



Responding to Child Sexual Assault in Aboriginal Communities

A report under Part 6A of the
*Community Services (Complaints,
Reviews and Monitoring) Act 1993*

December 2012



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Samples of the artwork used throughout this report are from the painting, ***The Offering*** by Nathan Peckham.

Nathan Peckham is a young Aboriginal artist from Dubbo and is a direct descendent from the Tubbah Gah clan of the Wiradjuri Nation.

The footprints represent the Ombudsman staff coming out to meet with the Aboriginal community. The circle is the 'meeting place' or 'fire', and represents the place for conciliation. The three 'seats' at the centre of the painting represent the Aboriginal community, government agencies and the Ombudsman. The three animals are offerings from each of the parties. These offerings represent what each party can trade. The pathways depict different options.

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January 2013

The Hon Victor Dominello, MP
Minister for Citizenship and Communities
Minister for Aboriginal Affairs
Level 37 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Please find enclosed our final report on our audit of the implementation of the *NSW Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities* ('the Interagency Plan') as required by Part 6A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* ('the Act').

This report is the fourth in a series my office has completed over the past three years in connection with our audit of the Interagency Plan. These reports, collectively, constitute our formal report to you on our audit.

I note that a copy of the report was provided to you on 31 December 2012 to meet the legislative requirements of section 43C(2) of the Act.

I also draw your attention to section 43C(3) of the Act which requires you to furnish a copy of the report to the Presiding Officer of each House of Parliament within one month of its receipt by you.

Yours sincerely

A handwritten signature in black ink that reads 'B. A. Barbour'.

Bruce Barbour
Ombudsman

Ombudsman message

This report is the fourth in a series my office has completed over the past three years in connection with our audit of the implementation of the *Interagency Plan To Tackle Child Sexual Assault in Aboriginal communities*. Each report has focused on the need to significantly improve the quality and efficiency of services delivered to Aboriginal communities. For several years, we have highlighted that poorly integrated services, a failure to deal with chronic staffing shortages in high-need locations, and weak accountability mechanisms, undermine the ability of agencies to identify and respond effectively to some of the most vulnerable Aboriginal children in NSW.

In recommending that we be required to audit agencies' implementation of the Interagency Plan, the Special Commission of Inquiry into Child Protection emphasised the need to assess the actual impact of the significant levels of activity generated by the Plan. Our independence as a watchdog body with jurisdiction over government agencies and relevant non-government organisations, our royal commission powers to require information, and our strong links and experience in working with Aboriginal communities, meant that we were well-placed to perform this auditing role. Our work was greatly assisted and informed by the valuable insights Aboriginal people shared with us throughout the audit.

Despite some good initiatives resulting from the Interagency Plan, the statistics show that there is still a long way to go in improving the social and economic conditions needed for Aboriginal communities to tackle this very complex issue and its underlying causes. In 2011, 55% of the 8,857 victims of sexual abuse in NSW were children younger than 16. While just 4% of all NSW children are Aboriginal, they comprise 10% of all child sexual abuse victims.

The Interagency Plan has succeeded in raising awareness of child sexual abuse in Aboriginal communities. Reporting of this issue rose strongly over the five years of the Interagency Plan, an indicator of Aboriginal people's increased confidence in the systems established to respond to child sexual abuse. Nonetheless, reported child sexual abuse represents only the 'tip of the iceberg'. Creating an environment where Aboriginal people feel safe to come forward in greater numbers and report abuse, must remain a priority.

To assess the impact of child sexual abuse at a community level, we examined information relating to reported abuse and related responses for 12 communities with significant Aboriginal populations. Between 2007 and 2011, we found that Aboriginal children in these communities made up 23% of all sexual abuse reports, despite only representing 12% of the population in these locations. Aboriginal people were also over-represented as suspects. Much of this alleged abuse was at the hands of Aboriginal people.

The child protection histories of each of the victims we identified from the 12 communities revealed that almost all of these children were known to Community Services. Two-thirds of these victims had already been the subject of 10 or more child at risk reports before the sexual abuse incident. The most serious reports usually receive a comprehensive face-to-face caseworker assessment, where resources are available. Recent state-wide data shows that 55% of all risk of sexual harm reports to Community Services received such an assessment, but the figure for the communities that we reviewed was just 26%.

In recognition that poor school attendance and behavioural problems often provide a window into the circumstances of vulnerable children, we looked at school attendance and suspension data for Aboriginal students enrolled in public schools. Almost a third of all Aboriginal students from these 12 communities had missed 30 days or more of school in 2011, and a significant number had missed the equivalent of half a school year. Aboriginal students from these communities received suspensions at a higher rate than non-Aboriginal students, and were more likely to be suspended on multiple occasions.

This disengagement from school also distances young people from the supports offered by the school environment, putting them at greater risk of abuse and involvement in anti-social and criminal behaviour. More than half of all juvenile detainees in NSW are Aboriginal. In parts of Northern and Western NSW, the incarceration rate is more than 80%. On this issue, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda recently said: 'Jail isn't seen as a place of punishment; it's almost a refuge for some kids... We've got to change that somehow'.ⁱ

For several years we have been highlighting the need for agencies with a shared role in child protection to identify and respond to at-risk children and young people. Yet many of the early intervention and 'integrated' case management programs operating in high-need communities are failing to reach those who need them most. The single biggest investment under the Interagency Plan, the \$22.9 million Safe Families program, was intended to deliver an integrated agency response to child sexual assault in five communities in Western NSW. This program raised high expectations, but fell well short on delivery.

ⁱ N. Robinson, *The Australian*, 'Disparity in black sentences perverse', 10 January 2013.

The Interagency Plan also provided significant funds to improve the availability of forensic medical services. A key objective was to reduce instances of child sexual assault victims in rural and remote communities having to travel as long as four hours to be examined by a paediatrician and receive medical treatment. Despite allocating \$5 million to tackling this issue, the progress made was limited and ultimately did not solve the central concern.

Our audit of the Interagency Plan put a spotlight on the capacity and effectiveness of a range of frontline services for all child sexual assault victims. In addition to Community Services' ongoing staffing shortages in high-need locations, NSW Health's sexual assault services are unable to meet the current demand for counselling. And, the multi-agency vehicle for responding to child sexual abuse – the Joint Investigation Response Team – is also facing serious state-wide resourcing challenges.

As we said in our 2011 report on addressing Aboriginal disadvantage, there is a need for targeted spending in priority areas, but simply directing additional funds to more programs and services is not the solution. Our report stressed the need for a streamlined, overarching approach by government to help communities address high levels of disadvantage and dysfunction. Establishing strong governance and accountability arrangements are integral to delivering an efficient and responsive service system.

While government agencies readily embrace the language of integrated service delivery, attempts to implement an inclusive approach to the development and implementation of major whole-of-government initiatives have been far from effective. Future attempts to develop genuinely holistic strategies to improve the circumstances of Aboriginal people, must take account of the lessons learned from these past attempts.

The establishment of the Ministerial Taskforce on Aboriginal affairs in 2011 and its recent commitments to strengthening accountability across government and forming genuine partnerships with Aboriginal leaders, provides considerable scope to achieve real and lasting change. One of the most significant outcomes from the Taskforce to date is the release of the Department of Education and Communities' *Connected Communities* strategy. This strategy represents an important step towards implementing place-based service models. It recognises the critical role that schools and health services play in providing vulnerable children and their families with the supports they need at the earliest opportunity.

A number of issues addressed in this report will be relevant to the recently announced federal royal commission into child sexual abuse in institutional settings. Adults reporting instances of sexual abuse that occurred when they were children represented 8% of all reported sexual abuse during the five years of the Interagency Plan's operation. Our audit identified the need to provide better services and supports for adult survivors of childhood sexual abuse; carefully examine all historical reports of sexual abuse made by adults for evidence of any current risks to children; and urgently consider legislative change to address the existing weaknesses in the regime for the cross-border exchange of child protection-related information.

In focusing on the underlying causes of Aboriginal child sexual abuse, rather than just the immediate service challenges, it was our intention that this report would inform the Government's approach to addressing major cross-agency service delivery issues. Our report should also inform the Ministerial Taskforce's current efforts to develop a comprehensive Aboriginal affairs strategy for NSW.



Bruce Barbour
Ombudsman

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Executive summary

This report outlines the findings and recommendations from our audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

The Interagency Plan was released in January 2007 and operated for five years. Approximately \$60 million was earmarked for implementing Interagency Plan initiatives.

The Plan committed 11 government agenciesⁱⁱ and a number of non-government organisations to implementing 88 actions. The goals underpinning the Interagency Plan recognise that child sexual assault in Aboriginal communities cannot be tackled in isolation of the broader issues of disadvantage – including poor health, education and employment outcomes, and the overrepresentation of Aboriginal children in the child protection and criminal justice systems.

In response to recommendation 18.1 of the Special Commission of Inquiry into Child Protection Services, the Ombudsman was required to audit the implementation of the Interagency Plan. When Justice Wood assessed what the Interagency Plan had achieved in its early years, he found that it had generated significant levels of activity but it was 'difficult to assess' the actual impact on Aboriginal communities, or on those children who are experiencing or are at risk of sexual abuse.

Throughout the period of the Plan's implementation, a range of major initiatives have been introduced. In particular, the reforms to the child protection system arising from the Special Commission of Inquiry and the Government's response, *Keep Them Safe*, as well as a range of initiatives linked to the National Indigenous Reform Agreement, settled by the Council of Australian Governments (COAG) in November 2008.

In August 2011, several months before the Interagency Plan was due to end, the NSW Government established a Ministerial Taskforce in recognition of the need to improve service delivery and accountability in Aboriginal affairs and, in particular, to improve employment and educational outcomes for Aboriginal people in NSW. Although the Ministerial Taskforce has not specifically focused on the issue of child sexual assault, it has recognised the strong alignment between its commitment to building strong accountability across government and what is required to properly address child sexual assault in Aboriginal communities into the future.

Throughout our audit, we have used a series of inquiries to focus agencies' attention on issues that need to be addressed if specific child protection strategies are to have an impact, especially in high-need locations. Two of these inquiries have culminated in reports to Parliament – *Inquiry into service provision to the Bourke and Brewarrina communities* (December 2010) and *Addressing Aboriginal Disadvantage: the need to do things differently* (October 2011). We also issued a confidential report provided directly to lead agencies about our review of a group of school-aged children in two Western NSW towns (July 2012).

Each report highlights measures needed to create an environment where child wellbeing is paramount and communities can thrive, thereby paving the way for more effective child sexual abuse prevention measures. These reports, collectively, constitute our formal report to the Minister on our audit.

Results achieved by the Interagency Plan

Perhaps the most important achievement of the Interagency Plan was to focus Aboriginal community attention on the issue of child sexual assault. As a result, a number of individual communities have shown leadership on this issue. This is reflected by increased reporting in those locations. Many of the practical initiatives these communities have developed are profiled in this report.

Despite weaknesses in the governance processes established to monitor the Interagency Plan's implementation and measure its outcomes, a range of positive initiatives to improve the systems to respond to Aboriginal child sexual abuse were introduced by agencies with responsibilities under the Plan. Some of the more significant achievements include:

- Improvements in the quality and consistency of assessment processes for reports of sexual abuse as a result of the introduction of the JIRT Referral Unit (JRU) in 2009 and the Enhanced JIRT Services to Aboriginal children and young people protocol. Together, these developments led to a substantial increase in the number of Aboriginal children accepted into the JIRT program. We recommend the permanent establishment of the JRU.

ii The main agencies with responsibilities under the Plan were Aboriginal Affairs, Attorney General's, Education and Communities, Police, Community Services, Health, Corrective Services, Juvenile Justice, Housing, Premier and Cabinet, and the Office of the Director of Public Prosecutions. Other entities with responsibilities included the Aboriginal Housing Office, Commission for Children and Young People, Education Centre Against Violence, Sport and Recreation, Justice Health, Office of the Director of Public Prosecutions, Office for Women, Police and Community Youth Clubs, State Parole Authority, The Cabinet Office and the NSW Aboriginal Land Council.

- The use of Safe Families funding to establish a JIRT in Bourke, representing an important symbol of the commitment to addressing child sexual assault in remote parts of the state. The team has brought valuable skills and experience to a region affected by chronic capacity constraints. We recommend that the Bourke JIRT also be funded into the future.
- A number of significant reforms have been implemented to improve the court process for all child sexual assault victims in order to reduce the number of victims who 'drop out' before their cases are finalised. Important changes include:
 - The significant expansion of 'remote witness facilities' to provide vulnerable witnesses with the option of giving evidence by CCTV from a secure location away from the courtroom. These facilities are now available in 82 locations around the state.
 - Additional court processes to better prioritise child sexual assault matters.

The data shows that in 2006, 26% of child sex offence matters were dismissed or withdrawn with no hearing. By 2011, the rate had decreased to 14%.

- In implementing their Aboriginal Strategic Direction, Police have continued to build on the good work achieved over many years in developing strong relationships with Aboriginal communities. This has included a continued commitment to increasing their Aboriginal employment rate through school-based mentoring programs and supported pathways for Aboriginal students into the police force.
- Despite no significant additional staff or funding increases, the NSW Health Sexual Assault Services (SASs) have nonetheless been able to steadily increase the total number of children receiving sexual assault counselling. While the data we received was not complete, it indicates that over the five-year period of the Interagency Plan, the number of children who received counselling increased by approximately 19%. NSW Health also established seven designated Aboriginal child sexual assault counselling positions, which facilitated a two and a half fold increase in the number of Aboriginal children receiving counselling from sexual assault services in the Hunter New England area (where four of the seven positions were based).
- The use of Keep Them Safe funding to establish an additional Rural New Street service at Dubbo and expanding the Hunter New England service at Tamworth to an additional site at Newcastle. New Street, an innovative NSW Health program that provides coordinated, specialist treatment services to young people with sexually abusive behaviours, is one of the few services of this type in NSW.
- We received consistently positive feedback about the courses and programs being delivered by the Education Centre Against Violence, a small but very effective unit within NSW Health. The training provided by ECAV has added significantly to the understanding of, and effective response to, child sexual abuse in Aboriginal communities. We recommend that ECAV be funded to take on an expanded role in relation to both its education function, and in developing and mentoring Aboriginal staff within the NSW public sector.

Significant ongoing challenges in addressing child sexual abuse

There are a number of fundamental challenges that meant agencies failed to meet core objectives of the Interagency Plan. If left unaddressed, they will continue to impede government efforts to respond effectively to child sexual assault in Aboriginal communities into the future. The most significant of these challenges are outlined below.

The need to improve the capture and use of data

The failure by partner agencies to develop robust systems for collecting and analysing data made it difficult to assess progress made and outcomes achieved by the Interagency Plan. The performance measures that were used often focused on activities (rather than outcomes), relied too heavily on broad state-wide indicators or were recorded in ways that limited their usefulness. An issue common to most agencies was their failure to routinely analyse local level data to identify and act on trends, even where this information was readily available. Nor could most agencies readily report on their services to, or outcomes achieved for, Aboriginal people in individual locations. These factors significantly impacted on their ability to identify what activities were having an impact.

Our audit identified a range of data weaknesses that must be addressed in order to improve service quality, accountability and transparency into the future. These include:

- **Capturing information about key service issues:** Access to accurate and timely information is fundamental to assessing service demand, measuring performance and identifying critical capacity constraints. Despite wide recognition that there are too few sexual assault counsellors, Health's inability to articulate the level or location of current demand due to inadequate systems for collecting service data potentially undermines arguments for additional resources to increase capacity. Health is also unable to quantify the number of forensic medical examinations conducted on children in each Local Health District, much less provide

information about key outcomes such as whether there has been any reduction in the distances child victims must travel to undergo a forensic examination. We recommend that Health ensure the consistent capture of a range of service referral and outcome data across all SASs, including where the service was unable to provide assistance and why. We also recommend that the collection and analysis of this information should occur by July 2013 and before the implementation of the proposed new SAS database.

- **Making better use of existing information sources:** In other cases, location-specific information about key outcomes is collected and centrally recorded, yet agencies do not make effective use of it. Although Community Services has long had ready access to highly useful data on the reporting of child protection concerns, it is only just beginning to consider the value of location-specific information and related analysis in its strategic reviews of child protection reporting and individual Community Service Centres' (CSCs) capacity to respond to priority concerns. While recent state-wide data shows that 55% of risk of sexual harm reports relating to Aboriginal children are referred for a face-to-face assessment, our review of data from 10 CSCs responsible for handling these reports in the 12 communities we targeted for detailed analysis, showed that none of the CSCs achieved anywhere near this rate of face-to-face contact. The average across the 10 CSCs was 26% for Aboriginal children. It is pleasing to note that Community Services has recently advised that it shares our concerns about the importance of improving the capacity to respond to reports of sexual harm in the target communities, and also recognises the potential of improved data analysis and reporting.
- **Investing in centralised data systems:** We also identified numerous weaknesses in the way Education collects, monitors and reports data on student attendance and suspensions. We required Education to provide us with school based data to determine the actual number of Aboriginal students who had missed significant periods of school or who were suspended, and how often. As this data is not systematically collected and analysed in this way, Education had to rely on time-consuming manual checks of paper records. The current lack of a centralised database to collect this type of information makes it difficult for Education to monitor and track the performance of individual schools. Education said the lessons learned from providing information for our audit will be used to inform the development of a new central database which is due to be implemented in all schools by late 2014. We recommend that, in consultation with its peak Aboriginal advisory group, Education develops and publishes a new report that includes a range of performance data relating to Aboriginal students' attendance, suspension, literacy and numeracy, and retention rates. And, that its region directors are required to regularly report against these indicators.
- **Ensuring compliance with data recording requirements:** In some cases, good data collection systems are in place, but compliance with recording requirements is poor. The JIRT database contains valuable workload and related investigation outcome data from across all 22 JIRTS. This database has the capacity to capture information such as whether children were interviewed and when, if charges were laid and the reasons for cases being discontinued. Our review of JIRT data revealed marked variations between JIRTS in relation to key outcomes/outputs. Police indicated that some of these variances are due in part, to a failure by some JIRTS to capture relevant outcomes. Police have acknowledged the need to immediately rectify this problem. Police have accepted our recommendation to use the workload and outcome data provided to us as part of our audit to implement a more rigorous performance monitoring regime for each JIRT. Ensuring that teams are provided with regular feedback on performance data is far more likely to encourage compliance.
- **Capturing data for agency business units:** Most reports about child sexual abuse meet the risk of significant harm threshold which was introduced on 24 January 2010. As a result, the Community Services KiDS database provides an important source of information about child sexual abuse. Understanding and monitoring the extent to which reports (both of sexual abuse and other welfare concerns) are being made where appropriate by mandatory reporters; and the response which these reports receive once made, are critical to addressing child sexual assault. Community Services provides agencies which have mandatory reporting responsibilities with high level trend data about their risk of significant harm reports. However this data is not broken down in a way that reflects organisational business units, and consequently it is of limited operational use. The lack of this more refined data can limit an agency's ability to conduct a meaningful analysis of risk of significant harm reporting patterns across different geographical areas such as school districts or police local commands. We recommend that Community Services provides its partner agencies with more detailed breakdowns of risk of significant harm reporting data to assist them to perform their shared child protection responsibilities.

Some of the more serious data deficiencies we identified through our audit were confirmed in a 2011 review conducted by the Social Policy Research Centre (SPRC) of the program performance framework that Aboriginal Affairs had used since 2009 to assess and monitor the implementation of the Interagency Plan. The SPRC review highlighted a number of difficulties with the performance indicators contained in the framework. It noted that none of the indicators aligned with activities and outcomes in the Interagency Plan, or at the local level, and that most (13 of 20) indicators did not align with the Plan's strategic outcomes. There was also criticism of the performance framework's failure to specify the 'jurisdictional level' at which data should be reported and that the lack of

meaningful location-specific data had undermined Aboriginal Affairs' ability to monitor what, if any, changes might have been occurring in high-need Aboriginal communities that agencies had targeted for particular attention.

Child protection and criminal justice agencies in NSW have an array of valuable records that could be used to strengthen the service response to child sexual abuse. For this reason, we recommend that the state-wide and local level crime data about child sexual abuse and sexual assault of the type that we specifically sought from BOCSAR and the NSW Police Force for this audit should – along with child protection reporting and JIRT outcome data – be collected and analysed as part of the process of monitoring future responses to Aboriginal child sexual assault.

In addition to agencies regularly analysing data to improve service delivery, it is also necessary in the interests of transparency and the public's right to information about 'return on investments', that information about agency performance is made public. Very little information about the results achieved through the Interagency Plan was publicly reported. For communities to be confident that local agencies and services recognise and are acting on priority issues, we recommend that publicly reporting include appropriate location-specific information.

Despite the sensitivity of this information, we argue there should be a presumption in favour of disclosure. Communities affected by high levels of school suspensions and absences need to know the extent of these issues, and be able to monitor progress. And while care is needed in the handling of information about child protection reports, especially highly sensitive reports about sexual abuse, it is important that communities know how agencies are responding to reported concerns. Without this information, communities have no way of assessing whether actions taken to address local capacity constraints and other performance issues are leading to improvements over time. Agencies therefore need to engage communities in a debate on what should be reported and how.

Building strong and safe communities

The Interagency Plan acknowledges that building strong and resilient communities is essential to tackling Aboriginal child sexual assault. In Aboriginal communities, existing violence and abuse needs to be viewed in the context of underlying and historical factors (such as trauma and family disruption), situational factors (such as excessive alcohol consumption and overcrowding), and precipitating causes that clearly trigger an episode of violent behaviour. Community members cannot be expected to feel safe and confident about reporting child sexual abuse when they are living in an environment of chronic disempowerment, uncertainty, violence and fear. The Plan recommended a developmental approach, noting the need for location-specific actions 'to be rolled out in, and tailored to, key locations where communities require intensive assistance'.

While governments have embraced the related language of 'community development' and 'capacity building', attempts to implement a genuinely inclusive, community-driven approach have been far from effective. The Ministerial Advisory Panel for Aboriginal child sexual assault argued that the Interagency Plan had been 'weakened by a lack of focus on community leadership and support' and that there had been 'inadequate community capacity building'. Similarly, Aboriginal Affairs criticised the Interagency Plan for not having a sufficient focus on supporting community leaders to develop initiatives to help break the cycle of abuse.

