite an apparent commitment made in the past by the Queensland Government to a model for delivering criminal justice services in Queensland's Indigenous communities that incorporates local justice elements, some agencies are not delivering in accordance with this policy or they appear to have departed from it.

Along with others before us, it is our view that the model that should operate in these communities is one which must include local justice elements (these may variously include community justice groups, local courts, local laws and Indigenous people in policing roles). It is important that the Queensland Government gets its agencies to commit (or re-commit) to the model so that there is not wasted effort as a result of gaps in the system.

Although we argue that there must be a model of criminal justice system service delivery to which all agencies provide sustained commitment, we also recognise that, though the overarching model in these communities should be broadly the same, there will be variations across the communities. There is no 'one size fits all' approach possible to crime prevention, policing and criminal justice system services that will meet the needs of Queensland's Indigenous communities. The communities have different levels of local involvement in policing; some have by-laws and active JP Magistrates Courts, while others do not; some have well-functioning community justice groups with the capacity to deliver a broad range of services, while others have very limited capacity; and the dynamics of each community and the nature of its crime and justice problems differ. The Queensland Government clearly accepts the notion that there is no 'one size fits all' approach appropriate to these communities and it is reflected in the 'place-based' approach to service delivery in these communities taken by the Indigenous Government Coordination Office and now ATSIS (see Chapter 2).

Accordingly, we consider that the crime prevention and criminal justice component of local plans (currently referred to as LIPs) should document the agreed model for the operation of local justice elements of the criminal justice system in each Indigenous community. The plan should also document the extent to which each agency, and the community, will contribute to the operation of each local initiative to be included in the model. Such plans should provide clarity for government agencies who will be needed to provide the services and for the community itself.

Summary and conclusions: unlocking the potential of local justice initiatives

The Queensland Government's position over a period of time has been that local justice initiatives developed and 'owned' at the community level — including community justice groups, local 'law and order' by-laws, and local courts — are to play a key role in the delivery of justice services and are to operate alongside the mainstream system in these communities. We agree with those who have asserted that local justice components have the potential to be an important source of local authority to deal with local problems; unfortunately, however, this potential appears to be generally unrealised.

A great deal of reliance appears to have been placed on community justice groups, really on the basis of an early interim review which could only show that they had potential to make a contribution to crime prevention and the delivery of fair and accessible criminal justice services in Queensland's Indigenous communities. Although JAG has been making efforts to improve the training and support provided to community justice groups in recent years, these groups continue to wrestle with problems of sustainability, capacity and their role. Given the nature of the crime problems confronting these communities and the longstanding gaps in service delivery, it is not surprising that the community justice groups, as they are currently conceived, continue to struggle to cope with the often competing demands that have been made on them.

Little close examination has been made of the operation of JP Magistrates Courts and their evaluation is well overdue.

There is a great deal of confusion and uncertainty about the role and future of 'law and order' by-laws, particularly since the decision was made to phase out community police and abolish QATSIP; this adds to the difficulties of ensuring that the JP Magistrates Courts are operating optimally.

We believe there must be a renewed commitment by all agencies and the community to support a model in which local justice initiatives play a role. There must also be a re-think regarding the future development of local justice initiatives. In particular, we believe, there needs to be a greater willingness to innovate to give these local justice components some real prospect of influencing the behaviour of community members. If this is not to be the case, then governments must take a far more realistic view, for example, of the extent to which local justice elements can contribute to the important task of reducing Indigenous overrepresentation in the criminal justice system.

➡ Action

That the Queensland Government commit to an agreed model for the delivery of a cohesive criminal justice 'system' in Queensland's Indigenous communities, and that this model should include local justice elements such as local laws, local Indigenous police and local courts.

We recognise that even with clear commitment from government to the broad model there is no 'one size fits all' approach possible to implementation of local justice initiatives to meet the needs of Queensland's Indigenous communities. It is our suggestion that, at a local level, planning needs to take place with communities to ensure that an appropriate level of agreement and clarity exists in relation to the operation of local justice elements of the criminal justice system in each Indigenous community.

We suggest that a greater level of discussion and agreement in the local plan between local police and community members on a range of issues could be of benefit. However, we also recognise that care must be taken in this process to ensure that community members understand that the matters to be agreed in a local-level plan do not act as a fetter on the decisions that must be made on a case by case basis by officers responding to offenders – rather, what can be agreed is how 'in principle' or 'wherever possible' the police will approach a particular type of issue.