The repeated failure of government programs to support and promote the development of community initiatives highlights the need to try another approach. We recommend that the government should elevate the importance of this issue as part of its future strategies in the area of Aboriginal child sexual assault (and in connection with its key strategies in Aboriginal affairs more generally). As part of determining its future approach to community development, the government should provide better support to Aboriginal (and other community) leaders – particularly those in highly vulnerable communities – by funding non-government agencies with significant community development expertise, to work for, and in accordance with the instructions of, Aboriginal and other community leaders. If Government adopts this recommendation, the role of Aboriginal leaders (and the non-government agencies) would need to be effectively integrated into any place-based model that the government might ultimately adopt.

Aboriginal leaders have told us that targeted healing programs for victims of child sexual assault are also essential, but so too is healing for the broader Aboriginal community – to address the effects of violence, trauma and dislocation associated with high levels of community disadvantage. Both our audit and the recent community consultations conducted by the Ministerial Taskforce on Aboriginal Affairs have identified a strong desire on the part of Aboriginal people for healing to be formally recognised as a therapeutic response and for healing programs to be adequately supported. Our audit sought to identify what is needed in a practical sense to move towards an evidence-based approach to healing. We recommend the development of a state-wide healing strategy that should be led by a designated government agency and/or Aboriginal entity. The strategy should include a process for building an evidence base of what works and the creation of a funding pool across government agencies to support a more consistent approach to supporting healing programs.

Improving staffing capacity in high-need locations

For many years now, we have been drawing attention to the fact that addressing rural and remote recruitment and retention is critical to delivering services to Aboriginal communities. Ensuring that there are skilled and experienced staff in the locations where they are needed underpins the issues which we discuss throughout this report, from preventing child sexual abuse and building strong families and communities, to responding to victims and offenders when a report is made.

In November 2011, the government established the Public Service Commission. The Commission's primary objectives include strengthening the NSW public sector workforce capacity, development and performance. Responsibility at a state-wide level for addressing rural and remote recruitment and retention issues now sits with the Commission and, as such, the establishment of the Commission provides a unique opportunity for a renewed focus on resolving these issues.

We recommend that a comprehensive strategy for the NSW public sector be developed and implemented across three key areas – rural and remote recruitment and retention; building a strong Aboriginal workforce; and developing the cultural competence of the workforce.

Reviewing resourcing and accountability within the JIRT

There have been a range of significant initiatives developed over recent years aimed at making the JIRT program more responsive to the needs of Aboriginal children. However, the success of these initiatives is dependent on the JIRT operating effectively.

Due to the multi-faceted and complex nature of the JIRT, there are a myriad of practice issues, developments and achievements that could be canvassed in this report. Instead, we have sought to highlight the fundamental challenges currently facing the JIRT partnership which, in our view, must be given attention. If this does not occur, it will be difficult for many of the positive reforms implemented by the JIRT State-wide Management Group to achieve the intended outcomes. Our audit has identified that the majority of the problems stem from chronic staffing shortages across the JIRT partnership and highlighted the need to strengthen accountability, data collection and case management systems in the monitoring of, and reporting on, JIRT outcomes.

While the introduction of the JIRT Referral Unit (JRU) has been one of the most successful developments resulting from the 2006 review of the JIRT, it has led to a much higher than anticipated increase in the number of cases accepted into the JIRT program. Our examination of JRU data showed that between 2009 and 2011, the acceptance rate had increased by 25% from the pre-JRU period. However, the resulting increase in workload has not been matched by an increase in resources.

In various ways, these resourcing problems have impacted on core practice issues which go to the heart of the JIRT partnership: for example, the ability of Police and Community Services JIRT staff to meet their commitment to jointly interview children and to conduct local planning and response briefing and debriefing meetings for individual cases.

Given that the accepted referral rate appears to have now stabilised, it would be timely for a review to be conducted into the level of JIRT resourcing against the current demand. This review would need to consider the current resources of the three partner agencies. However, it would be inappropriate to suggest that reviewing the capacity of JIRT should only be about ascertaining whether there is a need for more resources. As we have seen from our review of the child protection system more broadly, it would be counter-productive to examine resourcing without also examining productivity. In the case of the Police arm of the JIRT, this fact has been well illustrated by our recent examination of police workload and outcome data, which highlighted significant performance variance across the JIRTs in areas such as child interview and arrest rates.

Police have acknowledged the significant performance challenges it faces and a review of the operation of its Child Abuse Squad – which undertakes the Police JIRT responsibilities – is underway. We recommend that, as part of this review, Police should seek to enhance the monitoring systems of the individual JIRT teams; consider the sufficiency of the supervisory JIRT positions; develop strategies for making JIRT a more attractive operational policing unit; and consider the scope for local area commands carrying out increased work in relation to serious cases of child abuse.

In doing so, it is important to recognise that improvements to police productivity and resourcing will inevitably place a greater resource burden on JIRT interagency partners. For this reason, in addition to our recommendations in relation to the review of the Child Abuse Squad, we recommend that a comprehensive review of the JIRT program be carried out.

Facilitating cross-border exchange of information

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* allows government and 'prescribed' non-government agencies within NSW to exchange information relating to the safety, welfare or wellbeing of a child or young person. The benefits of this new legislation have been significant in all areas of child protection practice

in NSW. However, we are aware of the difficulties which can arise when there is a need for interstate exchange of information between agencies other than statutory child protection agencies. Given the ease with which alleged perpetrators can travel between states, any weakness in the regime for exchanging information between states can pose significant risks to children.

The Department of Premier and Cabinet have advised us that the Commonwealth, in partnership with the states, is investigating the need for changes to legislation to extend the national protocol which is currently used by child protection agencies for sharing information on children at risk. We believe that there is an urgent need for legislative change to address the existing weaknesses in the regime for the cross-border exchange of child protection-related information, and recommend that the NSW Government actively pursue this need with the Federal Government and its state and territory counter-parts.

Meeting the demand for counselling

Breaking the Silence and the Interagency Plan both acknowledged that there was a significant shortage in the availability of specialist child sexual assault counselling, particularly for Aboriginal victims. Our audit has identified that there has been very little improvement to this situation as a result of the Interagency Plan. Almost universally, the available specialist services are not able to meet current demand. For many victims of child sexual assault, this means that there are no options available to receive timely counselling.

It is apparent that the capacity challenges are disproportionately affecting a number of specific groups, in particular people in rural and remote communities who rely on outreach services; people who have not formally reported the sexual abuse, or who have not had a report substantiated by the JIRT; adult survivors of child sexual assault (including adults who are in custody); and people who require specialist services for intra-familial sexual assault.

Counselling for victims of child sexual abuse across NSW is provided by a number of different services, funded and/or operated across NSW Health, the Department of Family and Community Services, and the Department of Attorney General and Justice. The services provided through each agency differ both in terms of their reach as well as the eligibility criteria for access to the service. All of the available services face either funding shortages, or uncertainty as to the availability of ongoing funding. From our review of this area, it is clear that current service gaps could at least in part, be addressed by the three lead agencies responsible for delivering counselling services taking a far more collaborative approach to service planning and related funding. Accordingly we recommend that these three agencies jointly review the capacity of child sexual assault counselling services, and identify how they can be better integrated.

The NSW Health SAS are the most substantial service provider, with 58 dedicated service response sites for victims of sexual assault. Despite a direction in the Interagency Plan for the state-wide capacity of the service to be expanded, the information we received from the Local Health Districts demonstrates that in almost every area across NSW the funding and staffing of sexual assault counsellor positions have not kept pace with the increases in demand over the past decade. With the exception of the seven designated Aboriginal child sexual assault counselling positions and recent establishment of JIRT Senior Health Clinician positions, there have been no budget enhancements for additional frontline counsellors in the SAS for more than 10 years. We recommend that Health review its current incentive schemes for attracting and retaining staff to rural and remote locations for the purpose of identifying strategies for improving its staff vacancy rate in these parts of the state, and that any such review be undertaken collaboratively with the Public Service Commission.

Better access to forensic medical examinations for children

The limited availability of suitably qualified medical practitioners to undertake forensic medical examinations of child sexual assault victims has been repeatedly raised as a significant barrier to increasing the rate of reporting in rural and remote NSW. This issue has been on agency agendas for many years – without evidence of significant progress – and the level of community and agency concern led to our decision to devote considerable attention to it during our audit.

We found that for children in large areas of western, southern and inland northern NSW, access to a forensic medical examination following a sexual assault can involve lengthy negotiations and inquiries by sexual assault workers and/or police trying to locate an available practitioner to conduct the examination as well as appropriate transport to a suitable health facility. Travel by road may then be required over long distances, taking many hours. In addition, applicable policies and procedures are inconsistent and unclear, which can result in friction between workers from different agencies when urgent decisions need to be made about if, and when, a forensic examination needs to be performed. We recommend that clear decision making processes be developed and included in the updated JIRT manual.

A lack of qualified practitioners in remote and regional areas, particularly for children under 14 years of age, is at the heart of this problem. Efforts have been made by Health to encourage local doctors to perform forensic medical examinations by making increased payments available in areas of need. Although these fee increases have been welcomed and have shown limited success in some areas, they have not made real inroads to the problem. The

establishment by Health of assessment services in a small number of communities to provide a 24 hour crisis service where no sexual assault service currently exists is also a welcome improvement. However, the question of whether there are doctors available to conduct the forensic medical examination remains. We recommend that Health take steps to ensure contractual arrangements relating to paediatricians and other practitioners conducting forensic examinations on children, include obligations on these health practitioners to perform forensic examinations on children on a call-out basis, including air travel when necessary.

One Health initiative that does show promise is the AIRS Model Pilot Program being trialled in the Western Local Health District. Unfortunately, while this trial has involved the upgrading of forensic services for adults, services for children have not been upgraded and it is unlikely that this is achievable in the near future. The trial involves the provision of flights for adults and children if more than a 400km return journey is required to receive a forensic examination. However, this aspect of the trial has not been allocated additional funding and the situation for children in the trial area has remained largely unchanged. Without specific funding, Western LHD currently does not have the resources available to allow necessary flexibility for the LHD to use flight transport.

The most workable solution for now appears to be for LHDs to have a number of clearly defined transport options available, and to assess each situation as it arises. After reviewing the various options which have been canvassed in a number of reviews into this issue (and following extensive consultation with LHDs), we have formed the view that there needs to be a centrally administered pool of funds that LHDs, subject to certain criteria, can access in order to reimburse costs associated with guaranteeing a basic level of victim support in those circumstances where there is a need for a forensic examination and flight travel is the best option. The inherent lack of predictability about when and where flights will be required means that allocation of funds to individual LHDs to cover this kind of cost is unlikely to be the best option.

Improving the criminal justice response to child sexual abuse

Achieving lasting gains in the proportion of matters which are reported to police, and which proceed to court, will require ongoing efforts to examine all of the possible measures to reduce the trauma experienced by child victims in participating in the investigation and prosecution process. It is critical that there is sufficient investment in creating an optimal system to give those cases which are reported to police the greatest chance of success.

Our review of a number of individual child sex offence matters which proceeded to court has highlighted the value of the remote witness facilities, which are now available in many courtrooms across the state, in reducing the trauma experienced by victims when giving evidence in court. Despite this, and other existing considerations for vulnerable witnesses, engaging with the criminal justice system remains a significant challenge for victims of child sexual abuse. We have highlighted a number of additional provisions for vulnerable witnesses which, if available, could build on the success of the remote witness facilities in addressing this challenge. In particular, we recommend that the Department of Attorney General and Justice give consideration to providing an option in certain cases for a child to deliver their evidence entirely by way of pre-recording; and for a scheme which allows vulnerable witnesses to engage with both police and the courts through a suitably trained and qualified intermediary.

There is also a need to improve the support which is provided to victims by criminal justice agencies once charges have been laid. Support is currently available to vulnerable witnesses through the Witness Assistance Service, and we have identified many cases where the work of this service has been critical in facilitating victims of child sexual abuse to give evidence in court. However, the current staffing capacity of the service is insufficient to meet demand, affecting both the number of vulnerable witnesses who receive support, and the type and quality of support which is able to be provided. We recommend that the government consider increasing the funding for an expansion of the Witness Assistance Service.

While there will always be barriers to achieving convictions in child sex offence matters, our audit has brought to light a number of areas where there is the potential for legislative reform to improve the way in which sexual assault matters are handled by the criminal justice system. We recommend that the Department of Attorney General and Justice considers undertaking a comprehensive review of sexual offence legislation in NSW. We also highlighted a number of specific areas within the current sexual offence legislation where reform may warrant consideration. For example, all of the JIRT partner agencies raised concerns with us during our audit about the current legislative response to adolescents who engage in consensual sex with peers of a similar age. Since NSW does not allow for any legal defence in matters such of these, police have advised us that they are obligated to investigate these cases, even in circumstances where there is no evidence of coercion. In a context of significant resourcing constraints, this has significant implications for the effective operation for the JIRT. We believe that there is value in reviewing the consent provisions, including giving consideration to introducing a defence of 'similar age', as is utilised in other Australian jurisdictions.

Providing effective, holistic treatment to all children who display sexually abusive behaviours

Our audit identified an urgent need for NSW to review its current arrangements for providing therapeutic treatment for children and young people who have problematic and abusive sexual behaviours. There is uncertainty about the extent to which Health's already-stretched sexual assault services are currently able to provide specialist help to the families of children aged under 10 who display problematic or abusive sexualised behaviours. Despite the recent expansion of New Street, an innovative NSW Health program that provides coordinated, specialist treatment to young people who sexually abuse other children, those who live outside the Sydney, Newcastle, Tamworth and Dubbo areas where these specialist programs are currently based, have little chance of receiving the help they need. And while Juvenile Justice offers important specialist programs and interventions – including a revamped Sex Offender Program – there are numerous impediments to helping young people with multiple and complex needs within the relatively brief time allowed by a control order or a community supervision plan.

In New Street and other small but effective specialist services, Health has demonstrated a significant commitment to establishing and extending effective therapeutic services. However, the piecemeal evolution of treatment services in NSW has left important gaps in the current service system. In particular, there is a real danger that a small but potentially high-risk group of young people are falling through these gaps, and receiving no effective agency response to their sexually abusive behaviours.

We recommend that all agencies and services with responsibilities in this area come together to consider creating a cohesive legislative and policy framework that explicitly sets out the respective roles of police, child protection, accommodation providers, and support agencies and treatment services, in supporting effective treatment strategies – including the use of treatment orders. While this scheme should give priority to therapeutic treatment and emphasise the value of early intervention, parental and family involvement and voluntary participation, it should also provide effective sanctions for high-risk individuals and families who don't comply with their treatment plans.

We also recommend the development of a restorative justice approach for young Aboriginal people who sexually abuse, based on a therapeutic treatment and wraparound family support model. To facilitate this, we recommend that consideration be given to the youth justice conferencing scheme being extended to include certain sex offences committed by juvenile offenders.

Responding to broader juvenile risk-taking

As it is extremely rare for a child's problematic or abusive sexualised behaviours to be their only behavioural issue of concern, their only indicator of trauma, or their only area of therapeutic need, our review highlighted the need for these behaviours to be considered in the context of broader juvenile risk-taking. In particular, our audit focused on how agencies – especially Police, Education and Community Services – identify young people and families with complex needs. We closely examined the kinds of multiple child protection concerns that put young people at greater risk of drifting from the child protection system to the criminal justice system, and opportunities for agencies to intervene early. In this context, 'early intervention' to prevent juveniles becoming entrenched in the criminal justice system means interventions 'early in the pathway' of this drift into offending behaviour, not just interventions 'early in life'.

Despite repeated attempts by various individual agencies to manage the multiple issues and complexity of simultaneous needs affecting highly vulnerable young people, and other high-end users of agency services, the two main multi-agency case management models operating in NSW have so far failed to deliver. Both programs – Supporting Children, Supporting Families and Family Case Management – have demonstrated the central importance of creating strong local and regional governance arrangements to drive interagency case management initiatives and build a comprehensive, integrated service system over time. Family and Community Services is now introducing a Coordinated Approaches for Complex Clients Framework. Yet if this latest framework does not effectively resolve issues of governance and accountability in relation to initiatives that must be delivered across human service and justice agencies, it is unlikely to be any more successful than its predecessors.

In response to particular concerns we raised about the situation of vulnerable children and adolescents, the NSW Government established a Vulnerable Teenagers Review to recommend strategies to reduce the numbers of older children and young people re-entering Juvenile Justice, affected by homelessness and long-term instability in their accommodation, and entering out-of-home care. The review will also have a specific focus on Aboriginal young people. While we welcome this review, we recommend that it and other important initiatives form part of a broader, more cohesive state-wide framework for identifying and responding to children and adolescents with complex needs, and that the framework actively incorporate all major service providers, especially Education, Health and other universal services, but also community and non-government providers, and specialist agencies such as Juvenile Justice.

Managing sex offenders in the community

As a critical aspect of protecting children and young people from sexual abuse is the management of sex offenders in the community, our audit examined the effectiveness of current strategies to monitor offenders, reduce the risk of sexual re-offending and protect members of the community. The main agencies with responsibilities for managing child sex offenders in the community in NSW are Corrective Services and the NSW Police Force. As Community Services has primary responsibility for protecting children, it must work closely with Police and Corrective Services to ensure the effectiveness of strategies to identify and act on the significant child protection risks associated with managing serious sex offenders following their release from custody. Housing and Health also play crucial roles in providing secure housing, access to drug and alcohol programs, counselling and other services needed to reduce the risks of re-offending.

Our report highlights a number of major developments in NSW that have enhanced the management of child sex offenders in the community, including: The establishment of the Child Protection Register in 2001 – creating a scheme for sex offender registration; the use of Child Protection Prohibition Orders (CPPOs) to prohibit certain offenders who pose a risk to the lives, or sexual safety, of children from engaging in specified conduct; the creation of Child Protection Watch Teams (CPWTs) to provide multi-agency forums responsible for the 'monitoring and risk management of high-risk sexual and violent offenders on the Child Protection Register who have been released into the community'; and the introduction of Extended Supervision Orders (ESOs) for a small number of sex offenders who present an acute and ongoing risk upon their return to the community.

Despite these recent improvements, our audit also identified a number of ongoing challenges that must be addressed. Our recommendations for strengthening the management of child sex offenders in community settings include: continued investment in appropriate monitoring and supports for offenders – particularly for those returning to more remote communities; that steps be taken to address the many risks associated with Corrective Services having to manage a handful of high-risk juvenile offenders in the context of systems designed for high volumes of adult offenders; addressing the resourcing and other difficulties police face in administering the child protection register; strengthening the management of Child Protection Watch Teams and using data and other information about their work to drive further improvements; and improving the understanding by staff of Police, Community Services and Corrective Services about the use of Child Protection Prohibition Orders.

Addressing Aboriginal disadvantage

In recognising the need for genuinely holistic solutions, we outline a number of fundamental challenges which need to be addressed if real progress is to be made in reducing disadvantage in Aboriginal communities, and tackling child sexual abuse.

Investing in education and economic capacity

There is a strong relationship between educational outcomes and future employment prospects. A vicious cycle currently exists in which poor educational outcomes lead to poor employment outcomes. However, to be motivated to engage in schooling, Aboriginal students need to have tangible employment prospects to strive for. Despite more Aboriginal students finishing Year 12 and an increase in the enrolment of Aboriginal people at TAFE, there is still a significant gap in their employment prospects compared with non-Aboriginal people.

Improving employment and educational outcomes for Aboriginal people in NSW are two of the three Terms of Reference which the Ministerial Taskforce on Aboriginal Affairs was directed to address (along with improving service delivery/accountability in Aboriginal affairs across NSW). The Government has acknowledged that effective reform in education and employment 'is central to addressing Aboriginal disadvantage as a whole'.

- **Engaging Aboriginal children in school**

Despite substantial investments by the federal and state governments to improve educational outcomes for Aboriginal children in NSW, more needs to be done in relation to improving school attendance and engaging Aboriginal children more effectively in the education system. This is particularly important in high-need locations with significant Aboriginal populations. We recommend much stronger internal governance arrangements to track the performance of individual schools on an ongoing basis in relation to Aboriginal student attendance and performance. And, while we welcome the flexibility of another recent Education initiative, *Local Schools, Local Decisions*, in terms of the opportunities it creates for school leaders to be innovative, providing schools with greater discretion in relation to decision-making, it must be coupled with a strong accountability framework.

The recently released Connected Communities strategy is a very promising initiative which, among other things, seeks to improve problematic attendance and suspension patterns in highly disadvantaged Aboriginal communities. The strategy is founded on schools building genuine partnerships with local Aboriginal communities and agency partners, to design a school environment that reflects the broader social fabric of each distinct community. By

establishing 'executive' principal positions and paying them a salary that better reflects the complexity of the work, including the brief to make schools 'integrated service hubs', is precisely the approach required if the underlying causes of disengagement with vulnerable families and other children, and poor school attendance and behavioural problems are to be addressed.

However, *Connected Communities* is initially (and understandably) only being rolled out in 15 schools across 10 communities. School attendance data clearly shows that many other schools also need a Connected Communities-type approach. Therefore, the challenge for Education will not only be rolling out an innovative schooling model in the 15 trial sites, but also making sure that greater attention is paid to all schools with high rates of non-attendance for Aboriginal children and poor educational outcomes.

Given the significant number of Aboriginal students being suspended from school in high-need communities, further consideration also needs to be given to what type of alternative arrangements could be put in place to avoid 'suspensions', thus enabling students with challenging behaviours to remain within the school environment. However, finding solutions for better supporting high-risk adolescents should not be seen as solely Education's responsibility. This is an area that requires the development of a genuinely integrated plan and related response by Human Services and Justice agencies. Clearly, the current Vulnerable Teenager Review being conducted by Family and Community Services is also relevant to attempts by various agencies to include – rather than exclude from – children and young people who engage in problematic behaviour in universal and other service support.

- **Building economic capacity in Aboriginal communities**

The link between building the economic capacity of Aboriginal communities, and improving social wellbeing more broadly, has been identified repeatedly. In our October 2011 report to Parliament on addressing Aboriginal disadvantage, we noted that while increasing job opportunities for Aboriginal people is important, achieving sustainable improvements to Aboriginal economic capacity requires a focus on wealth creation as well as employment – including facilitating opportunities for Aboriginal people to participate in small business enterprises, and opportunities for Aboriginal entities such as the NSW Aboriginal Land Council to partner with 'big business'.

While outside of the Interagency Plan there has been significant investment in a multitude of initiatives and programs to increase the economic participation and capacity of Aboriginal people, the effectiveness of these initiatives has been limited because of the absence of an overarching state-wide strategy to build the economic capacity and wealth of Aboriginal people in this state. We recommend that such a plan be developed and that it specifically address the barriers experienced by different Aboriginal people, communities and entities to achieving economic advancement. We also recommend establishing a body with overall responsibility for improving Aboriginal employment outcomes and enhancing Aboriginal economic capacity through identifying and facilitating partnerships between the private sector, government and Aboriginal entities to create successful commercial enterprises.

Adopting place-based approaches to service planning and delivery

Currently in NSW there are a range of plans and related initiatives aimed at addressing Aboriginal disadvantage, often developed in isolation and without a clear articulation of how they fit together. The various plans and commitments have a range of governance structures and reporting mechanisms in place which often overlap and sometimes even conflict. As a result, it is difficult to gain a sense of which elements of the array of existing plans remain relevant, or whether the disparate range of objectives and strategies they encompass are likely to achieve demonstrable improvements in the lives of Aboriginal people.

A number of our reports have noted the impacts of poorly integrated and inefficient service systems operating in local communities, including: the failure to identify and meet the needs of those most vulnerable; the continued funding of NGOs that are failing to provide a good quality service; and the limited return on investment from a number of agency programs. Our work has highlighted that in small, relatively isolated towns, the funding of programs designed to enhance service availability can create multiple and often 'competing' programs, reference committees and multi-agency case management groups – often with overlapping objectives and target client groups.

We believe a centralised approach at the local level to decision making about the planning, funding and delivery of services is essential to address continuing disadvantage in Aboriginal communities. In order for this to be achieved, decision making processes for planning and funding, and the related governance arrangements, need to be jointly driven by federal, state and local government agencies working in partnership with key non-government and community representatives in building an effective place-based service system. Key issues around the leadership (and associated authority) that is required to break down siloed decision making, and to drive integrated planning and service delivery in local communities, must also be addressed before such a system can be built. In this regard, giving an individual responsibility without also giving them the requisite authority is unlikely to be successful. We therefore recommend the development and implementation of a strategy for delivering effective place-based planning and service delivery within a number of high need communities in rural and remote locations.

Accountability and governance

Accountability and governance needs to be at the core of any future approach to tackling child sexual abuse, with strong governance across both child sexual assault initiatives, and initiatives which relate to improving the broader social determinants within Aboriginal communities.

Throughout this report, we have discussed the vital role of Aboriginal leadership within local community settings. However, in addition to Aboriginal leadership (and associated governance arrangements) at the community level, it will be essential for government to put in place arrangements that recognise Aboriginal leaders' right to provide overarching strategic direction, and to receive detailed ongoing advice about the progress of major initiatives.

We believe that legislation should be enacted to establish a NSW Aboriginal Advisory Council with responsibility for providing independent advice to government on the success of major initiatives in the area of Aboriginal affairs. The Council's advisory role should be supported by an independent body tasked with obtaining and analysing critical source evidence relating to key initiatives. This body should have the legislative power to, where necessary, compel witnesses, require the production of information and investigate specific issues to enable it to provide a robust and frank assessment of whether major government plans in this area are resulting in real progress. This body will also need the necessary skills, experience and credibility with Aboriginal leaders and communities for it to succeed.

We recommend that the Government commit to public reporting during the next two calendar years on the progress of the response to all of the recommendations in this report. More broadly, it is essential for regular and meaningful public reporting to be central to any future governance and accountability arrangements which are put in place. The Ministerial Taskforce for Aboriginal affairs has recognised the need to strengthen accountability and increase transparency, and this will form part of its proposed Aboriginal affairs strategy.

Recommendations

1. That the NSW Government commits to developing a state-wide healing strategy and, in doing so, gives specific consideration to:
 - a) designating an agency and/or Aboriginal entity to develop and lead the implementation of a state-wide healing strategy
 - b) forming a partnership with the Aboriginal and Torres Strait Islander Healing Foundation to ensure that a collaborative state and federal approach is taken to reviewing, evaluating and funding healing programs in NSW
 - c) developing a process for identifying and evaluating existing healing programs operating in NSW with the aim of building a solid evidence base in relation to the core components of successful programs
 - d) NSW Health's proposal to create a funding pool across government agencies to support a more consistent approach to supporting healing programs.
2. That the NSW Government develops the agenda for its proposed healing forum in 2013 in collaboration with Aboriginal entities such as the Coalition of Aboriginal Peak Bodies; the Ministerial Advisory Panel on Aboriginal Child Sexual Assault and the Aboriginal Communities Matter Advisory Group (established by the NSW Health Education Centre Against Violence); and provides a copy of this Chapter on healing to these entities as part of their consideration of the forum agenda.
3. In light of legitimate criticisms by the Ministerial Advisory Panel and Aboriginal Affairs regarding the Interagency Plan's lack of focus on community development (and related issues of community leadership and support), the NSW Government should elevate the importance of this issue as part of its future strategies in the area of Aboriginal child sexual assault (and in connection with its key strategies in Aboriginal affairs more generally).
4. As part of better integrating community development into its future strategies, the NSW Government should seek to avoid the problems of the past by ensuring that it independently evaluates the strengths/weaknesses of past community development initiatives: such as the Remote Service Delivery Process (in relation to Walgett and Wilcannia), the Partnerships Community Program and the Murdi Paaki Trial.
5. As part of determining its future approach to community development, the NSW Government should provide better support to Aboriginal (and other community) leaders – particularly those in highly vulnerable communities – by funding non-government organisations with significant community development expertise, to work for, and in accordance with the instructions of, Aboriginal and other community leaders. If Government adopts this recommendation, the role of Aboriginal leaders (and the non-government organisations) would need to be effectively integrated into any place-based model that the NSW Government might ultimately adopt – See Chapter 21.
6. That the NSW Government gives consideration to designating a lead agency with responsibility for developing a state-wide strategy for:
 - a) The development and distribution of resources aimed at raising awareness about Aboriginal child sexual assault. In doing so, the designated agency should utilise existing resources such as *Speak Up* and adapt their use for different target groups including making use of various media formats. The distribution strategy should be accompanied by direct access to appropriate support services for participants.
 - b) The delivery of community development programs aimed at raising awareness of child sexual abuse and family violence that have been the subject of positive evaluation such as the *Weaving the Net*, *Strong Aboriginal Women* and *Strong Aboriginal Men* programs developed by NSW Health's Education Centre Against Violence.

In developing this strategy, the designated lead agency should identify and work with a suitable group of Aboriginal advisors, such as the Ministerial Advisory Panel on Aboriginal Child Sexual Assault, and should also ensure the participation of young people.
7. That the NSW Government gives consideration to the following recommendations arising from the 2011 Aboriginal child sexual assault forum which brought together the Taree and Quirindi/Walhallow women's groups:
 - a) That, to strengthen community leadership around Aboriginal child sexual assault, the NSW Government should support the creation of a state-wide network of Aboriginal women's groups focused on preventing Aboriginal child sexual assault and the establishment of an annual state conference for the network.

- b) That a designated lead agency should work with Aboriginal women's groups to support them in developing 'home grown' resources that can be used by individual women's groups to raise awareness about Aboriginal child sexual assault in their communities.
 - c) That additional funding should be provided to support an extension of the Education Centre Against Violence's programs targeting child sexual abuse such as its *Weaving the Net* program to Aboriginal communities across NSW.
 - d) That community child protection groups should be formally recognised in legislation to enable them to provide advice to Community Services on the placement of Aboriginal children in need of care.
 - e) That dedicated 'cultural spaces' in communities for Aboriginal women and girls should be established as part of any state-wide healing strategy.
8. That the Department of Education and Communities, in conjunction with a group of suitable Aboriginal advisors, identifies successful personal safety/protective behaviours training courses for delivery within schools with significant Aboriginal populations, and that, in doing so, specific consideration is given to the *Got Ya Back Midiga* and *Safe4Kids* program models.
 9. In light of the successful delivery of the *LOVE BiTES* personal safety/protective behaviours program in conjunction with Aboriginal men's groups in three juvenile justice centres, that Juvenile Justice and Justice Health explore the potential for delivering the program with input from local men's groups in all centres with high numbers of Aboriginal detainees on a regular basis.
 10. That the Department of Families and Communities commits to the development and implementation of a child safe house trial in a select number of high-need Aboriginal communities in Western NSW.
 11. That the NSW Government tasks lead human service and justice agencies with developing a cross-agency framework for community safety planning which addresses the issues identified in section 6.1 of this report to guide the development and implementation of local community safety plans in high-need Aboriginal communities. This framework should also be developed in conjunction with local government and have regard to the NSW Police Force's *Aboriginal Strategic Direction* Plan. If Government adopts this recommendation, it would need to be effectively integrated into any place-based planning model that it might ultimately adopt – see Chapter 21.
 12. As part of the process of monitoring the child protection system, the *Keep Them Safe* SOG should consider:
 - a) The nature of the baseline data that should be collected to measure how well child sexual assault is being responded to generally, and specifically, in relation to Aboriginal children. This consideration should include determining the best use of relevant mandatory reporting information (including assessment and outcome data) with criminal incident and JIRT outcome data as discussed in chapters 7, 8, 9 and 12 of this report.
 - b) The type of data that should be collected, analysed and publicly reported about Aboriginal child sexual assault to enable an assessment of whether progress is being made against this issue. This consideration should also include identifying the type of state-wide and local data that should be made publicly available.
 13. That Community Services provides its partner agencies with more detailed breakdowns of risk of significant harm reporting data to assist them to fulfil their shared child protection responsibilities. In determining, in consultation with partner agencies, the type of data required, consideration should be given to providing a specific breakdown against categories such as: organisational business unit; particular roles within organisations; reported issue type (including risk of sexual harm) and Aboriginality.
 14. That Community Services improves the guidance in the *Mandatory Reporter Guide* in relation to the reporting of diagnosed STIs in children in light of our observations in Chapter 7 of this report.
 15. That Community Services and NSW Health, ensure that the *Mandatory Reporter Guide* is regarded as the single authoritative source in relation to health practitioner's obligations to report STIs diagnosed in children.
 16. That JIRT partner agencies delete or amend existing policies to ensure there is alignment with the *Mandatory Reporter Guide* in relation to guidance relating to STIs diagnosed in children.
 17. That, following the review of the *Mandatory Reporter Guide* referred to in Recommendation 14 above, NSW Health nominate an organisational unit to be responsible for providing educational material to mandatory reporters in the broad health system, including information about reporting STIs and sexual activity in children.

18. That NSW Health improves its data collection practices in relation to capturing the 'Aboriginality' of children under 16 years diagnosed with an STI whose details are recorded on the Public Health Unit database.
19. Given the need to develop and promote best practice in relation to:
- Prompt and appropriate reporting to police of actual and possible child sexual abuse and other serious criminal matters involving children; and the reporting and assessment of historical allegations (and the responses to these allegations).

Community Services should work with the other JIRT partner agencies in seeking to progress and enhance the practice initiatives that we have discussed in section 7.4. In addition, Community Services should seek to evaluate the success of its current and future initiatives in this area both in terms of the impact on its own agency, other relevant government agencies and the broader community services sector.

20. That the respective heads of the three JIRT partner agencies should individually and severally carry out a review of the JIRT program that focuses on:
- a) Whether the resources available to deliver on the key components of the JIRT program are adequate.
 - b) Establishing a solid framework (and related evidence base) for better ongoing monitoring of the performance of the key components of the JIRT program. In establishing the framework, the respective heads of the three JIRT partner agencies should pay particular attention to the following:
 - i. Enhancing the JIRT program's case management information system(s).
 - ii. Effectively utilising the Child Abuse Squad's state-wide workload analysis reports.
 - iii. Continuing to strengthen the role of the JIRT State-wide Management Group in relation to its audit role and its leadership, and evaluation of, cross-agency JIRT-related development initiatives.
 - iv. Enhancing the output/performance data currently reported to the respective heads of the partner agencies by the JIRT State-wide Management Group.
 - v. Ensuring that there are adequate systems in place for assessing the ongoing impact of the Enhanced JIRT Services to Aboriginal children and young people protocol. (And its potential applicability to non-Aboriginal children).
 - vi. Whether there is ongoing practice improvement in relation to the exchange of critical information between JIRT partners.
 - vii. The extent of compliance with Local Planning Response Procedures.
 - viii. Whether there is ongoing progress in relation to the implementation of the *Aboriginal Community Engagement Guidelines*.
 - ix. Whether there is continuing high quality performance in relation to the operations of the JRU.
21. In consultation with its JIRT partners, the NSW Police Force should continue its ongoing review of its practices and performance as the lead criminal investigative body of JIRT. In doing so, the NSW Police Force should seek to:
- a) Enhance its monitoring systems of its individual JIRT teams in line with the rigorous monitoring system it already has in place under the COMPASS performance management system.
 - b) As previously noted, seek to effectively utilise the Child Abuse Squad's state-wide workload analysis as a performance monitoring tool.
 - c) Consider whether the allocation of supervisory JIRT positions is adequate.
 - d) Consider innovative strategies for making JIRT a more attractive operational policing unit.
 - e) Consider the scope for, and appropriateness of, Local Area Commands carrying out increased work in relation to serious cases of child abuse.
22. That the NSW Government commits to permanently funding the JRU and the Bourke JIRT.
23. That NSW Health ensures its new database for capturing Sexual Assault Service data includes collection of the following:
- a) the number of children who are referred to the service for counselling, disaggregated by age and Aboriginal status
 - b) the number of children who receive counselling from the service, disaggregated by age and Aboriginal status

- c) the number of referrals rejected by the service, and the reason for the referral being rejected
 - d) the number of referrals made to other services, including the number of those referrals which were for adult survivors of child sexual abuse.
24. That NSW Health collect, as a priority, the necessary data to allow it to determine the current staffing of, and demand for, the Sexual Assault Service. Furthermore, following the collection and analysis of the data, NSW Health should:
- a) review the adequacy of the overall budget for this Service
 - b) consider quarantining funds for the Sexual Assault Service as part of the budget allocations to Local Health Districts
 - c) consider allocating additional funds to the Local Health Districts specifically for the purpose of providing the Sexual Assault Service with access to a pool of flexible funds for brokerage and other incidental expenses.
25. In light of the observations made in sections 10.3 and 10.4 of this chapter, NSW Health, the Department of Family and Community Services and the Department of Attorney General and Justice should jointly review the capacity of the child sexual assault counselling services and identify how they can be better integrated. As part of this process, consideration should be given to developing a single referral mechanism, particularly for services operating in locations where serious capacity problems exist.
26. That NSW Health review its current incentive schemes for attracting and retaining staff to rural and remote locations for the purpose of identifying strategies for improving its staff vacancy rate in these parts of the state. Any such review should be undertaken collaboratively with the Public Service Commission – see also Recommendation 88.
27. That NSW Health designate responsibility to the Education Centre Against Violence (ECAV) for developing, in consultation with the Ministerial Advisory Body on Aboriginal Child Sexual Assault and the Aboriginal Communities Matter Advisory Group established by ECAV, an Aboriginal recruitment and staff development plan with the specific aim of increasing the number of Aboriginal sexual assault counsellors across NSW. Any such review should be undertaken collaboratively with the Public Service Commission – see also Recommendation 88.
28. That NSW Health consider utilising the funding previously allocated to the operation of Cedar Cottage to establish a specialist service to support the victims of intra-familial abuse and their non-offending family members.
29. That the Department of Attorney General and Justice considers the observations made in this report as part of:
- a) the current review of the Victims Compensation Scheme, and
 - b) the evaluation of counselling services in correctional centres through the Victims Services Approved Counsellor Scheme.
30. That NSW Health ensures that its new database for capturing Sexual Assault Service data includes collection of the following:
- a) the number of forensic examinations conducted on all children, disaggregated by Aboriginal status
 - b) the number of forensic examinations conducted on children under 14, disaggregated by Aboriginal status
 - c) the number and type of health practitioners who conduct forensic examinations on children, i.e. a SANE, trained GP or paediatrician
 - d) whether travel was required for the examination of a child and, if so, the distance covered, and the agency providing the transport
 - e) the time from the making of the child sexual assault report to the time of the forensic examination
 - f) requests for a forensic examination of a child that were declined due to a health practitioner deciding that an examination was unnecessary/inappropriate (and the reasons for each decision).
31. That prior to the implementation of the new Sexual Assault Service database and not later than 1 July 2013, NSW Health and all LHDs ensure that the data listed in Recommendation 30(a) to (f) above is:
- a) collected consistently by all NSW Health Sexual Assault Services using available technology
 - b) centrally collated and analysed by the Ministry of Health (or by a nominated entity).
32. That the Ministry for Health consult with the JIRT partner agencies and other relevant stakeholders, such as the Office of the Director of Public Prosecutions (ODPP), about other useful data that could be collected about forensic medical examinations of children.
33. That the Ministry for Health provide LHDs and the JIRT State-wide Management Group with regular feedback about local child sexual assault service data trends and comparative state-wide data.

34. That all LHDs regularly provide to Sexual Assault Services within their district relevant local and comparative state-wide data trends.
35. Following consultation with the JIRT partner agencies, NSW Health:
 - a) develops a policy that provides for equal access to transport options regardless of which agency has first contact with the victim about the reported sexual assault
 - b) develops policy and procedures that outline the decision-making regime relating to whether, and if so when, a child should undergo a forensic medical examination; the policy/procedures should also outline matters such as the type of interagency consultation required as part of making such a decision; consultation with the child and their family; the timeframe within which such a decision must be made; and the communication of the decision to other JIRT partner agencies
 - c) implements the policy and procedure outlined in Recommendation 35(a) and (b) by mid 2013
 - d) includes the relevant policy and procedure outlined in Recommendation 35(a) and (b) within the updated JIRT Manual.
36. That, following consultation with Sexual Assault Services within their district, each LHD develop a practical guide setting out local options for transportation of children for forensic medical examinations (including contact positions/people and phone numbers similar to the guides used in hospital emergency departments).
37. That, for a 12 month trial period, the Ministry of Health:
 - a) as part of the full AIRS pilot in Western LHD, commits to funding all flights required for the purpose of providing forensic medical examinations
 - b) provides funding for flight travel to all LHDs where road travel in excess of a 400km round trip is required for a forensic medical examination of a child
 - c) in order to facilitate Recommendations 37(a) and (b) above:
 - i. establishes a central funding pool with sufficient funds to reimburse LHDs for costs associated with air transport (including reimbursement for flying a health practitioner to a child victim, where required)
 - ii. conduct a mapping exercise in terms of flight paths and availability of flights within rural and remote regions.
38. That, following consultation with relevant health professional associations and LHDs, the Ministry of Health develops standard contractual arrangements relating to paediatricians and other health practitioners conducting forensic medical examinations on children. Among other things, these contracts should outline the obligations on health professionals to perform, in a timely manner, forensic medical examinations on a call-out basis (including obligations to fly to child victims, when necessary).
39. That, following consultation with the NSW Police Force and LHDs, the Ministry of Health develops criteria (and related procedures) relating to the making of call-out requests (including those involving flight travel).
40. That, following consultation with LHDs, NSW Health develops a consistent data collection process for recording information about the usage of Payment Determination 24 for the purpose of assessing its effectiveness in different districts and to identify potential improvements that can be made to the scheme (particularly in relation to improving service provision for children).
41. That, in order to strengthen the SANE forensic medical examination training program, the Ministry of Health should seek to identify the successful strategies used by the Hunter New England LHD to train and retain SANEs.
42. That the Department of Attorney General and Justice, the ODPP and the NSW Police Force identify the data required to adequately report on attrition of child sexual abuse cases and, in doing so, have regard to the observations made in Chapter 12.
43. In relation to recommendation above, the Department of Attorney General and Justice and the NSW Police Force should develop the capacity for jointly collecting child sexual abuse attrition data, and implement associated reporting mechanisms to ensure such data is routinely analysed by justice and human service agencies to improve service responses.
44. In relation to recommendation above, that the Department of Attorney General and Justice, NSW Police Force and other JIRT partner agencies (Community Services and Health) determine the nature of annual public reporting on the attrition of child sexual abuse matters (including a breakdown for Aboriginal child victims) that should be carried out and give consideration as to which agency should be specifically funded to perform such a role.
45. That the JIRT partner agencies and the ODPP conduct periodic audits of a sample of child sexual abuse cases in order to identify and report on the reasons for attrition.