➡ Action

That specific issues to be addressed within the crime prevention and criminal justice component of the local-level plans should include:

- **the agreed model for the operation of the criminal justice system in each Indigenous community**
- **the extent to which local justice initiatives such as the community justice groups, the local 'law and order' by-laws and the local JP Magistrates Courts will play a role in the delivery of justice services**
- **the role of the community justice group in each community, including its capacity to provide dispute resolution services, advise courts on sentencing, assist in the supervision of offenders in the community and so on, and the circumstances in which it can do so**
- **how offenders should be dealt with — for example, the circumstances in which offenders should be charged with by-law offences and taken before the local courts, and those in which they will be proceeded against for criminal offences before the mainstream courts.**

Local justice initiatives have suffered from the lack of rigorous scrutiny given to assessing their effectiveness to date. The key task before them — to make an effective contribution to reducing crime and violence in their communities — is no easy one. There are ongoing issues with each element of the local justice model that continue to demand attention. Timely evaluations will help to ensure that resources can be allocated to effectively deal with these problems, and will also inform the development of innovative ways to go forward.

It has been argued previously that more needs to be done to support the moral and cultural leadership provided by community justice groups and that the government has taken a far too restrictive approach to developing their roles, powers and authority (see Alcohol and Drugs Working Group 2002). In our view, now is a good time for a rethink about how the roles of local justice components could be developed to improve their ability to deal with the problems being faced in their communities.

Local justice components as a whole need to be revisited to ensure that they are able to bring about more effective social control in various areas of community life. They should be supported to have a role in setting the standards of social behaviour — perhaps a partial role in enforcement, taking action to stop situations of offending and conflict from becoming larger problems, dealing with young offenders, mediating in local disputes and resolving conflicts.

➡ Action

That the rigorous evaluation of local justice initiatives in order to better inform their development should receive greater priority than has been the case in the past. The evaluations should be premised on the notion that local justice components have the potential to make an important contribution to dealing with the crime and violence problems in Queensland's Indigenous communities, but that we may need to be more innovative in our approach if this potential is to be realised.

➡ Action

The Department of Justice and Attorney-General must conduct the much overdue evaluation of the JP Magistrates Courts that has been proposed on numerous occasions. This evaluation of the JP Magistrates Courts must be designed in a way that will allow JP Magistrates Courts to be considered as one possible element in a local justice system. Among other things the evaluation should:

- **compare the operations of the courts in those communities that have local 'law and order' by-laws, and/or local Indigenous police (community police or QATSIP), with the operations of courts in those that do not**
- **assess the extent to which the JP Magistrates Courts can reduce the demands on the circuit courts**
- **consider how the capacity of JP Magistrates Courts might be enhanced to deal creatively and responsively with local problems.**[365]

365 It is possible that the operation of the JP Magistrates Courts can be improved and informed by the experience of the Family Responsibilities Commission in the Welfare Reform Trial communities. In particular, offenders could be provided with a range of programs and services designed to intervene to break the cycle of offending more effectively than is done through fines.

➡ Action

That the Department of Justice and Attorney-General, with the support of the other departments for which the statutory community justice groups perform functions, undertake a review of the various roles and functions of those community justice groups (that is, those in Queensland's Indigenous communities) to determine how they can most effectively contribute to the delivery of crime prevention and criminal justice services in each community. The review should also examine:

- how to deal with conflicts of interest between the various roles and functions of community justice groups
- the extent to which community justice group members should be paid
- the extent to which other agencies can, or should, contribute to funding and capacity building for the groups.

➡ Action

That the Department of Infrastructure and Planning and ATSIS conduct the review of local 'law and order' by-laws in conjunction with, rather than in isolation from, the evaluation of the JP Magistrates Courts. The review should be premised on the notion that local justice components have the potential to make an important contribution to dealing with the crime and violence problems in Queensland's Indigenous communities, but that we may need to be more innovative in our approach if this potential is to be realised.

➡ Action

That the Queensland Government facilitate the development of partnerships, and provide support to them, to encourage innovations making local justice components more effective.

So far, we have focused on the local justice elements of the criminal justice system model in Queensland's Indigenous communities. We have proposed some steps to ensure that resources devoted to them are used most effectively. But these local justice elements were not designed to replace the mainstream criminal justice services; rather, they were designed as adjuncts to the mainstream services.

We turn now to examine the conventional criminal justice services (other than those we discussed in Chapter 16) and how we can improve the use of resources to deliver these services in Queensland's Indigenous communities.

18

RESOURCING A FAIR AND ACCESSIBLE CRIMINAL JUSTICE SYSTEM

We have said that there is a pressing need to increase the focus on effective crime prevention, both inside the criminal justice system and outside it, if we are to seriously address the crime and violence and overrepresentation problems in Queensland's Indigenous communities. However, we recognise that many of the most successful crime prevention programs will be effective in the longer term and that, even if we successfully reduce crime, we cannot expect to eliminate it. For those who proceed through the criminal justice system from Queensland's Indigenous communities, we also must ensure that justice is served — that is, that resources are provided to ensure a fair and accessible criminal justice system.

For a range of reasons, providing a fair and accessible criminal justice system for people in Queensland's Indigenous communities is a complex and difficult task. This chapter examines the issues that relate to this task, which necessarily involves providing conventional criminal justice services in a way that caters for the unique needs and circumstances of these communities.

This has not always been the case on the ground, as the absence of mainstream services has left the local justice initiatives trying to fill a gap. For example, the absence of youth justice services and community corrections officers has meant that community justice groups have often been constrained in their ability to work with the mainstream system. The absence of these services also significantly impedes the operation of other mainstream services — for example, the operation of the courts in sentencing offenders.

The areas we will cover in this discussion are mainly related to the operations of the courts and associated services such as legal representation and interpreters (see Chapter 6 for a description of the services available in these communities).

What are the key challenges in providing conventional criminal justice system services?

The Cape York Justice Study (Fitzgerald 2001) provided a comprehensive review of the operation of the criminal justice system in Cape York communities and recommended improvements to address service delivery gaps by:

- increasing the resources available to the courts to enable more Magistrates Court and District Court circuits to the communities (p. 156)
- enhancing the support for victims of crime (p. 192)
- improving the level of service delivery by legal services (p. 193)
- improving communications, including access to interpreters and communication facilitators
- improving cultural awareness training for courts and staff (p. 190).

The evaluation by Cunneen, Collings and Ralph (2005) of the Queensland Aboriginal and Torres Strait Islander Justice Agreement also proposed a number of strategies aimed at developing a fairer and more accessible justice system, including improvements to legal representation, provision of interpreters and cross-cultural training.

The reviews of justice services conducted more recently in the Torres Strait Islands (Loban 2006) and in Cape York (O'Connor 2008) confirm our own findings that, although significant improvements have been made in a number of areas since the Cape York Justice Study, there are still challenges facing the justice system in the Torres Strait Islands and in the other Indigenous communities. The key areas of concern continue to be:

- increasing demands on the circuit courts to hear matters in a timely way without compromising the quality of justice
- attendant demands on the legal services, including those who provide advice and representation to clients at the circuit courts, and their capacity to provide legal service more broadly, and prosecution services
- lack of availability of interpreters and victim impact statements.

How the delivery of justice is affected by workload pressure on the courts, the problems facing legal services and prosecuting agencies, and the lack of interpreters and victim impact statements was highlighted in 2007 in the controversy surrounding the 'Aurukun nine' rape case. In the accompanying text box we provide some details of this case that illustrate these problems.

The problems highlighted by the 'Aurukun nine' rape case

In 2007 the 'Aurukun nine' rape case received considerable publicity because of the lenient sentences imposed on nine Indigenous males aged between 13 and 25 years who pleaded guilty to the rape of a 10-year-old girl in Aurukun. All three adult offenders were sentenced to six months imprisonment suspended for twelve months and the juveniles were each placed on 12 months probation.