46. That the NSW Government gives consideration to increasing the funding for an expansion of the Witness Assistance Service, including but not limited to, the creation of additional Aboriginal WAS officers.
47. That the Department of Attorney General and Justice considers the observations made in this report as part of the current review it has commissioned of the:
 - a) provision of court support services to victims, and
 - b) Victims Compensation Scheme.
48. That the JIRT partner agencies include specific reference to their obligations under the *Charter of Victims Rights* in the revised JIRT Manual; and that the Manual detail the expected standards for communicating with victims in child sexual abuse cases.
49. That the ODPP review and promote processes for improving its communication with victims and witnesses, including:
 - a) ensuring that more consistent records of contact with complainants and witnesses are recorded on case files, and
 - b) conducting a periodic review of a sample of child abuse cases to assess the quality of the communication with complainants, and the records kept of this communication.
50. That the NSW Police Force implement a computer enhancement to automate the process for referring all child sex offence cases to the ODPP for prosecution and referring relevant victim contact details.
51. In relation to recommendation above, the NSW Police Force and the ODPP should immediately develop an interim joint protocol for the efficient referral of victim contact details, and provide the necessary education to staff in both agencies to ensure that it is consistently adhered to.
52. That as part of the JIRT Local Planning Response procedures, JIRT agencies include specific consideration of information that should be provided to the ODPP as soon as charges are laid, to assist the ODPP and WAS to engage with victims.
53. That the NSW Government consider allocating funds to the Department of Attorney General and Justice for the dedicated maintenance and upgrade of remote witness facilities, with the capacity for such funds to be rolled over in any financial years where they are not required.
54. That the Department of Attorney General and Justice includes the observations made in this report on the use of audio visual links in District Courts in the relevant business case to be provided to Treasury on expanding the availability of this facility.
55. That the Department of Attorney General and Justice conduct a broad review of the current case management processes for sexual offence cases heard in both the District and Local Courts in order to determine the extent to which improvements can be made to these processes.
56. That the Department of Attorney General and Justice gives consideration to whether the youth justice conferencing scheme should be extended to include certain sex offences committed by juvenile offenders; in particular, Aboriginal juveniles. Any such extension of the current scheme should incorporate participation by young offenders in therapeutic treatment and, for Aboriginal young people, an appropriate cultural response that is formulated by government in partnership with Aboriginal leaders.
57. If youth justice conferencing is extended to include certain sex offences committed by juvenile offenders, that the Department of Attorney General and Justice, and NSW Health, consider establishing a trial restorative justice model for Aboriginal young people in one or more Aboriginal communities in NSW, where access to therapeutic treatment services for young people who display sexually abusive behaviours are accessible and where the local Aboriginal community/s has indicated its willingness and capacity to participate.
58. That Corrective Services considers conducting future research into post-sentencing restorative justice options that include a particular focus on Aboriginal victims of sexual assault and Aboriginal sex offenders.
59. That the Department of Attorney General and Justice considers:
 - a) undertaking a separate, comprehensive review of sexual offence legislation in NSW
 - b) (if the issue of adolescent peer sex is not addressed through the statutory review of consent provisions being conducted by the Attorney General), conducting a separate review of consent provisions with the introduction of a 'similar age' defence in mind
 - c) providing an option to allow for a child's entire evidence to be pre-recorded in certain sexual assault prosecutions
 - d) creating a presumption in favour of joining trials for sexual assault prosecutions

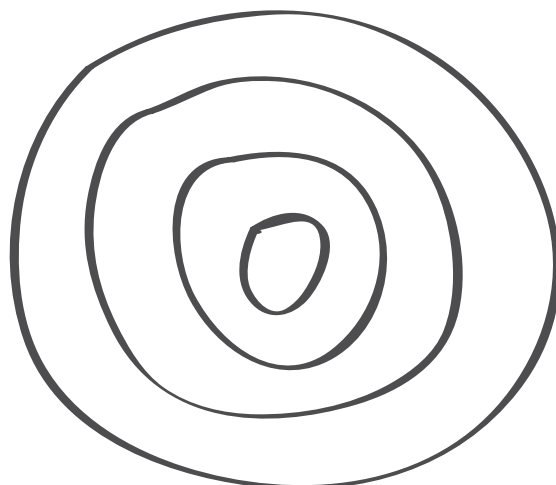
- e) the viability of amending the Criminal Procedure Act to establish a registered intermediary scheme
 - f) the observations made in this chapter in conducting its review of section 66EA of the *Crimes Act 1900*.
60. Following any amendments made to section 66EA of the *Crimes Act 1900* that:
- a) the NSW Police Force conducts an education campaign with police officers, in particular JIRT staff, to promote awareness of the provision
 - b) the ODPP conduct an education campaign with prosecutors to promote appropriate use of the provision by police.
61. That the Director of Public Prosecutions includes a review of the processes for managing adolescent peer sex matters as part of his review of the Prosecution Guidelines.
62. That the Department of Premier and Cabinet highlights the issues raised in section 14.6 of this chapter as part of progressing legislative reform (and related policy and practice initiatives) to strengthen the existing interstate information exchange regime.
63. That the NSW Government actively pursues with the Federal Government and its state and territory counter-parts, the need for legislative and related policy change that address the current weaknesses in the regime for cross-border exchange of child protection-related information.
64. Against the background of past and current initiatives focused on providing an integrated, multi-agency response to those older children and younger people who are at most at risk in connection with their self-destructive and/or offending behaviour, we recommend that the NSW Government considers the observations made in this Chapter with particular regard to:
- a) Addressing the need to enhance the service system's 'early intervention' capacity both in terms of intervention 'early in life' and 'early in the pathway' towards self-destructive and/or offending behaviour.
 - b) Making the structural changes required to enhance the capacity of services delivered in the community to provide a continuum of therapeutic (and other) supports to young offenders who are exiting the juvenile justice system.
 - c) Considering how Justice Health's CIT and ACCT initiatives will be sustained post the expiry of the Indigenous Health National Partnership Agreement in mid-2013.
 - d) Addressing the need to formalise the collaborative arrangements between Justice Health and its partners within communities (including community-based services). These arrangements should deal with matters such as:
 - the nature of the client group
 - assessments as to eligibility for support
 - the nature of the support to be provided.
 - e) Ensuring that there is an evaluation of the success of the ISP model and the ANTS program in the Western region with the view to considering whether these initiatives should be expanded.
 - f) Ensuring that FACS' Vulnerable Teenagers Review and its proposed *Coordinated approaches for Complex Clients* are integrated with a range of existing and planned initiatives (for example, *Connected Communities*, the work of CIT services, the ISP program etc) and ensure that the proposed program has the support of key government and non-government Human Services and Justice agencies, and the necessary governance and accountability arrangements in place to minimise the risk of program failure.
 - g) Determining how government will evaluate whether current and future work that is being, or will be, undertaken to strengthen the integration of work across portfolios to improve outcomes for vulnerable older children and younger people ultimately leads to:
 - i. Shared responsibility across government, the sector and the community for protecting vulnerable children and their families
 - ii. Connected services that cut across 'silos' and better meet the needs of children and families
 - iii. Demonstrated success in providing better services in areas of high concentration of vulnerability, and
 - iv. Positive evidence-based outcomes for vulnerable older children and younger people (including clear evidence of improvements in the six areas that we identified in Section 15.4.1 of this chapter).

65. That, together with the Department of Attorney General and Justice, Community Services and the NSW Police Force, NSW Health develops and implements an integrated service response framework for children and young people who commit sexually abusive acts. In doing so, consideration should be given to adopting elements of the Victorian scheme outlined in this chapter. The development of the framework should also include how recommendations 66 to 73 below can be implemented.
66. Irrespective of whether or not the framework referred to in Recommendation 65 is developed, NSW Health should review both the New Street Adolescent Service and Rural New Street program, from the perspective of examining:
 - a) The capacity of the overall program to meet demand across NSW.
 - b) The adequacy of the current level of funding allocated to the existing Rural New Street Western.
 - c) The viability of creating additional service 'hubs' in high-need locations in Western NSW: for example, Broken Hill and/or Bourke, and at regional centres in Southern and Northern NSW.
 - d) The adequacy of the funds available to evaluate the program's impact in regional and remote settings (including its reach and outcomes for Aboriginal people).
 - e) The adequacy of funds allocated to research projects.
67. That NSW Health works with the NSW Police Force, Juvenile Justice, Community Services and the Department of Education and Communities, to develop and implement a protocol specifying the responsibilities of all partner agencies in relation to supporting young people and families who are participating in the New Street and Rural New Street programs.
68. That in light of the limited awareness by LHDs of Health's policy relating to the right of children under 10 who display sexually abusive behaviours to receive services, regardless of whether they have been a victim of sexual assault, the Ministry of Health clarifies with LHDs its current policy in this area, and thereafter, monitors its implementation.
69. That, in consultation with LHDs, the Ministry of Health reviews the current capacity of LHDs to meet the demand for counselling services for children under 10 years who display sexually abusive behaviours.
70. That NSW Health ensures that its new database for capturing SAS data includes common data requirements in relation to children under 10 years who are referred to services for counselling in connection with their problematic sexualised behaviours. Furthermore, NSW Health should ensure that the data includes the number of referrals; reasons for each referral; service take-up and service outcomes.
71. That the Ministry of Health develops clear policy on the nature and level of services that each LHD should provide to those children under 10 years who display sexually abusive behaviours.
72. That NSW Health reviews the need to establish additional specialist services for responding to children under 10 who exhibit sexualised behaviours. In conducting this review, NSW Health should have regard to the Hunter New England LHD's Sparks program.
73. That Juvenile Justice works with NSW Health in establishing formal linkages between its sex offender program and the New Street and Rural New Street programs for the purpose of providing a pathway for sex offenders to receive ongoing therapeutic support following their release from juvenile justice detention.
74. That the Department of Attorney General and Justice submits a business case to the NSW Government for its consideration in relation to the following:
 - a) Expanding Corrective Services' transitional accommodation program, including increasing the options for returning offenders (particularly Aboriginal offenders) to rural and remote communities.
 - b) Establishing research partnerships to assist Corrective Services to refine its suite of risk assessment tools for child sex offenders.
 - c) Expanding the use of technologies such as Skype and Video Link to provide therapeutic services (e.g. drug and alcohol services and counselling) to support the safe management of child sex offenders residing in rural and remote areas.
75. That Corrective Services should refer its concerns about the need to establish much stronger links with community-based treatment services and supports for young people exiting custody via the adult correction system, to Family and Community Services for consideration as part of its Vulnerable Teenagers Review.
76. That the NSW Police Force conducts a review of the current capacity of individual local area commands to effectively manage their responsibilities in administering the Child Protection Register.

77. That the NSW Police Force identifies best practice by local area commands in managing the Child Protection Register and develops a process for sharing information about successful initiatives across commands.
78. That the Human Services Chief Executive Officers require the Child Protection Watch Team to provide more comprehensive data and information against its performance measures to enable a meaningful assessment of the effectiveness of the program.
79. That the NSW Police Force makes enhancements to the COPS system to enable information regarding applications for Child Protection Prohibition Orders to be systematically recorded, and for statistical reports to be generated on the use of these orders on a regular basis.
80. That Community Services provides this office for review and comment a copy of the Working Group paper setting out the respective roles, responsibilities, powers and limitations relating to information exchange and collaboration when a child may be at risk of significant harm due to contact with a person on the Child Protection Register.
81. That the NSW Police Force, Corrective Services and Community Services develop a brief educational session to complement the release of the interagency guideline on the roles and responsibilities of agencies in responding to child protection concerns involving registered child sex offenders.
82. That the NSW Government establish a body with overall responsibility for improving Aboriginal employment outcomes and enhancing Aboriginal economic capacity through identifying and facilitating partnerships between the private sector, government and Aboriginal entities to create successful commercial enterprises.
83. That the NSW Government review the existing range of federal and state employment and economic development initiatives as part of developing an integrated, state-wide strategy to build the economic capacity and wealth of Aboriginal people in NSW. In developing a state-wide strategy, particular attention should be given to:
 - a) the specific challenges associated with enhancing economic capacity and employment opportunities in disadvantaged and/or rural and remote locations
 - b) identifying and expanding vocational education, job training and mobility/relocation assistance programs that are achieving real employment outcomes for Aboriginal people, and
 - c) exploring opportunities for further partnering with Aboriginal job service providers in relation to the above.
84. In consultation with the Director General's Aboriginal Education Advisory Group, Education should develop a new report for regular publication that includes, at a minimum, data which shows:
 - a) literacy and numeracy attainment by Aboriginality, grade, region and school
 - b) retention rates by Aboriginality, grade, region and school
 - c) enrolment numbers and rates by Aboriginality, grade, region and school
 - d) attendance rates by Aboriginality, grade, region and school
 - e) suspension rates by Aboriginality, grade, region and school
 - f) the number of students who have been suspended, and the number of suspensions for each student, during each year by Aboriginality, grade, region and school, and
 - g) the number of students who missed 30 or more days of school each year, together with a breakdown of the reasons for their absence, by Aboriginality, grade, region and school.
85. That Education requires regional directors to regularly report against the indicators for Aboriginal students outlined in Recommendation 84.
86. That Education reviews the capacity of the Home School Liaison Program, particularly in disadvantaged communities with high levels of school non-attendance, with the view to trialling an intensive attendance case management model such as the approach outlined in our 2011 Addressing Aboriginal disadvantage report.
87. That, in consultation with the Director General's Aboriginal Education Advisory Group, Education should work with the Departments of Family and Community Services and Attorney General and Justice to develop innovative approaches which aim to keep 'hard to reach' Aboriginal young people engaged in education, including: initiatives that involve funding non-government organisations to provide services to such young people within the school environment as an alternative to suspension.

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88. Against the background of the recommendations made in our reports to Parliament on Service delivery to Bourke and Brewarrina and *Keep Them Safe*, that the Public Service Commission considers the observations made in this report in developing and implementing a whole-of-government recruitment and retention strategy. In doing so, the Commission should pay particular attention to:
- a) The nature of any public reporting that should occur in relation to agency efforts to fill vacant positions in rural and remote communities.
 - b) The development of a whole-of-government workforce strategy for Aboriginal people, from entry-level through to supported progression for senior positions.
 - c) Exploring how the Education Centre Against Violence could play an expanded role in developing the cultural competency of the NSW Public Sector workforce, including developing strategies to mentor and develop Aboriginal staff.
89. The Department of Premier and Cabinet, together with other key stakeholders, should develop and implement a strategy for delivering effective place-based planning and service delivery within a number of high need communities in rural and remote locations. As part of developing and implementing the strategy, the Department of Premier and Cabinet should:
- a) Trial the strategy in a number of communities in which *Connected Communities* will be operating.
 - b) Ensure that a rigorous 'action learning' evaluation process is put in place in order to inform refinements to the strategy over time.
 - c) Seek to build into the strategy the core elements of effective community development approaches.
 - d) Ensure early, productive and ongoing partnerships with federal and local government stakeholders, and Aboriginal and other community leaders.
 - e) Ensure that initiatives related to the current and proposed work on intelligence-driven child protection are integrated into the strategy.
 - f) Ensure that those required to drive the implementation of the strategy within each involved community have been given the necessary authority to deliver the required outcomes.
90. That the NSW Government adopts the framework that we have outlined in this chapter in connection with the three areas relating to Aboriginal affairs that we have identified as 'warrant(ing) strong governance arrangements'.
91. That following the NSW Government's decision on Recommendation 90:
- a) The Department of Premier and Cabinet takes responsibility for ensuring a coordinated and timely response to all of the recommendations in this report.
 - b) The Government commits to public reporting during the next two calendar years, on the progress of the response to all of the recommendations in this report.
92. That the NSW Government adopts the proposal for an Aboriginal Advisory Council with the legislative responsibilities and powers that are consistent with those we have proposed in this chapter.
93. That the NSW Government ensure that the proposed Councils' advisory role is supported by an independent statutory authority with:
- a) The specific legislative functions and powers that we have proposed in this chapter.
 - b) The necessary skills and experience and standing with Aboriginal leaders and communities.

Background



Chapter 1. Audit context

The Aboriginal Child Sexual Assault Taskforce (ACSAT) was established in July 2004 in response to recommendations resulting from a series of round-table discussions on sexual violence in Aboriginal communities. Conducted by the then Department of Aboriginal Affairs and the NSW Aboriginal Justice Advisory Council in 2001-2002, the round-tables found that 70% of Aboriginal women in custody were victims of child sexual assault.

The role of ACSAT was to: examine the incidence of child sexual assault in Aboriginal communities; review the effectiveness of government and non-government agencies' responses; and make recommendations about how responses could be improved.

After considering submissions from a wide range of stakeholders and extensive community consultations around the state, the ACSAT delivered its final report to Government in February 2006. The report, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal Communities in NSW* made 119 recommendations and was released in June that year.

ACSAT noted the absence of a state-wide policy framework to address child sexual assault and recommended that an implementation strategy be developed to respond to its findings. To guide the effective implementation of the strategy, the Taskforce recommended both the establishment of a steering committee made up of Aboriginal leaders and a specific auditing role for the NSW Ombudsman's office.

The government's response to *Breaking the Silence – the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* (the Interagency Plan) – was released in January 2007 and operated for five years. The Interagency Plan was informed by the priorities contained in the Government's then State Plan¹ and was intended to build on *Two Ways Together* (2003-2012), the ten year whole-of-government strategy to improve the social, economic, cultural and emotional wellbeing of Aboriginal people in NSW.

The goals underpinning the Interagency Plan recognise that child sexual assault in Aboriginal communities cannot be tackled in isolation from addressing the broader issues of disadvantage – including poor health, education and employment outcomes – and the overrepresentation of Aboriginal children in the child protection and criminal justice systems.

The Plan committed 11 government agencies and a number of non-government organisations to implementing 88 actions.

Aboriginal Affairs² was the designated 'lead agency' responsible for the Interagency Plan's implementation with the Minister for Aboriginal Affairs having overall responsibility. A Ministerial Advisory Panel made up of Aboriginal experts, a forum of justice and human services chief executives and a Senior Officers Group, which included representatives from the partner agencies, were tasked with overseeing the implementation process. However, at that time, the then government did not adopt ACSAT's recommendation to allocate an auditing role in relation to the Plan's implementation to the Ombudsman's office. (We discuss the Interagency Plan and its governance structure further in Chapter 3.)

Six months into the Interagency Plan's implementation, the Board of Inquiry established by the Northern Territory Government to inquire into child sexual abuse, released its widely publicised report - *Ampe Akelyernemane Meke Mekarle* "Little Children Are Sacred".³ A key finding of the Inquiry was that the sexual abuse of Aboriginal children was associated with the broader indicators of Aboriginal disadvantage.⁴

In response to the problems highlighted in *Little Children are Sacred*, on 21 June 2007 the former Federal Government announced a 'national emergency' in the Northern Territory. The Government outlined measures to be taken under the 'Northern Territory Emergency Response' (NTER) to ensure the protection of Aboriginal children from serious abuse and neglect.⁵ The controversy surrounding the NTER drew attention to the issue of child sexual assault in Aboriginal communities across mainstream Australia.

1.1 The Special Commission of Inquiry into child protection in NSW

Towards the end of the first year of the Interagency Plan, a Special Commission of Inquiry into Child Protection Services in NSW was established, led by His Honour, Justice James Wood, AO QC. The Inquiry released its

1 The 10 year *NSW State Plan* was launched by then Premier Morris Iemma in November 2006. This was replaced by *NSW 2021*, which was released by Premier Barry O'Farrell in September 2011.

2 Aboriginal Affairs is an agency within the Department of Education and Communities.

3 *Ampe Akelyernemane Meke Mekarle* 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007.

4 *Ampe Akelyernemane Meke Mekarle* 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007, p.22.

5 The Hon Mal Brough MP, *National emergency response to protect Aboriginal children in the NT*, Media Release, 21 June 2007.

final report in November 2008. In a submission to the Inquiry on serious child abuse and neglect in Aboriginal communities, we drew particular attention to the relationship between ineffective service planning, poor integration and accountability mechanisms, and the disappointing outcomes for many vulnerable Aboriginal children, especially in remote parts of the state.⁶ The Inquiry had a strong focus on improving service capacity and delivery to Aboriginal communities.

Addressing Aboriginal child sexual abuse was among the many issues considered by the Special Commission of Inquiry. In its final report, the Inquiry recited a number of the findings of the Northern Territory Board of Inquiry that were relevant to the NSW context, and revisited many of the issues highlighted by *Breaking the Silence*. Justice Wood also examined the results that had been achieved up to that time through the implementation of the Interagency Plan, which led to him reiterating the need for the Ombudsman's office to be given specific authority to audit the implementation of ACSAT's recommendations. Justice Wood noted that:

While the Interagency Plan appears to have generated significant activity levels within each of the agencies since its release in 2006, the nature of the draft performance measures makes it difficult to assess the actual impact on Aboriginal people and communities, or on those Aboriginal children and young persons who are experiencing or at risk of sexual assault.

The lack of independent oversight of implementation by the Ombudsman recommended in the ACSAT report (Recommendation 21) is of particular concern. The Inquiry could not access a report measuring success against the Interagency Plan and this task is not being undertaken by the Department of Aboriginal Affairs.⁷

In March 2009, the then government released *Keep Them Safe: A Shared Approach to Child Wellbeing 2009-2014* – its five year plan for responding to the findings and recommendations of the Special Commission of Inquiry. *Keep Them Safe* emphasises that protecting children is a shared responsibility and, to this end, introduced a range of legislative and structural changes including: new intake and referral pathways; narrowing the statutory role of Community Services; and placing greater responsibility on other human service and justice agencies to respond to child protection concerns. Among other things, these changes were intended to allow Community Services to concentrate its efforts on children most at risk of experiencing harm.

In November 2009, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* was amended to give effect to our auditing role and gave the Ombudsman the following audit functions in relation to the Interagency Plan:

- to review the implementation of the Interagency Plan by public authorities of the State that have functions under the Plan
- to identify any areas in which further action is required by those public authorities to implement the Interagency Plan, and
- to make recommendations for the more efficient and effective implementation of the Interagency Plan by those public authorities.

1.2 National reforms aimed at closing the disadvantage gap

Since the Plan's inception, a range of inter-governmental reforms have been introduced to improve the circumstances of Aboriginal people, and are therefore relevant to the Interagency Plan's objectives. The National Indigenous Reform Agreement, settled by the Council of Australian Governments (COAG) in November 2008, committed all jurisdictions to meeting six targets aimed at 'Closing the Gap' in life expectancy, and other key social outcomes between Indigenous and non-Indigenous Australians, within a generation. This was to be achieved through focusing on reducing disadvantage across seven key 'building blocks': early childhood; schooling; health; economic participation; healthy homes; safe communities; governance and leadership.⁸

The Reform Agreement also links to other national agreements and partnerships addressing the COAG targets. These include: the Remote Service Delivery (RSD) National Partnership Agreement which commits \$291.2 million over six years to improve service delivery in 29 priority communities (Wilcannia and Walgett are the RSD priority communities in NSW); and the National Partnership Agreement on Indigenous Early Childhood Development.⁹ Under the latter, the Federal Government has committed \$74.7 million over six years to build nine Aboriginal Child and Family Centres across NSW.

⁶ NSW Ombudsman, Submission to NSW Special Commission of Inquiry into Child Protection Services (Part 9), June 2008.

⁷ *Special Commission of Inquiry into Child Protection Services in New South Wales*, November 2008, p.769. See also Recommendation 18.1 of the report.

⁸ Council of Australian Governments *Intergovernmental Agreement (IGA) on Federal Financial Relations Schedule F: National Indigenous Reform Agreement*, 2009. www.coag.gov.au, Accessed on 10 September 2012.

⁹ The Remote Service Delivery National Partnership Agreement was signed in January 2009 and commenced on 1 July 2009. The National Partnership Agreement on Indigenous Early Childhood Development was signed on 2 October 2008. This was revised and superseded by a new version agreed on 2 July 2009.

In February 2010, a federal Department of Finance report – the *Strategic Review of Indigenous Expenditure* – was released. This report found that, despite the efforts of governments and the expenditure of significant public funds, progress towards addressing Aboriginal disadvantage ‘has been mixed, at best.’¹⁰ The review noted that substantial government investments have ‘yielded dismally poor returns to date’ and, that in order to reverse this, ‘the need is not so much for higher levels of spending as to use existing resources...far more effectively’.