The Court of Appeal concluded that the sentencing process had miscarried and that the judge had failed to impose sentences reflecting the seriousness of the conduct. One of the factors contributing to this was the heavy workload taken on by the judge in Aurukun on 24 October 2007, when she sentenced seven of the nine respondents:

> The transcript records that this sentencing proceeding effectively commenced at 3.40pm and concluded at 5.03pm, a few minutes after the planes which flew in the judge, lawyers and court and departmental officers that day were due to depart. It seems that the judge had dealt with some 18 to 20 other matters that day before commencing this complex matter …
> The sentencing proceedings concerned the serious charge of raping a 10 year old girl by seven offenders, all of whom had significant criminal histories and complex personal circumstances. Because some of the offenders were adults and others juveniles, the sentencing was of some particular complexity involving the consideration of two disparate sentencing statutes involving sometimes competing sentencing principles.
> Her Honour is a very experienced judge, and no stranger to sittings of the District Court in Aurukun. She was, no doubt, conscientiously seeking to dispose of all the matters listed for hearing that day. But even taking into account the judge's perusal of the pre-sentence reports prior to the hearing of this matter, the sentencing process appears to have been conducted with excessive haste and in too summary a fashion to ensure that justice was both done and seen to be done to all interested parties: the victim and her family, the respondents and their families, and the wider community. (*R v. KU & ors; ex parte A-G (Qld)* [2008] QCA 154 at [103])

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A review of the Court of Appeal's judgment and of parts of the transcript of the proceedings reproduced in the report by Davis and Eberhardt (2008) shows that this case exemplifies almost all of the difficulties identified in the delivery of criminal justice services in Queensland's Indigenous communities, including:

- lack of interpreter services for defendants and their supporters for whom English is a second language
- failure to use victim impact statements
- failure to hear submissions from the community justice groups
- high workload of the courts and the limited time available to deal with matters
- limited capacity of prosecutorial services to play their role in the proceedings
- high levels of repeat offending shown in the criminal histories of the offenders
- limited time and resources available to defence lawyers to properly prepare their case and take instructions
- limited supervision applied to community-based orders
- difficulty in recruiting and retaining community correctional staff in these communities
- lack of suitable programs available for juvenile offenders
- constraints imposed on all the service providers by the 'fly-in, fly-out' nature of the service delivery and aviation requirements.

These deficiencies in criminal justice service delivery are not new. The Court of Appeal itself noted that public concern about dealing with serious and complex sentences in such a summary way is longstanding and was identified by the Aboriginal and Torres Strait Islander Women's Task Force on Violence (1999) as an area requiring improvement if violence in Indigenous communities was to be controlled. That report recommended in 1999 that 'court services to rural and remote areas must be increased and improved. Sittings must be more frequent, hearings less expeditious, access to legal help better, presentation of cases improved and client information services upgraded.'

How well are the circuit courts coping with the demand?

In recent years, magistrates from Cairns and other regional centres have increasingly travelled on 'circuit' to remote communities to convene Magistrates Courts. The Queensland Magistrates Court calendar shows that, in 2008, Magistrates Court circuits were conducted to the following Indigenous communities (for the number of days per year in parentheses next to each community):[366]

- Aurukun (34 days)
- Bamaga (12 days)
- Hope Vale (4* days)
- Kowanyama (30 days)
- Lockhart River (12 days)
- Pormpuraaw (12 days)
- Wujal Wujal (3* days)
- Thursday Island (47 days)
- Badu Island (3 days)
- Boigu Island (4 days)

366 Notes:

* Only undefended and simple matters are listed.

† The court calendar at Cherbourg sets aside one day per month for Murri Court and one day per month for Community Court to hear council by-law matters only.

- Darnley Island (4 days)
- Moa Island (3 days)
- Mer Island (4 days)
- Saibai Island (4 days)
- Warraber Island (3 days)
- Yorke Island (3 days)
- Yarrabah (26 days)
- Doomadgee (22 days)
- Mornington Island (23 days)
- Woorabinda (24 days)
- Cherbourg (60† days).

The Cairns magistrates also conducted circuits to Weipa for 32 days per year, Coen for 6 days per year and Cooktown for 36 days per year. Many of the matters heard in these courts are from Queensland's Indigenous communities.[367]

For many communities this will mean judicial officers, attendant staff and legal representatives flying in and out of the community each day of a two- or three-day circuit. For example, the communities on the Western Cape do not have suitable accommodation, so magistrates fly to Weipa, where they are based for the week, and fly in and out of the communities each day.