1.3 Our interim audit reports

Although not required to report our audit findings until the end of 2012, we decided to report annually on major themes emerging from our audit. In light of the changes taking place to the child protection system through *Keep Them Safe* and the more recent establishment of the Government’s Ministerial Taskforce on Aboriginal affairs, we believed it was particularly important to release relevant interim findings to further inform the Taskforce’s deliberations.

Throughout our audit, we have used a series of companion inquiries to focus agencies’ attention on issues that need to be addressed if specific child protection strategies are to have an impact – especially in high-need locations. Two of these inquiries have culminated in reports to Parliament – *Inquiry into service provision to the Bourke and Brewarrina communities* (December 2010) and *Addressing Aboriginal Disadvantage: the need to do things differently* (October 2011). We also issued a confidential report provided directly to lead agencies about our review of a group of school-aged children in two Western NSW towns (July 2012).¹¹

Each report highlights measures needed to create an environment where child wellbeing is paramount and communities can thrive, thereby paving the way for more effective child sexual abuse prevention measures.

These reports collectively, constitute our formal report to the Minister on our audit.

Inquiry into service provision to the Bourke and Brewarrina communities

Although our report on the Bourke and Brewarrina communities focused on addressing the critical service delivery challenges in these two locations, its recommendations were also directed to other high-need rural and remote communities in NSW. Our inquiry clearly demonstrated that simply directing additional funds to more Aboriginal programs is not the solution. Rather, what is needed is to rebuild the service system to achieve a more targeted response to those individuals and communities most in need of assistance and support. Among other things, our recommendations focused on the need to: address chronic staff shortages in high need locations; build the capacity of the Aboriginal service sector; and develop an ‘intelligence-driven’ approach to child protection practice to identify those children and families most at risk. We also recommended establishing effective local leadership and governance arrangements to drive service improvements and measure ongoing performance.

Addressing Aboriginal Disadvantage: the need to do things differently

Whereas our Bourke and Brewarrina report stopped short of recommending major structural changes to the governance of Aboriginal affairs in NSW, our *Addressing Aboriginal disadvantage* report did just that. The over-riding theme of the report was the urgent need to establish a stronger accountability framework for addressing Aboriginal disadvantage at a state-wide level, which must include:

- strong leadership and governance arrangements
- integrated decision-making at all levels about local service planning, funding and delivery to ensure resources are more effectively utilised
- more rigorous and meaningful data collection, analysis and public reporting on progress made against key indicators at a local community and state-wide level, and
- a statutory agency to provide independent scrutiny of the steps taken to implement the government’s approach to addressing Aboriginal disadvantage and the outcomes achieved.

Importantly, the report emphasised the need for government to build meaningful partnerships with Aboriginal communities and, in doing so, give practical recognition to Aboriginal people exercising responsibilities consistent with their right to self-determination. It also stressed the importance of taking bold approaches to the priority areas of education, building economic capacity, and protecting vulnerable children in Aboriginal communities.

Review of a group of school-aged children from two Western NSW towns

Our confidential report on our review of a group of 48 school-aged children from two Western NSW towns found that, in locations where resources are scarce and there are comparatively high numbers of vulnerable children

¹⁰ Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure – Report to the Australian Government*, February 2010.

¹¹ This report was not released publicly due to the confidential nature of the subject matter.

and families, agencies need efficient and effective ways to collectively identify and respond to those at greatest risk. Relevant to this issue, the report provided a practical demonstration of the benefits of intelligence-driven child protection and place-based service delivery. In carrying out our review of vulnerable children from these towns we adopted an action research approach that involved the participation of three Western region directors from Community Services, Education and Police, who saw first-hand the benefits of collaborative risk profiling and integrated case management.

We found that in small, relatively isolated towns, the funding of programs designed to enhance service availability can create multiple and often 'competing' programs, reference committees and multi-agency case management groups. Despite considerable government investment in a variety of programs intended to improve the quality and availability of child protection and other community services in high-need locations, we were unable to identify any interagency case management frameworks capable of bringing together the mix of services needed to engage high-need families in a meaningful way. Our review showed that despite the high level of need in these communities – and the existence of programs that were established to meet the needs of at risk families – only 13 of the 48 children had received some type of formal, case management assistance from one of these established programs.

This review once again demonstrated the need for robust and effective governance arrangements to drive a genuinely integrated service approach.

1.4 The current landscape – The Ministerial Taskforce

In August 2011, several months before the Interagency Plan was due to end, the NSW Government established a ministerial taskforce in recognition of the need to improve service delivery and accountability in Aboriginal affairs and, in particular, to improve employment and educational outcomes for Aboriginal people in NSW. The Taskforce's establishment followed the release of a report by the NSW Auditor General on the implementation of *Two Ways Together*. The Auditor General found that *Two Ways Together* had failed to deliver on the intended improvements for Aboriginal people. The Taskforce's terms of reference were also informed by the findings of our addressing Aboriginal disadvantage report.

Following two rounds of extensive consultations across NSW, the Ministerial Taskforce released its most recent progress report in August 2012. The report confirmed many of the same themes outlined in our 2011 report and committed to developing an accountability framework which will focus on:

- greater participation by Aboriginal people in decision-making
- building state-wide and local level accountability mechanisms
- collection and regular analysis of data relating to performance to inform the ongoing improvement of service delivery, and
- independent performance auditing of Aboriginal initiatives delivered and funded by government, including ongoing public reporting.

Although the Taskforce has not specifically focused on the issue of child sexual assault, it has recognised the strong alignment between its commitment to building strong accountability and what is required to properly address child sexual assault in Aboriginal communities into the future. In responding to the Ministerial Advisory Panel's final report on the Interagency Plan, the Minister for Aboriginal Affairs indicated that the development of a new approach to addressing child sexual assault in Aboriginal communities should be informed by the findings and recommendations of our final audit report, and form part of the Taskforce's broader strategy for managing Aboriginal affairs.¹²

1.5 About this report

Under Part 6A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the Ombudsman must prepare and provide a report to the Minister for Aboriginal Affairs by 31 December 2012 on the audit of the implementation of the Interagency Plan. The Minister for Aboriginal Affairs must table the report in Parliament within one month after receiving it.

This report examines the implementation of the Interagency Plan and the discrete initiatives needed to improve specific responses to child sexual assault in Aboriginal communities. It also seeks to bring together what we have said over a number of years publicly – as well as to agencies directly – about the systemic reforms that are required to address Aboriginal disadvantage in NSW. In doing so, we build on the findings and recommendations contained in our earlier interim reports, and draw on the knowledge we have acquired from carrying out our specific legislative functions to review the delivery of community services and to oversight policing.

¹² Response by Minister for Aboriginal Affairs to the Ministerial Advisory Panel's Final Report on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, undated, received 29 November 2012.

During our audit, we looked at whether the relevant agencies implemented the actions for which they had responsibility and whether these actions led to real and tangible outcomes. To test this, we required agencies to provide us with a comprehensive range of data and information about initiatives relevant to the substance of the Interagency Plan's goals. We also examined the effectiveness of the governance mechanisms established to drive the Plan's implementation and the performance framework put in place for measuring its success. In doing so, we identified the type of performance indicators required to measure progress made in addressing child sexual assault both now, and into the future.

In our view, many of the weaknesses identified throughout our audit can be traced back to a lack of strong governance and accountability across government to drive the implementation of the Plan, as well as a lack of transparency around reporting on progress.

Throughout our audit we have spoken to more than 2,000 Aboriginal community members and leaders, representatives of Aboriginal peak bodies and other stakeholders, to seek their views on whether progress has been made towards achieving the Interagency Plan's goals. Our regular engagement with communities allowed us to identify examples of leadership being taken on the issue of child sexual assault and broader community development – these are highlighted throughout this report.

Over the last three years, we have visited a number of jurisdictions throughout Australia. Our visits involved speaking with a broad range of individuals and agencies from the Kimberley and Cape York regions, and a number of locations within the Northern Territory (including Alice Springs, Jabiru and Gunbalanya). These visits have provided us with valuable insights into: improving school attendance and educational outcomes for Aboriginal children; placed-based service models; and structures for involving Aboriginal leadership in decision-making.

While our audit sought to determine whether each of the actions in the Interagency Plan were implemented, we have principally structured this report around the overall goals and strategic directions of the Interagency Plan. In this regard, the report is separated into seven priority areas:

- building strong and safe communities
- improving child protection, therapeutic and criminal justice responses to child sexual assault victims
- responding to the needs of high-risk young people, including those who sexually abuse or display sexually abusive behaviour
- managing child sex offenders in the community
- investing in employment and education
- adopting place-based approaches to service planning and delivery, and
- strengthening governance and accountability.

Chapter 2. Methodology

We utilised a range of research and investigative methods during our audit. They are listed below.

2.1 Our consultations

Our consultations for this audit were extensive. We conducted 495 separate meetings involving more than 2,000 people.

We met with senior managers and frontline staff across the state from lead agencies including NSW Health, Community Services, Police, Education, Attorney General and Justice, the Joint Investigation Response Team, and Aboriginal Affairs. We also brought agencies together to consider significant issues relevant to our audit, including: addressing poor school attendance and suspensions in high-need locations; improving access for child sexual assault victims to forensic medical examinations; and policing child sexual assault in remote locations.

Throughout our audit we regularly engaged with the Aboriginal Child Sexual Assault Ministerial Advisory Panel and members of the Coalition of Aboriginal Peak Bodies.

In early 2011, we met with the Director of the Bureau of Crime Statistics and Research (BOCSAR) to discuss our data needs. As a result, BOCSAR agreed to provide us with ongoing trend analysis reports relating to sexual abuse as well as a range of comprehensive data-sets for the five year period of the Interagency Plan.

We also brought together stakeholders from other jurisdictions such as the Commonwealth Coordinator General for Remote Services Delivery, the Commonwealth Ombudsman and the Australian Crime Commission (including its National Indigenous Intelligence Taskforce whose work in examining abuse of power and fraud in Aboriginal communities was highly relevant to our audit). In addition we met with state oversight bodies such as the NSW Auditor General and Independent Commission Against Corruption. With all of these agencies we discussed the scope for better coordination by state and federal agencies around service planning, and funding and delivery of programs.

In 2011, we hosted two sexual assault forums. In April that year, we convened a sexual assault forum with police.¹³ We canvassed the particular challenges associated with policing child abuse in rural and remote locations, the availability of forensic medical examiners for victims of child sexual assault, and the management of offenders on the Child Protection Register. In November, we brought together two Aboriginal women's groups from the Quirindi/Walhallow and Taree communities that had shown strong leadership in addressing child sexual assault. We profile the outcomes of this forum in our chapter on encouraging reporting.¹⁴

Throughout 2010-2012, we also facilitated various forums in the Bourke and Brewarrina communities involving representatives of justice and human service agencies, local service providers and community members. At our most recent forum in April 2012, we asked the agency representatives to report directly to those communities on the progress made since the release of our 2010 report on service provision in Bourke and Brewarrina. The forums enabled residents and community leaders in each town to voice their concerns to key decision-makers, and to receive direct feedback on practical options for tackling priority issues.

We visited a number of jurisdictions throughout Australia to examine how they were addressing issues relating to: child sexual assault and child protection more broadly; engaging Aboriginal children in school; improving service delivery; and building economic capacity within Aboriginal communities. Our visits involved speaking with a broad range of individuals and agencies from the Kimberley and Cape York regions, and a number of locations within the Northern Territory (including Alice Springs, Jabiru and Gunbalanya).

We also conducted extensive consultations in 12 target communities (discussed below).

2.2 The 12 Target Communities

We selected 12 Aboriginal communities across NSW to enable us to examine how the goals and strategic directions of the Interagency Plan were being implemented at a community level.

We initially focused on the nine communities participating in Aboriginal Affairs' Focus Community Program. The Focus Community Program also includes the five communities participating in the Safe Families program. Both

¹³ Officers from several operational and policy areas within the New South Wales Police Force participated in the forum including members of the Sex Crimes and Child Abuse Squads, and the Forensic Services Group.

¹⁴ We arranged for presentations to be delivered by Pam Greer, Senior Education Officer, Education Centre Against Violence (ECAV), Detective Inspector Linda Howlett, Joint Investigative Response Team, Dana Clarke, Burrun Dali Out of Home Care Organisation, Shane Phillips, CEO, Tribal Warrior, Jenny Barker, Ngemba Aboriginal Community Working Party, Brewarrina, Tammy Wright, Yula-Punaal Education and Healing Centre, Mandy Young, Director Victims Services, Attorney General's Department, Christine Robinson, Wirringa Baiya Aboriginal Women's Legal Centre and Jenny Bedford, Director of Corporate Governance, NSW Aboriginal Land Council.

programs are discussed further in Chapter 3. We also included three additional communities with significant Aboriginal populations which allowed us to examine service provision in a broad range of geographic locations.

In each community, we consulted a range of community members, leadership groups, service providers, agency staff and other stakeholders. We also met with the various region agency managers/directors responsible for the target communities from Health, Community Services, Aboriginal Affairs, Education and Police. Prior to each visit, we asked agencies to provide us with a range of information about their work in the relevant communities in order to inform our discussions.

We were particularly keen to examine the effectiveness of the local service sector in each location and the degree to which agencies were collaboratively identifying and responding to those children most at risk. In addition to examining specific child sexual assault initiatives, we focused strongly on Aboriginal children's school attendance and suspension rates in each location, and explored how individual schools were addressing poor performance in these areas.

We also sought to identify positive examples of community and agency partnerships to address child protection concerns and broader community development initiatives.

2.2.1 Aboriginal child victims and suspects from the target communities

To gain a better understanding of how child sexual abuse was being responded to at the community level, we sought data from Police on the incidence of Aboriginal child sexual abuse in the 12 target communities.

The data indicated that there were 248 Aboriginal child victims of sexual abuse in the 12 communities between 2007 and 2011. We checked how many of these children had been the subject of child at risk reports to Community Services prior to and following the reported sexual abuse incident. We selected a sample of 60 children from this group to examine in more detail. This included looking at their education, health and child protection records.

We also conducted a detailed review of 27 cases¹⁵ prosecuted by the ODPP involving 45 Aboriginal children and 30 defendants. We reviewed all of the information held by the ODPP relating to these cases, including the Witness Assistance Service files.

The data revealed that there were 218 suspects who were linked to the incidents involving the 248 children – 85 of these suspects were juveniles. Of these 85 juveniles, 10 were charged with at least one sex offence. We examined the child protection and criminal justice histories of these juveniles to inform the observations in our chapter on high-risk adolescents.

2.3 Requirements for Information

The *Community Services (Complaints, Reviews and Monitoring) Act 1993* requires public authorities with functions under the Interagency Plan to provide the Ombudsman with full and unrestricted access to records which the Ombudsman reasonably requires access for the purpose of exercising audit functions in relation to the Interagency Plan.¹⁶

In 2010, we required Aboriginal Affairs to provide us with comprehensive information about: the governance and monitoring processes for the Interagency Plan's implementation; advice about the progress made by agencies in implementing specific actions; and the Focus Community program.

To ensure the information was current, we decided not to issue agencies responsible for implementing actions under the Interagency Plan with requirements to provide information until the end of 2011 (when the Plan ended). Throughout 2012, we required comprehensive information from these agencies to help us assess the nature of the results achieved. This information included state-wide operational and program data, as well as data relating to the 12 target communities.

A number of agencies were issued with multiple requirements for information. A total of 20 formal requirements were issued to 12 separate agencies.

We also requested information from the Australian Crime Commission in connection with its National Indigenous Intelligence Taskforce.

¹⁵ A 'case' may involve more than one child complainant and/or defendant.

¹⁶ *Community Services (Complaints, Reviews and Monitoring) Act 1993*, s. 43D(1).

2.4 Review of literature

We conducted a comprehensive literature review in the early stages of our audit to understand the nature and extent of issues related to Aboriginal child sexual assault, and the underlying causes of disadvantage and dysfunction more broadly in Aboriginal communities. We looked closely at the findings of inquiries into Aboriginal child sexual abuse in other jurisdictions and how governments had responded. Our review of the literature alerted us to a number of community-led initiatives that appear to be achieving positive results across a range of areas. Our research informed our interstate visit program.

2.5 Companion Inquiries

We have used a series of companion inquiries to focus agencies' attention on issues that need to be addressed if specific child protection strategies are to have an impact – especially in high-need locations. Two of these inquiries have culminated in reports to Parliament – *Inquiry into service provision to the Bourke and Brewarrina communities* (December 2010) and *Addressing Aboriginal Disadvantage: the need to do things differently* (October 2011). We also issued a confidential report provided directly to lead agencies about our review of a group of school-aged children in two Western NSW towns (July 2012).¹⁷

These reports collectively, constitute our formal report to the Minister on our audit.

2.6 Related Ombudsman functions

The views expressed in this report have been informed not only by our audit of the Interagency Plan, but also the significant work we have carried out with Aboriginal communities over the past 11 years. This work has involved extensive consultation with many thousands of Aboriginal people, as well hundreds of agencies and organisations responsible for providing services.

Our report also draws on the knowledge we have acquired from carrying out our specific legislative functions to review the delivery of community services and to oversight policing. A number of the issues highlighted in this report have also been considered in our 2011 report on *Keep Them Safe* and our ongoing examination of the implementation of this initiative.

¹⁷ This report was not released publicly due to the confidential nature of the subject matter.

Chapter 3. The Interagency Plan

In this chapter we outline the purpose of the Interagency Plan, the governance structure established to guide its implementation, the performance framework developed to measure its impact, and the public reporting that took place about the Plan during its five years of operation.

We also outline the views of stakeholders who participated in the implementation process, including factors to consider for future approaches in addressing Aboriginal child sexual assault.

3.1 The Plan

Many of the recommendations made by the ACSAT were translated into 'actions' in the Interagency Plan.

The Interagency Plan is built around three goals:

- to reduce the incidence of child sexual abuse in Aboriginal communities
- to reduce disadvantage and dysfunction in Aboriginal communities, and
- to build up Aboriginal leadership and increase family and community safety and wellbeing.

There are 88 actions within the Plan directed to 11 different government agencies and a number of non-government organisations. While many of the actions initially involved agencies sharing responsibility for their implementation, as the monitoring process evolved individual agencies were given lead responsibility. A full list of the actions and the status of their implementation at the time of reporting is included at Annexure 1.

The actions are arranged around four strategic directions which are: law enforcement; child protection; early intervention and prevention; and community leadership and support.

Many of the actions in the Interagency Plan involve: reviewing or monitoring existing initiatives; expanding existing initiatives; better coordinating or linking services; developing, implementing or trialling new initiatives; providing clearer and more comprehensive information to stakeholders; and monitoring and measuring the implementation of the Interagency Plan.

The actions are categorised as: proposals for immediate state-wide implementation; proposals to be rolled in, and tailored to, key locations where communities require intensive assistance (focus communities); and proposals for further research, assessment or development.

Immediate state-wide actions generally addressed issues that were common from 'one community to the next'. For example, improving aspects of the operation of the Joint Investigation Response Team and measures to improve the protection of victims and witnesses. Proposals for further research included ensuring the criminal justice system can detect and respond to early 'grooming' behaviours directed towards children, and identifying best practice techniques and models for counselling Aboriginal people.

In recognition that there can be no simple 'one-size-fits-all' solution to the problem of child sexual assault in Aboriginal communities, the Plan includes the capacity for tailored responses to be developed to suit the circumstances of individual communities where child sexual assault is known to be a significant issue. A range of proposals were to be immediately rolled out in 'focus communities' which are defined in the Plan as 'priority communities that show acute levels of disadvantage and dysfunction'. In light of how little is known about what actually works to reduce the incidence of child sexual assault, the aim was to test initiatives in the focus communities then after further refinement, roll them out to other locations. A range of proposals were planned for these communities including:

- additional resources for witness assistance programs and forensic examinations
- providing a suite of culturally appropriate awareness raising programs to target the causes and address the consequences of child sexual abuse
- informing communities of available government services, and
- enhancing service provision and staffing in regional and rural areas.

To support the Plan's implementation, Aboriginal Affairs developed the Focus Community Program; four communities, located in a mix of metropolitan and regional areas, were initially selected to participate. The program aims to raise public awareness and generate community support to help prevent and report sexual abuse, build community leadership and increase the safety and wellbeing of children. The four communities received in total, \$25,000 per year until June 2011 to develop initiatives. The program is also supported by a part-time community engagement officer position employed in these communities by Aboriginal Affairs.

When additional funding became available from the NSW Government in 2009, a further five communities were selected to participate in the Focus Community program. However, a different model for addressing Aboriginal child sexual assault was developed for these communities – it is referred to as ‘Safe Families’. This particular program involves a partnership between Aboriginal Affairs, NSW Health and Community Services. It includes the provision of early intervention and support services to vulnerable children and families, and a range of community development initiatives aimed at building community leadership on the issue of child sexual assault. Safe Families received \$22.9 million in funding to cover the four year period of the program’s operation. The program was implemented during 2009-2010 starting with Wilcannia, followed by the other four sites; Lightning Ridge, Walgett, Brewarrina and Bourke. It was intended that all nine focus communities would host events to raise awareness of the issue of child sexual assault, and establish a local Aboriginal Reference Group that would be responsible for developing a community-wide child sexual assault prevention plan and related community engagement activities.¹⁸

Approximately \$60 million was allocated to implement Interagency Plan initiatives over the five year period. This figure includes a commitment of \$30 million by the then State Government sourced from ‘redirected agency funds’. A further \$22.9 million was allocated over four years for the implementation of Safe Families, and NSW Health received \$5 million towards improving access to forensic and medical services in NSW.¹⁹

While many of the actions in the Plan are valuable, a significant number are focussed on activities rather than outcomes. As we discuss in section 3.4, the lack of alignment between the goals, strategic directions and actions also made it difficult for the partner agencies to develop a performance framework to measure the Plan’s impact.

3.2 The governance structure

A range of governance structures were established to oversee the implementation of the Interagency Plan. The Minister for Aboriginal Affairs was designated as the Minister with overall responsibility for the Interagency Plan.

A dedicated forum of chief executive officers of justice and human service agencies known as the ‘Aboriginal Affairs CEOs Group’ was initially established to: coordinate and monitor the implementation of the Plan; drive the achievement of key milestones; and ensure accountability around funding. The CEOs group was to provide advice to the Minister for Aboriginal Affairs, who in turn, was required to report to Cabinet on the Plan’s implementation. In line with changes to cross-agency governance, this dedicated forum was disbanded several years ago, and the group’s responsibilities relating to the Interagency Plan were transferred to the Justice and Human Services CEOs forum.

The Justice and Human Services CEOs Forum met approximately three times a year to discuss the Interagency Plan.²⁰ Our examination of the minutes of these meetings indicates that they were largely used as a forum to update CEOs about the status of individual actions.

The CEOs group was supported by a senior officers group made up of representatives from agencies with responsibilities under the Plan. Its role was to: coordinate agency delivery of actions within agreed timeframes; provide advice on outcome measures and performance indicators; engage in consultations with stakeholders; and identify and manage issues, including barriers to implementation.

In accordance with Action 76 of the Interagency Plan, a Ministerial Advisory Panel, comprising community representatives with experience and/or expertise in child protection matters, was established to: enable the exchange of information between stakeholders; provide advice to the Minister and Aboriginal Affairs about concerns in relation to the Plan’s implementation; promote best practice interventions and initiatives; and conduct research into priority issues. The Ministerial Advisory Panel was required to report to the Minister every six months.²¹

In its final report to the Minister on the Interagency Plan, the Ministerial Advisory Panel indicated that one of the more ‘effective tools’ they used during the Plan’s implementation was requesting directors-general, or other senior staff, to attend advisory panel meetings and brief them on progress. This led to renewed attention by agencies on implementing certain actions which had become delayed. The Ministerial Advisory Panel also valued its regular meetings with the Minister that provided them an opportunity to raise significant issues of concern.²²

Aboriginal Affairs was the designated lead agency for the implementation of the Plan. Its responsibilities included providing secretariat support to the Ministerial Advisory Panel, Senior Officers Group and CEOs Forum.²³

18 Aboriginal Affairs NSW Factsheet 2, Safe Families.

19 Aboriginal Affairs NSW, *Tackling Child Sexual Assault in Aboriginal Communities in NSW*, Fact sheet No. 2 – Achievements (undated).

20 Material provided by Aboriginal Affairs, 27 August 2012 states that there are no Minutes subsequent to December 2009.

21 Response by Aboriginal Affairs to NSW Ombudsman Requirement for Information, 14 March 2011.

22 Ministerial Advisory Panel, Report to the Minister for Aboriginal Affairs on the *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, undated, received November 2011.

23 Aboriginal Affairs was not provided with any additional funding to perform these responsibilities. Email from Aboriginal Affairs to NSW Ombudsman’s Office, 23 August 2012.

Our review of the documentation indicates that the Senior Officers Group and Ministerial Advisory Panel met regularly in performing their respective oversight roles, discussed relevant issues and followed up on agreed undertakings. However, because an implementation strategy had not been developed at the time of the Plan's release, the governance groups spent considerable time determining the nature of the available data required to measure the impact of the Plan, and in attempting to link initiatives contained within the Plan with related initiatives such as *Keep Them Safe* and *Two Ways Together*.

As the child protection landscape changed dramatically with the release of *Keep Them Safe*, many of the functions of the governance groups established to oversee the implementation of the Interagency Plan became duplicated, as lines of accountability between governance forums were not clearly articulated. This lack of clarity in the governance framework was noted by the Senior Officers Group in late 2008, when it discussed the range of reporting and oversight mechanisms for the Interagency Plan and the resultant confusion about responsibilities.²⁴

Although Aboriginal Affairs staff worked to track the implementation of actions, when progress stalled in relation to certain initiatives, it became difficult for Aboriginal Affairs to exert the necessary influence over larger, frontline service delivery agencies. Aboriginal Affairs staff were also hampered in their attempts to develop a performance framework, as they were overly reliant on partner agencies to determine the availability and reliability of the data that was required to underpin the program's performance framework. As we discuss below, the development of the performance framework and the related data compendium, were significantly delayed.

3.3 Measuring performance

Action 77 of the Interagency Plan required Aboriginal Affairs to 'develop milestones and indicators to measure success in implementing the Plan and reduce Aboriginal child sexual assault..'. The Plan was released in 2007 without an implementation strategy, or an evaluation framework, to guide partner agencies in their ongoing assessment of the Plan's impact.

A program performance framework to assess and monitor the progress of the Plan's implementation was not developed until more than two years after the Interagency Plan was released. Prior to this, attempts were made by partner agencies to develop a 'data compendium' and performance framework, however, the processes undertaken to achieve this were protracted. For example, implementation plans for individual actions were approved at CEO level in early 2007, but were determined months later to be inadequate.

After six months of agencies attempts to refine milestones and measures, the Ministerial Advisory Panel recommended to the Minister that a 'results logic model' be developed to measure performance. This led to a consultant being engaged in mid-2008 to develop a performance framework. The resulting framework was not approved by the then government until February 2009. Although the performance framework indicated that a data development agenda would need to be in place by August 2009, it was another year before this agenda was finalised.

Towards the end of the Plan, data was being collected about Aboriginal children (for various timeframes) in relation to a number of performance measures. The analysis of the performance data was reported on only one occasion, as agencies had difficulty sourcing data for a number of the measures. The report containing the analysis was completed in November 2011.²⁵

Its major findings were also summarised in a paper prepared by Aboriginal Affairs in 2012 which examined the Plan's implementation – *Beyond the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*. The findings included:

- An increasing proportion of children involved in (child protection) reports for further assessment and substantiated reports are Aboriginal.
- Aboriginal children are being involved in substantiated reports, and being placed in out-of-home care at an increasing rate; and that the number of Aboriginal children in care who are placed with a relative or Aboriginal carer has increased, with this group representing 81.2% of all Aboriginal children in care.
- Aboriginal students perform more poorly in all domains, in all grades tested than non-Aboriginal students, with the gap widening between Year 3 students and Year 9 students.
- There has been a small increase in the proportion of Aboriginal students completing Year 12, however the Aboriginal student population only completes Year 12 at half the rate of the non-Aboriginal student population.

²⁴ Material provided by Aboriginal Affairs, 14 March 2011, (November 2008 meeting).

²⁵ Aboriginal Affairs, *Tier 1 and Tier 2 Data for the Program Performance Framework, Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, November 2011 Reporting cycle, November 2011.

- There has been an increase in child sexual assault charges involving Aboriginal victims over the past six years (whether related to higher rate of incidence, increased propensity or willingness to report, or enhanced detection and prosecution processes).

The findings also noted that 'it is not possible however to link these outcomes with the implementation of activity in the Plan'.²⁶

As a separate exercise, Aboriginal Affairs commissioned the Social Policy Research Centre (SPRC) to conduct a review of the performance framework. The SPRC's report on the framework was finalised in November 2011. It is unclear why the review was commissioned at such a late stage in the implementation process. However, its findings are clearly useful for developing and evaluating future frameworks for addressing Aboriginal child sexual assault.

The SPRC review outlined a number of difficulties with the performance indicators contained within the framework, including that:

1. *None of the indicators align with activities and outcomes in the Interagency Plan, or at the local level, in Safe Families locations or Focus Communities.*
2. *Most (13 of 20) indicators do not align with the Plan's strategic outcomes, which are largely short-and medium-term outcomes.*

.....

*Given these difficulties with existing indicators and the limitations of reporting and substantiation data, additional specific measures for the future development of the Interagency Plan are warranted.*²⁷

The SPRC's review report included a number of specific recommendations, including the development and inclusion of a range of new indicators, including service system indicators that are for both universal (health and education) and specialist (especially alcohol and other drugs, family violence and mental health) services; that school attendance and overcrowding be included as indicators; and that organisations that provide services to children and families be supported to provide data – for example, about the availability and uptake of services – for ongoing monitoring.²⁸

The SPRC review concluded that the indicators used to measure performance of the Plan were flawed, and that data used to substantiate the indicators were inappropriate and/or inadequate.

3.4 Reporting on progress

Action 77 also committed Aboriginal Affairs to developing indicators to monitor the Plan's implementation²⁹ and to report on progress through the existing *Two Ways Together* and State Plan reporting cycles. The *Two Ways Together Report on Indicators 2009*³⁰ made only a brief reference to the Interagency Plan. However, in August 2009, a public report on the progress of the Interagency Plan's implementation was released.³¹

The report summarised the progress in implementing each action. The majority of the 'significant achievements' related to the introduction of initiatives such as the funding allocated for the rollout of Safe Families and the establishment of the Rural New Street program. The report did not discuss the processes for measuring the impact of the Plan or how it would fit within the broader *Keep Them Safe* framework, which had commenced in March that year.

Various agencies released annual reports that referred to certain Interagency Plan actions. In addition, the 2010-2011 and 2011-2012 *Keep Them Safe* annual reports provided brief commentary about the status of the Plan's implementation. The bulk of the public reporting about the Interagency Plan that occurred during 2009-2011 was contained in Aboriginal Affairs' own annual report. However, the August 2009 progress report was the only public report released during the five year period of the Plan's operation that outlined comprehensively the progress made in implementing all 88 actions.

26 Aboriginal Affairs, *Beyond the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, undated, provided to the Ombudsman in November 2012.

27 Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, Final Report*, November 2011, p.i.

28 Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, Final Report*, November 2011, p.ii.

29 *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities (2006-2011)*, released January 2007, p.8.

30 Aboriginal Affairs NSW, *Two Ways Together Report on Indicators 2009*, p.111.

31 Aboriginal Affairs NSW, *Report on Progress*, August 2009.

3.5 Lessons learned

In examining the feedback from most agencies involved in implementing the Interagency Plan, a consistent theme is that, despite frustration with what many regarded as an overly bureaucratic monitoring process, the Plan itself had led to a strong focus being placed on the issue of Aboriginal child sexual assault. The Plan brought together for the first time, a whole-of-government framework for responding to Aboriginal child sexual assault. A number of agencies sought to build on the actions they were responsible for under the Plan, by expanding existing education programs and services aimed at addressing Aboriginal child sexual assault. There was also a greater willingness among agencies to work collaboratively around Aboriginal child protection issues, and a recognition that this must also be done in partnership with Aboriginal communities.

For example, Juvenile Justice said the Plan enabled training to be initiated for staff on better identifying, and responding to, sexual abuse. In addition, Juvenile Justice ran a successful education program for detainees around personal safety and protective behaviours.³² NSW Health said the Plan was strategically useful in supporting the development or expansion of valuable Health programs aimed at responding to child sexual assault in Aboriginal communities, such as the New Street service network, traineeships for Aboriginal drug and alcohol and mental health workers, Aboriginal Maternal and Infant Health Services (AMIHS), and changes to Justice Health screening tools.³³

However, agencies also said they were often hampered in their ability to implement many of the Plan's initiatives, due to challenges involved in recruiting staff to rural and remote locations; obtaining ongoing funding for programs and services proven to work; and a lack of over-arching coordination to drive the implementation of the Plan and integrate it with related cross-government initiatives.

In its *Beyond the Interagency Plan* paper, Aboriginal Affairs noted the following weaknesses with the Plan:

Despite its successes, implementation of the Interagency Plan was strongly focused on responding to reports of child sexual assault rather than on preventing and reducing rates of offending. Furthermore, less emphasis was placed on overcoming the barriers to Aboriginal people reporting sexual assault, or addressing the disadvantage Aboriginal communities' face.

The specific focus of the plan perhaps reflects the lack of Aboriginal community engagement in its development and designing the specific actions...The focus on legal responses to actual cases of sexual assault, and limited communication to communities on progress, has also been suggested as being partly responsible for the limited community support for the plan.³⁴

The Ministerial Advisory Panel, in its final report to the Minister on the Interagency Plan, outlined a number of obstacles that reduced their effectiveness as a governance group throughout the Plan's implementation. These include:

The MAP is to a large extent reliant on obtaining progress information from the agencies themselves, and has limited means of verifying the information provided. The MAP is also aware of instances where reports on progress of actions relate to reforms made centrally to policies or protocols that may not be effectively implemented regionally or locally.

The MAP also considers that formal linkages with the Ombudsman would enhance the Panel's capacity to provide effective oversight. The MAP and the Ombudsman's office met informally a number of times to exchange information about relevant matters and this has been a useful tool. The MAP notes that the Ombudsman is also in a better position to provide accountability than the MAP due to that office's powers to access information.

.....

The lack of authority of Aboriginal Affairs to deal with the lapses in reporting has also frustrated the MAP.

The Ministerial Advisory Panel made the following general observations to the Minister about weaknesses in the implementation of the Plan.

The MAP notes that more generally, agency focus on implementation of the Interagency plan started off high but appeared to taper off as the years progressed, with a resultant loss of effectiveness. This became most apparent after the previous Minister discontinued his practice of regularly meeting with agency heads regarding their actions. This perceived lack of commitment diminished the accountability of agencies. In addition, changes to the policy context, including the implementation of Keep Them Safe, reduced the focus on the interagency plan. The MAP considers that, while the Keep Them Safe reforms were designed to improve services for all children, the entry points to the system are not always culturally appropriate.

³² Response from Aboriginal Affairs to NSW Ombudsman Requirement for Information, 27 August 2011.

³³ NSW Health Position Paper Child Sexual Assault in Aboriginal Communities, 28 September 2012.

³⁴ Aboriginal Affairs, *Beyond the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, undated, received November 2012.

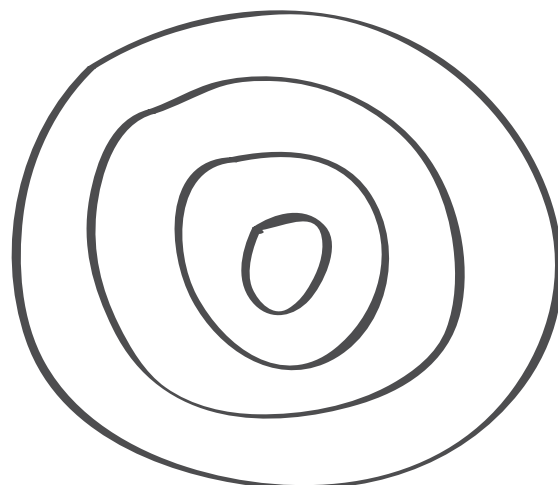
A key obstacle to implementation of the Interagency Plan appears to have been created by difficulties recruiting and retaining staff. The Interagency Plan had insufficient focus on workforce development, particularly in rural and remote areas.

The Ministerial Advisory Panel also outlined to the Minister what it regards as priority areas that must be addressed for progress to be made in addressing child sexual assault. These include:

- more effective advocacy for adult survivors of sexual assault and child victims
- building the knowledge base about the programs that work and the need to assess related outcomes - this process should include identifying high performing NGOs
- adopting place-based approaches to service delivery
- community 'ownership' of data
- establishing strong governance and accountability and maintaining a voice for Aboriginal Affairs in government.³⁵

³⁵ Response from Aboriginal Affairs to NSW Ombudsman Requirement for Information, 27 August 2011.

Building strong and safe communities



Chapter 4. The need for healing

Healing can be difficult to define, particularly because its definition and form will ultimately be set by those involved in the process.³⁶ However – in his 2008 *Social Justice Report* – Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner, acknowledged that ‘to make healing a viable agenda that government will seriously fund and support’ we need to clarify the case for healing by explaining what it means to Aboriginal people.³⁷

The *Social Justice Report 2007* noted that:

*Healing can occur at the individual [and the] community level. It aims to deal with different layers of trauma experienced by Indigenous communities. Often, healing will seek to mend the harms of the past, as well as contemporary manifestations of trauma through violence and abuse in communities. Healing is holistic so these two layers of hurt cannot be separated.*³⁸

Professor Judy Atkinson, an Aboriginal woman who has spent most of her community and academic life working in the field of violence, trauma and healing, has studied the effects of intergenerational trauma. She argues that many of the problems present in Aboriginal communities today are symptoms of the effects of unresolved trauma reaching into the present day.³⁹

Calma also stated in his 2008 *Social Justice Report* that ‘anger, hopelessness, worthlessness and lack of genuine opportunities and disconnection run like a common thread through the experiences of both victims and perpetrators of violence’.⁴⁰ The effects of intergenerational trauma have resulted in a situation where, if left unresolved, Aboriginal communities ‘can begin to internalise shame and guilt and, in more severe and sustained cases, whole communities can begin to think that pain and chaos is normal’.⁴¹

Aboriginal leaders have told us that targeted healing programs for victims of child sexual assault are essential, but so too is healing for the broader Aboriginal community – to address the effects of violence, trauma and dislocation associated with high levels of community disadvantage. Given the impact of intergenerational trauma, Aboriginal communities have repeatedly highlighted that at times there is no clear delineation between perpetrators and victims of abuse. This is because the lines are blurred between offenders who have often been victims of abuse or intergenerational trauma themselves.

During the Aboriginal Child Sexual Assault Taskforce (ACSAT) consultations, a number of participants expressed the view that perpetrators of child sexual assault must stop offending and be accountable for their actions – but healing in the form of treatment and rehabilitation was also essential. These participants suggested that it was ‘likely the perpetrators were themselves victims of child sexual assault, so they needed some form of healing and help to stop offending and reintegrate into the community’.⁴²

In providing its views to us on future approaches to addressing Aboriginal child sexual assault, NSW Health highlighted the importance of strategically dealing with the underlying causes of Aboriginal disadvantage and improving the wellness of Aboriginal communities, rather than focusing solely on the issue of child sexual assault. NSW Health emphasised the need to build community capacity through a social determinants of health approach. It argued that this requires government agencies to anchor their responses to the issue of child sexual assault in a solid understanding of the experiences of trauma for individuals brought about by colonisation and racism. In this regard, NSW Health recommended that any future interagency approaches to addressing Aboriginal child sexual assault reflect the Aboriginal Health Family Model of Care – which has at its centre, family and culture, with a strong focus on healing.⁴³

36 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Australian Human Rights Commission (2008), p.52.

37 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), Chapter 4, p.152.

38 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Australian Human Rights Commission (2008), p.53.

39 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), Chapter 4, p.155.

40 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), Chapter 4, p.156.

41 Voices from the Campfires, Establishing the Aboriginal and Torres Strait Islander Healing Foundation, 2009, p.16 as cited in P Shepherdson, *Just Healing: Do Australian Indigenous sentencing courts facilitate healing for Aboriginal people and communities?*, 2012, (Unpublished), p.3.

42 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General’s Department NSW, 2006, p.55.

43 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

4.1 How the issue of healing has been progressed so far

The Interagency Plan sought to address healing through Action 57, which required the Department of Attorney General and Justice to:

Conduct cultural camps for Aboriginal children, men or women and include education about child sexual assault and promote healing. Link the camp to support services and trained staff/counsellors to ensure that appropriate support is provided if/when disclosure occurs.

The difficulty with this Action is that it sought to promote a broad and complex issue through a narrow focus and very specific activity, rather than seeking to properly understand what the concept of healing actually means more broadly for Aboriginal communities and what is needed to develop a sustainable healing agenda in NSW. The reasoning behind the decision to allocate an action aimed at promoting healing to a justice agency was also unclear. In our view, NSW Health's Education Centre Against Violence and Aboriginal Affairs would have been far better placed to jointly lead the implementation of such an action.

While technically the Action was implemented by the designated lead agency – with camps being held in Nowra and Mount Druitt in late 2009 – an evaluation of these camps was mixed. The camps included several educative components such as raising awareness about sexual assault, personal safety, reporting processes and the supports available for victims, but they did not include a specific focus on healing.

During the period of the Interagency Plan's implementation, the Department of Attorney General and Justice informed Aboriginal Affairs that it did not have a dedicated pool of funds to support an ongoing cultural camps program and determined that it was more productive for it to progress related initiatives, such as Safe Aboriginal Youth Patrols.⁴⁴ The Department also raised with Aboriginal Affairs the need to hand the model over to another agency which might be better placed to adapt and implement it more effectively.⁴⁵

More recently, in responding to concerns raised about the implementation of this Action by the Ministerial Advisory Panel (the MAP), the Director-General of the Department of Attorney General and Justice noted that while his department remains committed to strategies that improve awareness of child sexual assault in Aboriginal communities, this work cannot be undertaken by his department alone, and must form part of an integrated suite of early intervention initiatives delivered across a number of agencies.⁴⁶ In this regard, the MAP also cited 'insufficient services available within the communities where camps were held' and a 'lack of follow through' as reasons for the lost opportunities flowing from this Action.⁴⁷

Ultimately, Action 57 failed to deliver a comprehensive response to what has become a foundation issue for Aboriginal communities across NSW. Like a number of other Interagency Plan actions, the problem lay more in the narrow interpretation of the Action, compounded by a failure of the Aboriginal Child Sexual Assault (ACSA) Senior Officers Group⁴⁸ to recognise the need to approach the issue of healing differently. It appears from our review of the documentation that steps were not taken to act on the recommendation of the Department of Attorney General and Justice to refine and reassign Action 57. However, as we discuss below, Aboriginal Affairs has more recently sought to inform the dialogue around healing through its role in supporting the Ministerial Taskforce.

Our own examination of healing has been informed by our consultations with Aboriginal people involved in delivering healing programs, as well as those who have participated in these programs. We have also held discussions with the Aboriginal and Torres Strait Islander Healing Foundation. In addition, we have sought the views of agencies such as NSW Health and Corrective Services who have played a role in overseeing and administering healing programs over several years.

Both our audit and the recent community consultations conducted by the Ministerial Taskforce on Aboriginal Affairs have identified a strong desire on the part of Aboriginal people for healing to be formally recognised as a therapeutic response and for healing programs to be adequately supported.

In our 2011 *Addressing Aboriginal disadvantage*⁴⁹ report we highlighted the need for sustained support for successful healing programs which have received strong endorsements by communities. Since then, the Ministerial Taskforce has acknowledged that the government can play a role in contributing to healing in Aboriginal communities. In its August 2012 progress report, the Ministerial Taskforce stated that 'the issue of healing and trans-generational trauma

44 This program provides a range of support services for at-risk young people and employs staff experienced in handling disclosures of sexual assault.

45 NSW Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 26 June 2012.

46 Response by Director-General, Department of Attorney General and Justice to *Ministerial Advisory Panel's Final Report on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, 26 July 2012.

47 Ministerial Advisory Panel on Aboriginal Child Sexual Assault, *Report to the Minister on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, February 2012.