A typical circuit

Two Cairns magistrates have described a typical circuit in 2006 as follows:

> A typical Cape York circuit would see the two (2) Magistrates leaving Cairns once a month on a Tuesday morning at approximately 6.00am by light aircraft, travelling to a community (Lockhart River) to drop off one of the Magistrates and then continuing on to another community (Aurukun) to drop off the second Magistrate. At the end of the Aurukun list, the pilot then flies the Magistrate from that community back to Lockhart River or vice versa to pick up the first Magistrate and then all fly to Weipa where everyone is accommodated each night of the three (3) night circuit. The Magistrates then fly in and out of the remaining communities for the rest of the week, leaving Weipa at approximately 7.00am and returning each night to Weipa, sometimes as late as 8.00pm. Both Magistrates then return to Cairns on Friday evening.
>
> Court days can be long and exhausting and are usually rushed. Breaks are few and lunch is truncated, if held at all. Apart from defendants appearing in criminal matters, the court also hears Child Protection applications and domestic violence applications as well as being required to dispose of summary and committal hearings. (In relation to the latter, however, we notice that a large number of summary trials become pleas of guilty and solicitors elect not to cross-examine any witnesses in relation to charges set for committal hearing, even when those charges continue to proceed to hearing in the District and/or Supreme Court.)
>
> When endeavouring to complete the list of matters before the court, even with the best of intentions, the sentencing of defendants often feels like a factory. There is inadequate time to test assessments or submissions from the community justice group and/or the departments of Corrective Services and Communities. Many sentences involve serious charges and properly require much more time than we have to give. Consequently, these matters are usually adjourned to Cairns the following week, and where defendants are already in custody, they usually remain in custody until the sentencing occurs. This is less than desirable, in addition to which it offends against the principle that the sentencing of offenders should occur in the community in which the offending occurs. (Previtera & Lock 2006, p. 5)

367 Magistrates Court calendar available on the Queensland Courts website, <www.courts.qld.gov.au/2714.htm>.

The number of days that the court sits in these communities has increased to help the courts to keep up with the amount of work generated by most of these communities. For example, the court list for 2008 provided for 34 scheduled sitting days for Aurukun and 30 days for Kowanyama, in contrast to the 2006–07 financial year, when the court sat for 21 days in Aurukun and 18 days in Kowanyama (Queensland Magistrates Court 2007).

The number of communities to which the magistrates travel has also increased over the years, with the recent inclusion of a number of Torres Strait islands. For example:

- Loban (2006) reported that the court circuits to the Torres Strait were once a month to Thursday Island for 3.5 days and once every three months to Badu Island, and recommended the expansion of the circuits to other islands in the hope that this would reduce the number of non-appearances. In response, an additional Cairns-based magistrate was appointed and the scheduled circuit program was expanded to include Saibai, Yorke and Mer Islands, which commenced in early 2008, to be followed by Kubin (Moa Island), Boigu Island, Iama (Yam Island), Erub (Darnley Island) and Warraber (Sue Island) (JAG 2008, p. 18).
- Circuit courts have also commenced to Hope Vale and Wujal Wujal (Queensland Magistrates Court 2008, p. 3).

Despite the increase in the circuit program in Cape York, O'Connor (2008) identified an ongoing need to address the size of the circuit lists in a number of communities by, among other things, increasing the frequency and/or duration of circuits in some communities. The Chief Magistrate has agreed to keep the circuit court needs of the communities under review (JAG 2009a).

The District Court has also been increasingly conducting circuits to Indigenous communities in recent years, though less frequently than the Magistrates Court. The District Courts will only hear sentence matters (where the defendant pleads guilty). Any contested higher court matters will require the defendant and witnesses to travel to Cairns (for most Cape York and Torres Strait Island communities), Townsville, Mt Isa, Rockhampton or another regional centre for trial. In 2007–08, District Court judges:

- on the Gulf circuit sat in Mornington Island, Doomadgee and Normanton
- on the Cape circuit sat in Weipa/Napranum, Aurukun, Pormpuraaw, Lockhart River and Kowanyama
- also sat in Thursday Island, Bamaga, Yarrabah and Murgon (Queensland District Court 2008).

The District Court also continues to struggle to meet the demand for services in Indigenous communities in its twice-yearly circuits and to meet the communities' expectations that the circuit courts will deliver timely justice to the local communities.

Consultations for this inquiry revealed continuing widespread dissatisfaction and disenchantment with aspects of the fairness and accessibility of the criminal justice system, especially with the lack of justice and related services in the communities and the long delays between when an offence is committed and when the offender is sentenced. The increasing size of the court circuit lists contributes to the communities' dissatisfaction with the justice system as it results in longer delays to the court hearing and increases the disjunction in time between the offence and any sentence. The long lists and lengthy delays[368] put pressure on the courts to move through matters quickly and this can have an adverse effect on the quality of the proceedings.

368 For example, O'Connor (2008, p. 10) states that delays from the time the offence is reported to the matter coming to court can be lengthy — often in the vicinity of six months.

We need to continue to monitor and adequately resource the circuit courts. We have noted in Chapter 16 that youth justice conferencing and more community-based sentencing options must be made available, so a well functioning system must ensure timely court hearings keep up with the 'demand' so that people can access such services in a timely fashion.

The quality of proceedings is also affected by the lack of other services — legal services and interpreters — and by the limited cultural awareness of some of the people providing the services.

Legal services: defence and prosecution

Defence

Concerns over the adequacy and quality of legal representation continue to be raised by stakeholders. Aboriginal and Torres Strait Islander Legal Services (ATSILS) is the main provider of criminal law services in Queensland's Indigenous communities[369] and a number of magistrates expressed concerns to our inquiry about the quality of the legal services provided to Indigenous defendants in remote communities by ATSILS. Magistrates were particularly concerned about the level of experience of certain representatives, especially after the 2005 amalgamation of legal services[370] (see also Previtera & Lock 2006).

O'Connor (2008, p. 27) also noted the challenges facing ATSILS in recruiting and retaining staff to provide services to remote communities, which affect the level of skill and experience of legal personnel working in the area, and reported that ATSILS (SQ) was examining the staffing needs. She stated that lack of staff and funding were impeding the ability of ATSILS to travel to communities to take instructions prior to court circuits, which was essential for the effective operation of the circuit and for maximising the use of court time during the circuits. O'Connor suggested that, if ATSILS could not send staff to the communities before the circuit days, it should use the videoconferencing facilities to take instructions and advise clients.

369 Legal Aid Queensland (LAQ) also provides legal services. ATSILS and LAQ entered into a memorandum of understanding in late 2006 to clarify their working relationship and to minimise duplication or gaps in service delivery. The legal services that LAQ provides to Queensland's Indigenous communities include LAQ's in-house counsel often appearing on behalf of Indigenous offenders who are represented by ATSILS on District Court circuits (submission of LAQ, p. 2). LAQ provides a range of other services, such as outreach services through a pilot program operating in the Northern Peninsula Area, Yarrabah, Thursday Island, Palm Island, Cooktown, Bowen and Ingham, and staff travel to the communities each month to provide legal advice, court support and community education (this program operates beyond the criminal law) (LAQ 2008). LAQ also provides an Indigenous mediation program for family law conferencing in Yarrabah, which we have not discussed here as the focus is on the criminal justice system (submission of LAQ, p. 1).

370 Until July 2005, there were 11 Aboriginal and Torres Strait Islander Legal Services (ATSILS) operating throughout Queensland, providing legal services (mainly criminal law services) to Indigenous communities. These services were funded by the Australian Government and in 2005 it restructured Indigenous legal service delivery, establishing a centralised legal service in each of two regions in Queensland — South Queensland and North Queensland. Most of the services to remote Indigenous communities were provided by the Aboriginal and Torres Strait Islander Community Legal Service (NQ), which won the tender to deliver services for three years, from July 2005 to June 2008. The Brisbane-based Aboriginal and Torres Strait Islander Legal Service (SQ) won the tender to deliver services to South Queensland (Ross 2006). In 2008, ATSILS (SQ) was successful in tendering for the North Queensland region and that organisation now provides the majority of legal services to Indigenous communities. The Torres Strait Northern Peninsula Legal Service (TSNPLS) was the only legal service based in the Torres Strait and was funded by the Torres Strait Regional Authority to provide services in criminal matters only (Loban 2006). At the end of 2007, the contract was awarded to ATSICLS (NQ) to deliver the services from January 2008.

As the primary provider of criminal law services, ATSILS plays a pivotal role in ensuring the effective operation of the criminal justice system in remote communities, especially in ensuring the effective operation of the court circuits and ensuring that justice is delivered not only to offenders but also to victims and to the community. ATSILS is funded by the Australian Government and the competitive tender process introduced in the past few years was designed to improve the quality of service delivery to Indigenous people.