48 The ACSA Senior Officers Group, made up of human service and justice agency representatives, had as one of its responsibilities, identifying concerns about the Plan's implementation.

49 NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently*. A special report to Parliament under s31 of the *Ombudsman Act 1974*, October 2011.

needs to be better understood by working in partnership with Aboriginal communities'. It also proposed that a forum be held to progress the dialogue on healing and develop responses in a NSW context.⁵⁰

In this chapter, we have sought to identify what, in a practical sense, is needed to move beyond the rhetoric around healing and towards an evidence-based approach for delivering a coordinated healing strategy across NSW. In doing so, we have also had regard to the recent paper prepared by Aboriginal Affairs – *"It's all about healing..." A discussion paper about wholeness and healing within Aboriginal communities in NSW* – which outlines a possible healing framework.⁵¹

4.2 What is the role of the NSW Government in healing?

After extensive consultation, Tom Calma recommended in his 2008 *Social Justice Report* that the Federal Government establish an independent, Indigenous-controlled national healing body to develop and then implement a coordinated National Indigenous Healing Framework in collaboration with state and territory governments, and Indigenous organisations and communities. In addition, he recommended that such a body should:

- be adequately resourced for long-term community generated and culturally appropriate Indigenous healing services and programs to meet identified need, and
- have a broad range of possible roles and functions including research, public education, capacity building, training, accreditation, policy review, public reporting, monitoring and evaluation.⁵²

On 13 February 2009, the Australian Government announced its intention to establish a national Healing Foundation to address trauma and aid healing in Indigenous communities.⁵³ The Federal Government committed \$26.6 million over four years to fund programs supported by the foundation.

Since its establishment, the Healing Foundation has provided funding to 72 Aboriginal designed, developed and delivered healing projects over the last three years across Australia (21 projects have been funded within NSW).⁵⁴ Projects range from one-off events to large scale three year projects in urban, regional and remote areas across Australia – and focus on men, women, families, communities, children and young people and members of the Stolen Generations. The Healing Foundation is currently coordinating the National Healing Framework that ensures consistency across the country for its funded projects.

There are a number of different Aboriginal healing programs that appear anecdotally to be positive and well received by Aboriginal communities in NSW. However, there is currently no mechanism in NSW to track healing programs and get a sense of how effective and practical the outcomes are for communities. There is also no central accreditation practice or evaluation process in place to ensure quality government funded healing programs are being provided. Without an overarching healing strategy or designated agency to monitor the implementation of healing programs and track their outcomes, there is a risk that many of the efforts and gains made as a result of already established programs may be lost.

In its discussion paper on healing, Aboriginal Affairs highlighted that, 'the NSW Government cannot step in and "heal" or make "whole" an Aboriginal community'. However, it outlined four key areas where the NSW Government does have a role in encouraging healing and wellbeing in Aboriginal communities'. The following four areas were listed:

- encouraging greater recognition and respect for Aboriginal people and culture
- undertaking research and helping to build an evidence base
- providing a commitment to fund Aboriginal healing programs, and
- ensuring government policies and programs expressly recognise healing for Aboriginal communities as an outcome.⁵⁵

Given the current activities of the Healing Foundation, it will be important for any state-wide healing strategy developed for NSW to complement and align with the foundation's work and, ideally, it should involve joint research and partnership approaches.

50 Ministerial Taskforce on Aboriginal Affairs: *Progress Report*, August 2012, p.5.

51 NSW Aboriginal Affairs, *"It's all about healing..." A discussion paper about wholeness and healing within Aboriginal communities in NSW*, June 2012, p.16.

52 Recommendation 15, T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), Chapter 4, p.197.

53 Advice obtained from the Department of Families, Housing, Community Services and Indigenous Affairs website: www.fahcsia.gov.au. Accessed 3 December 2012.

54 Advice provided by Lisa Hillan, Programs Director, Aboriginal and Torres Strait Islander Healing Foundation, 13 November 2012.

55 NSW Aboriginal Affairs, *"It's all about healing..." A discussion paper about wholeness and healing within Aboriginal communities in NSW*, June 2012, p.16.

4.2.1 Defining healing

The potential scope of what healing can mean to Aboriginal people and communities has 'led to confusion over its appropriateness as a public policy response'.⁵⁶ However, it is important to recognise that healing will mean a number of things and may be different in each Aboriginal community. This should not be a barrier to supporting healing processes.

A number of community leaders have suggested that, as part of this government's commitment to place-based service delivery, healing should form part of an overall 'whole of community' plan and be linked to the provision of related support services; economic and education opportunities; and broader community development work to have the maximum impact. In fact, during the Ministerial Taskforce's consultations, Aboriginal people identified 'job and educational outcomes, in and of themselves, as healing activities for individuals, as well as necessary in terms of real ongoing community healing'.

*A person may overcome substance abuse but without a job, those gains may be lost due to despair and frustration. An Aboriginal community may undertake a healing journey and overcome significant issues such as divisiveness and tension within the community, but the resulting leadership and empowerment capacity may be lost if it is not harnessed and recognised in terms of broader community development.*⁵⁷

In addition, the development of a suitably qualified healing workforce would not only improve the quality of healing programs but also provide broader benefits for communities by providing practical evidence of self-determination and local job opportunities. The Healing Foundation has reported that, through its funded projects, it employs 164 Aboriginal and Torres Strait Islander people.

The healing paper prepared by Aboriginal Affairs also discusses a wide range of healing practices and facilities currently operating in Aboriginal communities in NSW and elsewhere. Some of these include:

- individual and family counselling
- therapeutic programs
- community healing programs
- cultural safe places and Aboriginal healing centres (including traditional cultural healing practices)
- culture camps for young people
- cultural renewal, including reviving and promoting Aboriginal culture such as languages, art programs, performing ceremonies including songs and dance, and
- recognition, respect and reconciliation through the promotion of Aboriginal culture and values at mainstream ceremonies and events and via Aboriginal events such as NAIDOC.

4.2.2 Evaluating healing programs and developing an evidence-based approach

There are a significant number of healing programs operating in NSW that have been developed and delivered by Aboriginal people, but funding for these programs is often unstable or in some cases has now ceased. To achieve intergenerational healing and change, longer term funding of successful models is needed to ensure service security. However, there must also be sufficient flexibility to vary services as community needs change. We also appreciate that – if the NSW Government is to support a range of healing processes – there is a need for these programs to be reviewed and their success measured in a meaningful way.

Research suggests an average of 10 years is required for an Aboriginal community to '*reach out, dismantle denial, create safety and engage participants in therapeutic healing*' – and this is just the beginning of the process.⁵⁸ Undoing over 200 years of trauma will take a significant period of time. The government needs to be realistic about the process and the length of time required, otherwise healing processes will be set up to fail. The ability to fund projects over the long-term will therefore be critical.

56 G Phillips, *Healing and Public Policy*, in Altman & Hinkson (eds), *Coercive Reconciliation*, Arena Melbourne, 2007, p.141 as cited in P Shepherdson, '*Just Healing: Do Australian Indigenous sentencing courts facilitate healing for Aboriginal people and communities?*', 2012, (Unpublished), p.6.

57 NSW Aboriginal Affairs, '*It's all about healing...*' A discussion paper about wholeness and healing within Aboriginal communities in NSW, June 2012, p.5.

58 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), Chapter 4, p.184.

4.2.2.1 **Building on the lessons learned from existing healing programs**

A significant investment by the NSW Government in healing was made through the following projects funded under the *Two Ways Together* initiative over an eight year period and overseen by Corrective Services. However, *Two Ways Together* funding for these programs ended in June 2012.⁵⁹

- Rekindling the Spirit – provided a range of culturally specific support services for Aboriginal communities in Lismore and Tabulam. It targeted male and female offenders as well as families and was run by an independent Aboriginal organisation based in Lismore. Services included group-based interventions, cultural camps and individual and family counselling – with a focus on addressing family violence, child abuse and neglect within the family as well as drug and alcohol abuse.
- Yindyama La – an interagency project for Aboriginal male offenders in Dubbo, which addressed Aboriginal violence within a framework of Aboriginal healing. The project worked closely with services for victims and children, in collaboration with local Aboriginal communities.
- Walking Together – a set of group-based programs in Newtown, Sydney targeting Aboriginal male and female perpetrators of family violence. They were run by Probation and Parole Officers and included:
 - Aboriginal group-based drug and alcohol addiction/relapse prevention intervention programs.
 - Aboriginal pathways to employment, education and training programs, in partnership with TAFE.
 - Vocational programs in partnership with BSI Learning (BSIL), a provider that targets Aboriginal offenders and engages Aboriginal staff and trainers in key positions.
 - An Aboriginal mentoring program in partnership with a non-government agency.

Corrective Services informed us that in overseeing these programs, it has encountered a range of barriers and a separate set of challenges; for example, determining what success should look like for the Rekindling the Spirit program. Low numbers of participants prevented statistically meaningful data in terms of longer term successful outcomes. One measure is successful completion of legal orders following participation in the program. However, this is a fairly crude measure. Corrective Services has legitimate concerns about the low completion rates for both men and women who participated in the above programs.⁶⁰

Corrective Services questioned whether healing programs can have the desired impact in circumstances where the often serious psychopathologies of many of its clients, coupled with alcohol and substance abuse disorders, have not been properly addressed. For example, a significant proportion of female Aboriginal offenders supervised by Corrective Services have been victims of sexual and other forms of physical/emotional abuse and require specialised and intensive treatment to turn their lives around. Significantly, Corrective Services has indicated that it has no current intention to develop additional healing programs unless 'there is future clear, robust evidence that specialised programs are warranted or a gap in service provision becomes apparent'. Referral to specialised treatment or community healing programs, as part of an individualised case plan, remains an option for the management of offenders in the community.

In putting forward this view, Corrective Services highlighted the success it has had in implementing its Domestic Abuse Program (DAP) – an evidence-based cognitive behavioural therapy program aimed at reducing domestic and family violence. The DAP has significantly reduced both violent and non-violent offending for both Aboriginal and non-Aboriginal males. Corrective Services advised that:

Time to re-offend has been extended and severity of re-offence has been reduced at two-year follow up of program participants. Retention rates for the program have been high with some 80% of participants completing the program. To date, 2,555 offenders and 14 custodial institutions in NSW, with Aboriginal participants comprising some 25% of all participants.

During our consultations, Aboriginal leaders and staff from the Healing Foundation acknowledged that healing cannot be solely responsible for addressing dysfunction and disadvantage in Aboriginal communities – and the success of programs must not be measured in this way, given the systemic and complex nature of these issues. They warned that any reliance on healing programs to achieve such results would ultimately be setting them up to fail.

4.2.2.2 **Creating stronger linkages between evaluation and funding of healing programs**

Our consultations have revealed that there are a number of well-regarded healing programs operating in NSW that have not yet been properly evaluated, including those outlined earlier in this section. The government should consider establishing a process to identify which of the current programs have delivered positive results, and in doing so, develop a meaningful way to evaluate them as well as other future healing programs.

⁵⁹ Exit strategies were developed to refer clients to alternative programs.

⁶⁰ Corrective Services NSW response to NSW Ombudsman Requirement for Information, 30 November 2012.

During October and November 2011, the Healing Foundation had a round of funding to support training and community education projects about trauma and its impacts in Aboriginal and Torres Strait Islander communities. The funding round attracted 120 applications from communities across Australia – NSW had the highest number of submissions with approximately 40 applications. The applications were reportedly of an exceptionally high standard. To fund the top 20% of projects required \$7 million, but the Healing Foundation only had \$3.5 million to distribute.

The Healing Foundation is currently collecting and collating quantitative and qualitative data from its funded projects to contribute to an evidence base about the performance and outcomes of healing projects it funds. A number of healing programs are also the subject of in-depth evaluations by external organisations.⁶¹ The Healing Foundation measures cultural connections, cultural identity, and whether the projects are strengthening the resilience of communities and bringing about a sense of purpose. It has also been working on good indicators of healing within Aboriginal communities.⁶² Aboriginal Affairs has recommended that the NSW Government can play a key role in developing the evidence base for successful Aboriginal healing programs and activities by funding research and evaluation; and promoting partnerships with universities and philanthropic and non-government organisations.⁶³ In this regard, it will be important that the NSW Government leverages off the work already being done in this area by the Healing Foundation.

A continued theme during our consultations was that the current practice of ad-hoc and short-term funding of healing programs undermines their overall effectiveness and limits their accessibility. The uncertainty of funding also impacts on the ability of providers to develop and maintain staff. These problems are particularly heightened for Aboriginal organisations.⁶⁴ NSW Health has recognised this issue and, rather than supporting ad-hoc requests for funding healing programs, it is currently working with Aboriginal Affairs to consider more sustainable state-wide approaches to funding, such as 'pooled funding across government' to support healing programs.⁶⁵ This is a positive step.

Finally, the significant level of interest in, and activities being carried out, in the area of healing mean that it is more important than ever to adopt a clear and consistent strategy for assessing and funding healing programs across NSW.

Recommendations

1. **That the NSW Government commits to developing a state-wide healing strategy and, in doing so, gives specific consideration to:**
 - a) **designating an agency and/or Aboriginal entity to develop and lead the implementation of a state-wide healing strategy**
 - b) **forming a partnership with the Aboriginal and Torres Strait Islander Healing Foundation to ensure that a collaborative state and federal approach is taken to reviewing, evaluating and funding healing programs in NSW**
 - c) **developing a process for identifying and evaluating existing healing programs operating in NSW with the aim of building a solid evidence base in relation to the core components of successful programs**
 - d) **NSW Health's proposal to create a funding pool across government agencies to support a more consistent approach to supporting healing programs.**
2. **That the NSW Government develops the agenda for its proposed healing forum in 2013 in collaboration with Aboriginal entities such as the Coalition of Aboriginal Peak Bodies; the Ministerial Advisory Panel on Aboriginal Child Sexual Assault and the Aboriginal Communities Matter Advisory Group (established by the NSW Health Education Centre Against Violence); and provides a copy of this Chapter on healing to these entities as part of their consideration of the forum agenda.**

61 Aboriginal and Torres Strait Islander Healing Foundation, *Our Healing Our Solutions, Volume 2*, July – December 2011, p.2, www.healingfoundation.org.au. Accessed 20 November 2012.

62 Record of conversation with Richard Weston, CEO, Aboriginal and Torres Strait Islander Healing Foundation, 12 October 2012.

63 NSW Aboriginal Affairs, *"It's all about healing..." A discussion paper about wholeness and healing within Aboriginal communities in NSW*, June 2012, p.16.

64 Productivity Commission, *Contribution of the Not for Profit Sector*, February 2010, Chapter 12 – Delivery of Government Funded Services, pp.335-336.

65 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

Chapter 5. Community development

Aboriginal community development seeks to strengthen individuals and whole communities in their capacity to overcome poverty, disadvantage and dysfunction.

The Interagency Plan acknowledges that building strong and resilient communities is essential to tackling Aboriginal child sexual assault. The Ministerial Taskforce on Aboriginal Affairs also has a focus on developing the capacity of local Aboriginal communities to become more involved in, and accountable for, the health of their local communities. But as Professor Juanita Sherwood, a Wiradjuri woman, who has been a leading voice in Aboriginal community health and education for many years, says creating models of community development that work 'requires understanding, commitment, collaboration, partnership and respect'.⁶⁶

At the heart of successful community development models is the principle of self-determination. The *UN Declaration on the Rights of Indigenous Peoples* recognises the rights of Aboriginal people '...to self-determination, to participation in their own development and to the promotion and revitalisation of their cultural traditions and customs'.⁶⁷

Governments have for a number of decades acknowledged the need for Aboriginal people to determine their own future. But while governments have embraced the related language of 'community development' and 'capacity building', attempts to implement a genuinely inclusive, community-driven approach have been far from effective.

5.1 Community development and the Interagency Plan

The Aboriginal Child Sexual Assault Taskforce (ACSAT) recognises that a community development approach to child protection is more likely to lead to an increase in disclosures of abuse, and to also possibly reduce the incidence of Aboriginal child sexual assault. The Taskforce's recommendations included a call for Community Services to 'provide more child protection early intervention and prevention services to Aboriginal communities that specifically included community development/empowerment models'.⁶⁸

The goals in the Interagency Plan stress the need for measures to reduce disadvantage and dysfunction in Aboriginal communities and strengthen community leadership. Its strategies for achieving these goals include one aimed at 'community leadership and support'. The plan also recommends a developmental approach, noting the need for location-specific actions 'to be rolled out in, and tailored to, key locations where communities require intensive assistance'.

In its February 2012 report to the Minister for Aboriginal Affairs, the Ministerial Advisory Panel for Aboriginal child sexual assault (MAP) argued that the Interagency Plan had been 'weakened by a lack of focus on community leadership and support' and that there had been 'inadequate community capacity building'.⁶⁹ Similarly, Aboriginal Affairs criticised the Interagency Plan for being too focused on responding to individual incidents of suspected abuse rather than supporting community leaders to develop initiatives to help break the cycle of abuse. In a paper entitled, *Lessons from the Interagency Plan process*, Aboriginal Affairs noted that despite the Plan's commitment to supporting community-driven initiatives, there were few actions to address this issue. It also criticised the Plan's:

*...focus on child sexual assault in isolation of related social, economic, justice and health issues...More broadly there is a need to address the social and economic disadvantage and family and community breakdown that is closely associated with increased risk of sexual assault and a cycle of abuse...these are issues that need to be addressed strategically and holistically...rather than through ad hoc single issue programs and initiatives.*⁷⁰

Overcoming the multiple factors associated with entrenched disadvantage requires a combination of community development initiatives. These can include:

- building the capacity of Aboriginal leaders and Aboriginal non-government organisations
- developing true partnership approaches between Aboriginal people and government and non-government services providers
- engaging in a healing process
- encouraging a revitalisation of culture and land use
- building opportunities for economic participation and advancement

66 J Sherwood, *What is Community Development?*, Aboriginal and Torres Strait Islander Health Worker Journal, 1999. Professor Sherwood is currently the head of Indigenous Education at the University of Technology Sydney.

67 Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Chapter 4, p.137.

68 See Recommendation 26.

69 Report to Minister on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, February 2012, p.7.

70 Aboriginal Affairs, *Lessons from the Interagency Plan process*, undated.

- community involvement in program design and decision-making
- establishing strong and accountable governance structures, and
- ongoing government support – including human, financial and physical resources.

NSW Health says that its preferred approach to strengthening sexual assault services in Aboriginal communities is to use community development processes. Under its Aboriginal Family Health Strategy, strategies to address sexual assault are intended to be developed in the context of broader 'whole of life' interventions to improve health, self-determination, working in partnership, cultural understanding and recognition of trauma and loss.⁷¹ Health argues that the core principles of any community development model should be based on this approach.

We agree that strategies to respond to incidents of abuse are much more likely to be effective when they are developed in the context of, and are supported by, broader health and wellbeing strategies. For example, establishing stand-alone child sexual assault committees is unlikely to achieve substantial increases in reporting or better support for victims.

5.2 The role of government in community development

Community development is a process. While it must be initiated by Aboriginal communities rather than imposed, effective leadership and strong governance structures are integral to the success of community development. In locations where leadership and governance have been weakened, governments must consider ways to work with communities to develop their capacity in these areas. This requires understanding, commitment, collaboration, partnership and respect.

The federal and state governments have each invested heavily in large-scale initiatives aimed at strengthening Aboriginal leadership and community governance. In 2002, the Council of Australian Governments established the Murdi Paaki Regional Assembly and a network of local Aboriginal Community Working Parties in 16 towns across Western NSW. The Murdi Paaki trial was established 'with the aim of improving coordination of government services for Indigenous people based on priorities agreed with communities'.⁷² An evaluation in 2006 highlighted community frustration at the slow pace of change, but concluded that 'substantial progress has been made in enhancing the capacity of both governments and communities to work with each other'.⁷³ The evaluation also noted improvements in the governance capacity of communities. This was attributed to a strong commitment by many participating communities to improve governance and establish effective decision-making forums.⁷⁴

The main NSW Government investment aimed at strengthening Aboriginal community leadership is through Aboriginal Affairs' Partnership Community Program (PCP). Starting in 2009, PCP identified 40 locations (including many of the Murdi Paaki towns) to sponsor the development of structures aimed at helping 'Aboriginal communities and government agencies to work together to improve outcomes for Aboriginal people on the ground'. In practice, this largely involved employing project officers to: clarify what was already in place; help communities establish 'community governance bodies'; and to look for ways to assist local governance bodies to 'work with government agencies to identify community priorities and develop an action plan in response'.

Between 2009 and October 2011, Aboriginal Affairs estimated that it had spent \$8.1 million to implement the PCP. Employee-related expenses accounted for 94% (\$7.6 million) of these costs. Other major expenses included \$165,000 to pay consultants to train Aboriginal Affairs staff working in the 40 communities, and \$80,000 to train members of the community engagement bodies. Each of the participating communities was also provided with \$3,000 per year for a 'Community Solutions Fund'. However, at least in the initial stages, this fund was 'for activities that support communities to establish a community engagement body'.⁷⁵ Advice provided by Aboriginal Affairs in December 2012 noted that just 23 of the 40 communities had successfully established Partnership Community Governance Frameworks, with most of these having only been settled in the previous 12 months. PCP is funded until June 2014. Aboriginal Affairs is reviewing the program and will report on its findings in 2013. These findings will assist NSW Treasury in its decision on whether to support the extension of the program beyond June 2014.⁷⁶

Also in 2009, the Federal Government established two of its 29 Remote Service Delivery (RSD) programs in Walgett and Wilcannia. The aim of the RSD program is to provide simpler access and better coordinated government services for Aboriginal people; improve the level of governance and leadership within Aboriginal communities and

71 NSW Health *Aboriginal Family Health Strategy 2011-2016*; NSW Health response to NSW Ombudsman Requirement for Information, 17 August 2012.

72 Urbis Keys Young, *Evaluation of the Murdi Paaki COAG Trial, Revised Draft Report*, September 2006.

73 Community Services' Service Level Agreement with the Murdi Paaki Regional Assembly is an example of this cooperation. Urbis Keys Young, *Evaluation of the Murdi Paaki COAG Trial, Final Report*, October 2006.

74 NSW Government submission to the *Inquiry on Overcoming Indigenous Disadvantage*, p.82.

75 Advice obtained from Budget Estimates 2011-2012, Questions on Notice – Questions relating to the portfolio of Citizenship and Communities and Aboriginal Affairs website, www.parliament.nsw.gov.au. Accessed 7 December 2012.