We are hopeful that the concerns expressed by the magistracy during our initial consultations are being addressed by the new service providers. O'Connor (2008) reported that the service provider for Cape York planned to have eight criminal lawyers and eight field officers to service the area. ATSILS reported to us that it continues to struggle to meet demand for its services but is working towards conducting pre-court circuits to the communities and using videoconferencing facilities to assist in this.[371]

The Queensland Government must liaise with the Commonwealth to ensure that the ATSILS funding keeps pace with the demand for services as the circuit courts increase their service delivery to remote communities. There is little point in spending state funds to deliver more circuit courts if the courts and communities are not supported by adequate legal advice and representation. There is a need for continuing dialogue between JAG, ATSILS and other service providers, such as LAQ, to ensure optimal use of resources.

Prosecution

Concerns have also been expressed about the quality of legal service provided by the Office of the Director of Public Prosecutions (ODPP) in the District Court circuits to the community. O'Connor (2008, p. 29) noted the difficulties faced in recruiting and retaining staff in the Cairns office of the ODPP, often resulting in young or inexperienced legal officers or prosecutors finding themselves on circuit or prosecuting matters that involve people from Cape York communities, frequently without sufficient training and lacking awareness of the language and cultural barriers associated with Indigenous witnesses. In the 'Aurukun nine' case, the Court of Appeal noted that the judge was not given any real assistance by either the defence or the prosecution, and made particular reference to the attitude of the prosecutor (*R v. KU & ors; ex parte A-G (Qld)* [2008] QCA 154).

JAG has reported that additional funding was provided in August 2008 to increase staffing levels in the Cairns ODPP office (JAG 2009a). We are yet to see what effect, if any, this will have on the level of service delivery by ODPP to the circuit courts in Indigenous communities. Again, we note that without adequate support from the ODPP — in the form of suitably experienced and culturally aware prosecutors — the District Court circuits will not optimise the delivery of justice to these communities, and we therefore encourage the ODPP to provide such support.

Interpreters

The ability of legal practitioners for the prosecution and defence to assist the courts by presenting the evidence and the various versions of events is made more difficult by the absence of interpreters, especially in communities such as Aurukun and in the Torres Strait Islands, where traditional languages dominate or where many people have English as a second or third language (Loban 2006).

371 Pers. comm., ATSILS CEO, 25 November 2008.

The lack of suitably qualified interpreters has been a problem in these communities for many years and has been raised many times, with recommendations to redress the problem (see Fitzgerald 2001; Cunneen, Collings & Ralph 2005; Loban 2006; O'Connor 2008). For example:

- In 1996, the CJC made numerous recommendations to improve the provision of interpreter services for Aboriginal witnesses in the report *Aboriginal witnesses in Queensland's criminal courts* (CJC 1996b).[372]
- The judiciary has also called for the provision of interpreter services to assist the courts in the circuits to Indigenous communities. For example:
  - The Annual Report of the District Court for 2006–07 described the lack of appropriately trained interpreters as 'a significant and concerning barrier to the proper administration of justice in the remote communities' (Queensland District Court 2007, p. 9; see also Previtera & Lock 2006, p. 12; Queensland Magistrates Court 2008, p. 20).
  - The Court of Appeal has noted that in 2007 there were no Wik Mungkan language interpreters accredited to the appropriate level by the National Accreditation Authority for Translators and Interpreters, despite the fact that Wik Mungkan, the traditional language of the area of Aurukun and Archer River, was the most widely spoken traditional Aboriginal language in Queensland in 1992, with about 1000 speakers. The court noted that the District Court had been raising the matter with the government for six years. Her Honour Justice McMurdo, President of the Court of Appeal, said:

    > The application of the rule of law in Queensland depends not only on the right of an accused person to a fair trial according to law but also on victims of alleged crimes having a genuine opportunity to make a complaint and to give evidence about it. Our community has an obligation to do everything practicable to ensure that even complainants who do not speak English or who have other disabilities have this basic access to the criminal justice system. This obligation is certainly not lessened in respect of Indigenous complainants. (*R v. Watt* [2007] QCA 286 (7 September 2007))

The response to the calls for improved interpreter services has been slow, but JAG has recently begun working with the National Accreditation Authority for Translators and Interpreters to develop a pilot court interpreters training and accreditation project for Wik Mungkan language in Aurukun (JAG 2008, p. 39). We are pleased to see some progress and support the trial as a first step. However, we need to see this as the first part of a process that makes interpreter services available to the other Indigenous communities in which many people do not speak English as a first language, including those in the Torres Strait Islands.

Victim impact statements

As noted above, interpreters are important not just to ensure a fair trial for the accused, but also to ensure that the victim's case is fairly put before the court. Another process designed to ensure that is the presentation of victim impact statements. One of the matters a court is to take into account in sentencing an offender is the impact of the offence on the victim.[373] Courts will usually be informed of this through the preparation and tendering of a victim impact statement.

372 The CJC recommended that consultation occur with the Torres Strait Islander community to determine the extent to which the recommendations should be modified to take account of language and cultural aspects specific to that community. The report also made recommendations that legal services be funded to allow adequate time to take instructions and prepare cases, and that the courts, lawyers and police prosecutors be provided with cross-cultural awareness training.

373 See s. 9(2)(p) of the *Penalties and Sentences Act 1992* and s. 150(1)(g) of the *Juvenile Justice Act 1992*.

Very few of the people in Cape York prepare a victim impact statement. According to O'Connor (2008), the ODPP victim liaison officers send material to victims in remote communities and, if the paperwork is not completed and returned, it is assumed that they do not wish to submit a victim impact statement. This is not a satisfactory process, as there are a range of other reasons the material may not be returned to the ODPP, including that:

- the material was not received by the victim as it was most likely to have been sent care of the post office
- the material was not understood by the victim
- the victim may feel 'shame' for what happened and may not want to talk or write about it
- the victim may have limited or no ability to read the material or write a report
- the victim may have limited ability to recall the events because of the passage of time (O'Connor 2008, p. 30).

As we noted earlier in this chapter, O'Connor recommended that community justice groups be trained to take victim impact statements in a timely way after an offence, and that this task be coordinated through the victim support officer within the ODPP in Cairns. JAG has accepted this recommendation and reports that training in the taking of such statements will be incorporated in the 2008–09 training program. Although we commend the fact that steps are being taken to improve the service delivery to victims, we reiterate our concern that community justice groups are being asked to shoulder a considerable and possibly conflicting responsibility in these communities. It should also be remembered that police in these communities are able to take victim impact statements.

Summary and conclusions: a criminal justice system under strain

In addition to reducing crime by preventing offenders from committing more crime, a vital role of the criminal justice system is delivering a fair and accessible system of justice. Although there is widespread recognition of the desirability of taking justice to the communities, and there have been increasing efforts to do so, there remain considerable problems encountered in delivering criminal justice services to these communities. Although the 'Aurukun nine' case may be an extreme example, it is clear from our consultations and research that many of these problems are widespread and not limited to the District Court circuits or to only one community.[374]

A number of improvements have been, and are being, made to the delivery of justice services in Queensland's Indigenous communities and there has been an increase in resources devoted to the criminal justice system, especially over the past few years. However, there is still considerable progress to be made, especially in the following areas:

- continuing to monitor the demands on the circuit courts to ensure that justice is delivered in a timely manner, and identifying and pursuing strategies to improve the effective use of circuit time (for example, making use of videoconferencing where appropriate to minimise the time taken on circuits)
- ensuring that there is close liaison between the courts, the ODPP, legal services and other services such as interpreters to ensure that all parties have the capacity to participate effectively in the delivery of justice to these communities. That is, there is work to be done to ensure that the elements of the 'system' are operating in a way that ensures that all parties in the system are able to complement the work of other elements. We have demonstrated that at the moment this balance is not present, and that there is a significant mismatch between some elements.

374 Nor are they limited to Queensland's Indigenous communities — criticism has also been levelled at the quality of justice delivered in the 'bush courts' of the Northern Territory and Western Australia (Siegel 2002).

There are areas that could benefit from increased resources, but we are reluctant to argue for an increase in the money spent at the 'back end' of the process — namely the criminal justice system — when the evidence so clearly shows that money spent at the 'front end' or early stages is more effective.

The challenge is to find an appropriate balance for the expenditure of criminal justice resources that provides an effective criminal justice system linked with effective local justice initiatives and counterbalanced by appropriate resources directed toward crime prevention, both within and outside the criminal justice system. The concluding part of this report provides discussion of where we believe the priorities for reform should lie in order to achieve the balance needed to make inroads into the crime and violence problems in Queensland's Indigenous communities.

➡ Action

The Queensland Government must ensure that the future allocations of criminal justice resources are appropriately balanced with resources allocated to prevent crime, both within the criminal justice system and outside of it.