76 Advice received from Aboriginal Affairs, 4 December 2012.

community organisations; and to increase economic and social participation.⁷⁷ Both communities are also part of the Murdi Paaki trial and the PCP. Two-thirds of the \$67.7 million allocated for capacity building activities in these and other sites across Australia is provided by the Federal Government. Participating states and territories contribute the rest.⁷⁸

Despite the significant level of funding for this program, a recent National Audit Office report on the program noted concerns that governance capacity and leadership activities had not performed as expected. It concluded that 'effective capacity development requires more than just training'. The report said the most successful approaches are systematic, where long-term goals are flexible; and are suited to local circumstances.⁷⁹ Frustrations expressed by members of the Aboriginal community working parties in Walgett and Wilcannia included reported claims that the Remote Service Delivery process had mired their communities 'in more bureaucratic red tape than ever before'.⁸⁰

In response, the Coordinator General of the RSD agreed that there needs to be 'a more practical approach' to community development with Aboriginal communities which is 'community driven and supported by a coordinated service system, including government and non-government providers'. He endorsed the approach outlined in the Auditor General's report, and recommended that the Department of Families, Housing, Community Services and Indigenous Affairs engage with government and non-government stakeholders to develop agreed community development practices. The first stage of implementation should be a community development pilot with an evaluation to determine next steps.⁸¹

The concerns expressed in Walgett and Wilcannia are similar to those raised by Aboriginal communities in many other locations in NSW. A common theme is the slow pace of change to address service inefficiencies and to create programs and services in line with priorities determined by Aboriginal people. In addition, there has been minimal investment in actually strengthening communities. For instance, the PCP's spending on staffing the program far outweighs the small amount allocated for community initiatives.

The NSW Ministerial Taskforce on Aboriginal Affairs has recently canvassed the idea of creating a new local decision-making model to guide and coordinate the local delivery of federal and state services and programs. In recognising the need for better integrated decision-making processes, the local decision making model proposes legislation to compel government agency participation, and a 'staged devolution of decision making and authority to communities around local service delivery, based on community capacity'.⁸²

A key challenge is to move away from initiatives centred on meetings, workshops and training, and to start developing more streamlined yet accountable processes that have the capacity to respond to practical community-led initiatives. While the Murdi Paaki trial has helped strengthen the voice of Aboriginal people in at least some communities, the ability of local community working parties to create and deliver real innovation in service delivery is often stymied by their inability to navigate the often inflexible and burdensome requirements of government bureaucracy. While a core objective of the PCP is to identify and mobilise the strengths and capacities of local communities and to help them put proposals to government, its engagement with communities relies on relatively junior public servants to foster the skills and community leadership needed to do this. These staff are also part of the machinery of government and are often caught between a 'rock and a hard place' in attempting to deliver on community priorities.

To work effectively, community development initiatives need to be responsive to community needs, rather than the needs of agencies' program requirements. As part of developing its strategy for Aboriginal affairs, we believe it is both timely and necessary for government to rethink its current approach to community development and give consideration to whether the non-government sector has greater capacity than government employees to work as agents waiting on the instructions of community leaders. Regardless of the vehicle government chooses to deliver on its commitments in this area, we believe it is necessary for an overarching community development strategy to be developed to guide this work.

5.2.1 The need to provide hands-on support for community initiatives

In trying to encourage and support local community development, successive governments have tended to focus on building community governance structures. While successful community development is much more likely in locations that have effective governance arrangements in place, community-led proposals for initiatives that are important to a community should be considered, even if the leadership or institutions needed to successfully manage a program or initiative are not yet in place. In high-need locations where community leadership can

77 Presentation by Brian Gleeson, Coordinator General for Remote Indigenous Services, May 2012.

78 Australian National Audit Office, *Audit Report No.43 2011-12*, National Partnership Agreement on Remote Service Delivery, p.91.

79 Australian National Audit Office, *Audit Report No.43 2011-12*, National Partnership Agreement on Remote Service Delivery, p.91.

80 N Robertson, *Towns' verdict on closing gap: an utter failure*, The Australian, 14 July 2012.

81 Brian Gleeson, Coordinator General for Remote Indigenous Services, *Six Monthly Report, April 2012 to September 2012*, p.55.

82 Ministerial Taskforce on Aboriginal Affairs, *Getting it Right, the findings of the round two consultations for the NSW Ministerial Taskforce on Aboriginal Affairs*, 2012, Aboriginal Affairs.

sometimes be under enormous pressure, it is vital that agencies and services ensure their local leadership is well supported, encouraged and developed.

The following case study provides a practical illustration of the need for agencies to get behind proposals initiated by the community.

Case study 1 – The Dhiyaan Aboriginal Centre

Established in 1995 as part of the Moree Plains Shire Council Library, the Dhiyaan collection has grown to become 'one of the biggest regionally held Aboriginal culture and history collections in Australia'.⁸³ The library now holds an estimated 90,000 to 110,000 genealogies of local families, a photographic and traditional Kamilaroi artefact collection, a database of Aboriginal ex-service people, birth registrations dating back to 1788, burial and cemetery records and Aboriginal postcards, language records and research.

Dhiyaan helps Aboriginal people learn about their family history and reconnects them with living family members. In doing so, it makes a significant contribution to the physical, mental and spiritual wellbeing of local Aboriginal people and the wider Aboriginal community.⁸⁴

In light of the cultural significance of the collection, a group of local Aboriginal people proposed that the Dhiyaan Aboriginal Centre should become a separate entity, independent of the council library. Arts NSW funded consultations to determine the best way to achieve this. The report from those consultations recommended a staged transition whereby Dhiyaan would become an independently constituted organisation, governed by an Aboriginal controlled board.

Some time later, Aboriginal people behind the proposal approached us with concerns that the process had stalled. They feared that the transition of the collection to a separate entity might not proceed. In October 2012, we convened a meeting between members of the Moree Aboriginal Elders Group, Moree Aboriginal Land Council, Walgett Aboriginal Community Working Party and Dharriwaa Elders Group, Moree Plains Shire Council, Arts NSW and the State Library.

At the meeting, the State Library and the Moree Plains Shire Council agreed to facilitate the staged transition. An interim steering committee with Aboriginal community representation is being established to oversee the process, and the State Library and local council is also committed to preparing a transition agreement outlining key tasks and clear timeframes.

Shortly afterwards, the NSW Government announced that it would provide a \$200,000 Arts NSW grant to fund the appointment of a director to guide Dhiyaan through the transition and for future collection development.⁸⁵ The State Library of NSW has agreed to administer the grant, and to provide other supports to Dhiyaan during the transition, including specialised assistance in maintaining the collection.

The local community proposal to develop the Dhiyaan Aboriginal Centre into an independent Aboriginal entity might have failed were it not for the hands-on support provided by Aboriginal leaders, Arts NSW, the Moree Plains Shire Council and the State Library to assist with the transition. The State Library's agreement to employ a local Aboriginal person as a director, and to mentor and assist that person and the local community to develop an appropriate entity, will be crucial to the Centre's future success. This initiative fits well with the Ministerial Taskforce on Aboriginal Affairs Aboriginal Language and Culture initiative which aims to 'enhance access to language and cultural knowledge'.⁸⁶ The Dhiyaan Centre could provide a model for similar cultural centres to be developed across NSW.

In contrast to the practical support being provided to the Dhiyaan Aboriginal Centre, government agencies have been slow to respond to the Bourke Aboriginal Community Working Party's proposal to establish a community-driven family case management and support team to work in partnership with government and non-government agencies in Bourke. The working party has committed considerable time and effort to developing the model, known as Maranguka, to develop practical supports for vulnerable children and families.

Case study 2 – The Bourke Aboriginal Community Working Party's Maranguka proposal

In April 2012, we facilitated a meeting between members of the Bourke community, local service providers and senior government agency representatives to examine progress made in addressing the Bourke Aboriginal Community Working Party's concerns about service inefficiency, as highlighted in our 2010 report to Parliament. The meeting also provided the opportunity to discuss whether government agencies were

83 Arts NSW, *Keeping Places and Beyond: Building cultural futures in NSW*, pp.36-37.

84 Arts NSW, *Keeping Places and Beyond: Building cultural futures in NSW*, pp.36-37.

85 Advice obtained from Aboriginal Affairs website: www.daa.nsw.gov.au. Accessed on 6 December 2012.

86 *Getting it Right*, the findings of the round two consultations for the NSW Ministerial Taskforce on Aboriginal Affairs, 2012.

prepared to back the Working Party's Maranguka family support proposal. In his opening remarks at the meeting, the Chair of the Working Party made clear that the Bourke community was committed to working hand-in-glove with government agencies, and noted that, 'if service efficiency can't be achieved in Bourke, it is unlikely to be achieved in other communities'.

The Department of Family and Community Services (FACS) agreed to consider supporting the Bourke community's Maranguka proposal once it had been more fully developed. Aboriginal Affairs offered to assist the Bourke Aboriginal Community Working Party to undertake this further development work. Seven months after the April meeting, Aboriginal Affairs confirmed that it would support the engagement of a consultant to work with the Bourke Aboriginal Community Working Party to 'scope' the project. Following this, there would be discussions between government agencies and the Bourke Aboriginal Community Working Party members. The Bourke Aboriginal Community Working Party has had a long-standing commitment to pursuing effective early intervention and prevention models for vulnerable children and families in its community. The working party's desire to work alongside government agencies and other service providers dovetails into the government's commitment to the delivery of integrated service models in high-need Aboriginal communities, such as the Department of Education and Communities' *Connected Communities* strategy. The strategy is built around a core commitment to working inclusively with communities and the local service sector to create integrated service hubs, placing schools and early childhood facilities at the centre of service delivery in all Connected Communities sites.

The Bourke Aboriginal Community Working Party has indicated its willingness to be flexible about the ultimate shape that the Maranguka model takes to ensure that it fits with related government initiatives; and has shown the wisdom to know that a proposal of this type would require the support and expertise of an experienced service provider to deliver it. For this reason, the Working Party proposed that the model be delivered in partnership with the Bourke-based Outback Division of GPs.

It is inevitable that community development work of this type will come up against a range of hurdles and will need to involve the continual refinement of ideas. This can mean that initial suggestions made by communities may not always work out as intended. However, if there is an in-principle commitment by government agencies to back a particular concept, as there was in this case, it is incumbent upon them (or their delegated representatives) to continue to work with community to get it right. As the Dhiyaan Centre experience has shown, this might sometimes involve government (or non-government) agencies providing direct project management and technical expertise to facilitate the process more quickly.

It is of significant concern to us that when community leaders have pushed for a protracted period of time for improved services to their community, the ability of government agencies to mobilise and support community leadership has been so poor. Having said this, it is important to stress that this isn't about individuals and their commitment. In this regard, the commitment of senior government agency representatives who attended the April 2012 meeting was clearly evident. Rather, it goes to the ability of government agencies to deliver on innovative community proposals that require both cross-agency 'buy-in' and the capacity to work outside the usual parameters governing their work.

5.3 Community development and the NGO sector

The repeated failure of government programs to support and promote the development of community initiatives highlights the need to try another approach. One option might be to harness the existing experience and expertise of the non-government sector in this area of community development.

There are a number of Australian-based NGOs that perform community development work through AusAid's international aid program. The Federal Government supports Australian NGOs to undertake community-based development work with communities and vulnerable people in more than 50 countries across Asia, the Pacific, Africa, the Middle East, Latin America and the Caribbean. Some have been working in international aid and development for more than 60 years. They 'mobilise public support, and work in areas which are difficult to access and also have expertise in working in emergency situations where fast and flexible responses are essential'. The four year budget strategy outlined in *Australia's Comprehensive Aid Policy Framework 2015-16* anticipates that total funding to these NGOs is approximately \$500 million in 2011-12 and will increase to between \$700 and \$800 million by 2015-16.⁸⁷

In looking for models of effective capacity building that could be adapted to Aboriginal communities in NSW, the NSW Aboriginal Land Council (NSWALC) and University of Sydney established a partnership with Gawad Kalinga, an NGO that has implemented a community development program in more than 300 communities in the Philippines. The initial stages of Gawad Kalinga interventions aim to develop community leadership and to foster self-governance and self-sufficiency among residents. Subsequent phases aim to foster social entrepreneurship in the

⁸⁷ AusAID website: www.ausaid.gov.au. Accessed 14 December 2012.

form of community infrastructure, self-sufficient food supply, youth programs, basic health care and environmental sustainability projects.⁸⁸

While it would be simplistic to assume that community development in an international context could easily be adapted to the very different economic and social circumstances of Aboriginal communities in NSW, projects aimed at giving Aboriginal people a strong voice in shaping what community development should look like could benefit from these kind of skills and experience.

In suggesting a greater role for the NGO sector, we believe it is essential that any non-Aboriginal NGO engaged in a role of this kind should also be required to utilise its expertise to build the capacity of local Aboriginal staff and organisations over time. One strategy could be to use a large mainstream NGO with a significant number of Aboriginal employees, including Aboriginal people in senior leadership positions, to lead this work.⁸⁹

In addition, there is also the scope to continue to expand the capacity of existing Aboriginal organisations, and for these organisations to play an increasingly important role in establishing and supporting new Aboriginal entities. This approach is being used by the Aboriginal Child, Family and Community Care State Secretariat (AbSec) to build the Aboriginal out-of-home care sector to enable the transition of all Aboriginal children from Community Services to an Aboriginal service provider.

Other established Aboriginal entities' such as the NSWALC, would also be well-placed to auspice community development work. Similarly, although the Education Centre Against Violence is not an NGO (it is formally part of NSW Health), the success of its community development and education work in Aboriginal communities suggests that it could play a role in supporting community development initiatives, especially those targeting child abuse and family violence.

Recommendations

3. **In light of legitimate criticisms by the Ministerial Advisory Panel and Aboriginal Affairs regarding the Interagency Plan's lack of focus on community development (and related issues of community leadership and support), the NSW Government should elevate the importance of this issue as part of its future strategies in the area of Aboriginal child sexual assault (and in connection with its key strategies in Aboriginal affairs more generally).**
4. **As part of better integrating community development into its future strategies, the NSW Government should seek to avoid the problems of the past by ensuring that it independently evaluates the strengths/weaknesses of past community development initiatives: such as the Remote Service Delivery Process (in relation to Walgett and Wilcannia), the Partnerships Community Program and the Murdi Paaki Trial.**
5. **As part of determining its future approach to community development, the NSW Government should provide better support to Aboriginal (and other community) leaders – particularly those in highly vulnerable communities – by funding non-government organisations with significant community development expertise, to work for, and in accordance with the instructions of, Aboriginal and other community leaders. If Government adopts this recommendation, the role of Aboriginal leaders (and the non-government organisations) would need to be effectively integrated into any place-based model that the NSW Government might ultimately adopt – See Chapter 21.**

⁸⁸ Gawad Kalinga, *Building Mighty Currents of Hope: 2009 Annual Report*, 2010.

⁸⁹ The Jaanimili Aboriginal Service and Development Unit within UnitingCare is an example of an Aboriginal entity within a larger non-government organisation that demonstrates strong Aboriginal leadership.

Chapter 6. Encouraging community reporting

Breaking the Silence argued that child sexual assault was not well understood in Aboriginal communities and, that as a result, it is seldom reported and often goes undetected:

*This lack of understanding also contributed to a culture of silence, denial, and inappropriate responses such as protecting the perpetrator rather than the child. Communities believe that these factors, among others, enable the abuse to continue unchecked.*⁹⁰

There are a range of other barriers which might prevent victims from reporting sexual assaults, including negative perceptions of the ability of the criminal justice system to address child sexual abuse, and negative perceptions of the support services provided to victims.

Aboriginal victims experience, or at least perceive, barriers to reporting in different ways to the general population largely because of the influence of particular historical, social and cultural factors. Fear and distrust of the justice system and of other government services are potential barriers to reporting, particularly given the legacy of forced removal of children, and the ongoing significant overrepresentation of Aboriginal people in the child protection and justice systems. Pragmatic issues also account for the low rates of reporting of child sexual assault in Aboriginal communities. For example, the difficulties faced by Aboriginal people living in small, interconnected and isolated communities may include a lack of awareness about or access to culturally appropriate services which can guarantee anonymity and confidentiality.

The Australian Crime Commission has also argued that non-disclosure of child sexual abuse is more pronounced in Aboriginal and Torres Strait Islander communities because of the high probability that many of the offenders are family members or are otherwise known to the victim, the nature of small kin-based and insular communities, the existence of strong and powerful individuals and families who can wield disproportionate power, and real and/or threatened violence against disclosing. As a result, children may be actively discouraged (often by their adult carers and by direct or implicit threats of violence) from disclosing sexual abuse.⁹¹

The Interagency Plan recognised the barriers Aboriginal community members face in reporting child sexual assault and family violence. Action 42 of the Plan required Community Services, Aboriginal Affairs, Housing and the Aboriginal Housing Office to:

*Develop options for removing the impediments to reporting child sexual assault and family violence, including the provision of alternate financial assistance and support for families and primary carers where a family member has been removed or charged for committing child sexual assault, and additional assistance for situations where primary carers and victims wish to relocate.*⁹²

In response to Action 42, Aboriginal Affairs commissioned an options paper to examine how to reduce the barriers to reporting child sexual assault. Based on consultations in two communities, it concluded that the barriers to reporting child sexual assault remained largely unchanged although the issue was being discussed more now than it was during the Taskforce's consultations.

The report highlighted the following for further action to reduce the barriers to reporting child sexual assault:

- supporting education and awareness-raising strategies
- provision of more support for 'speaking out'
- investing in a more culturally-competent service sector, and
- developing a more flexible approach to funding strategies in each community.⁹³

The material we reviewed for our audit indicates that the options paper was expected to be completed by the end of 2009. It is unclear why Action 42 was not progressed in a timely manner. However, Aboriginal Affairs did not identify the two communities that were to participate in the project until May 2011, and the draft report was not completed until July 2011 – six months before the Interagency Plan ended. While the paper has some useful insights, many of the issues it raises had already been covered in *Breaking the Silence* and the Interagency Plan. There was no specific action taken in response to the report's findings.

The performance framework developed to measure the Interagency Plan's overall implementation noted that a measure of success would be an initial increase in sexual assault reporting in relation to Aboriginal children. During

90 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.48.

91 Australian Crime Commission response to NSW Ombudsman Request for Information, 29 October 2012.

92 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.18.

93 ARTD Consultants, *Options for reducing barriers to reporting child sexual assault: Report for Aboriginal Affairs NSW – Draft for consultation*, July 2011, pp.17-19.

the five year period of the Plan's implementation, reporting increased by 12%.⁹⁴ As we discuss in Chapter 7, during this period the highest proportion of risk of sexual harm reports received by Community Services was made by non-mandated reporters – who are usually members of the community.

There are a range of factors that may account for this increase in reporting, including: an increased awareness about child sexual assault and child protection matters due to the release of the Plan itself; associated community awareness strategies; the Special Commission of Inquiry into Child Protection Services and its focus on Aboriginal child protection; the release and wide promotion of *Keep Them Safe*; and our own extensive consultations across NSW in connection with our audit.

Throughout this report, we examine a range of ways that the responses to child sexual assault victims can be improved, which, if implemented, may remove some of the existing barriers to reporting. In this chapter, our focus is on some of the core elements that need to be in place at a community level in order for communities to have the necessary knowledge and confidence to report known or suspected child abuse. These include: a sense of safety; strong local leadership; increased community awareness of child sexual abuse; and enhanced protective behaviours training for children.

Aboriginal people whom we consulted during our audit, including members of the Ministerial Advisory Panel, were keen for us to highlight successful community-driven initiatives that have helped to focus attention on child sexual assault. For this reason, much of this chapter includes promising initiatives which have been led by community members and delivered in partnership with government agencies. We also discuss what else is needed to ensure that substantial and consistent improvements in community reporting are achieved and maintained.

6.1 The need for people to feel safe

There is wide acknowledgement that a range of interrelated factors contribute to levels of violence and abuse, and that prevention or intervention programs need to offer a multi-faceted and systemic response.⁹⁵ In Aboriginal communities, violence and abuse need to be viewed in the context of:

- underlying and historical factors – such as trauma, familial disruption and the undermining of Aboriginal systems of law, morals, authority and punishment
- situational factors that predispose violence to occur or exacerbate its likelihood – such as excessive alcohol consumption, overcrowding, poverty or pornography, and
- precipitating causes that clearly trigger an episode of violent behaviour.⁹⁶

Therefore, these factors must be addressed in order for improved safety in Aboriginal communities to be achieved. Child sexual abuse cannot be reduced – and community members cannot be expected to feel safe and confident reporting it – when they are living in an environment of chronic disempowerment, uncertainty, violence and fear.

6.1.1 Rationalising safety planning processes at community level

At present, while many communities have recognised the need to address a range of issues which impact on community safety, such as anti-social and criminal behaviour, the result has often been to establish a range of committees, and to develop a plan (and related strategies) to target specific safety concerns. The plans include: local council crime prevention plans; strategies undertaken by Aboriginal Community Justice Groups; alcohol management plans; Police Local Area Command Aboriginal Action Plans; and (under the banner of the Interagency Plan) Aboriginal Child Sexual Assault Prevention Plans.

In some locations, a number of these strategies are reportedly contributing to improving community safety – particularly when community members are actively engaged in both developing and implementing initiatives. However, at present, the ad hoc and fragmented approach to developing community safety initiatives means that communities may end up with a myriad of safety planning instruments and committees that operate in isolation, and which compete with each other for resources and/or duplicate work being undertaken.

Consistent with a place-based approach to planning, particularly in smaller communities, it would be much more efficient and effective to have a single overarching safety plan, acting as an umbrella under which more targeted or specific plans and initiatives sit. This approach would enable communities to better determine priorities, more effectively employ limited resources, lessen the burden on and help to focus interested stakeholders, and provide an opportunity to integrate safety initiatives. This approach also recognises that many of the factors causing and contributing to a lack of safety in a community – such as those outlined above – are inter-related and need to be addressed holistically.

94 See Chapter 8.

95 O'Brien, Wendy Dr, Australian Crime Commission, *Problem Sexual Behaviour in Children: A Review of the Literature*, p.20.

96 Memmott, P, Stacey, R, et al. *Violence in Indigenous Communities*, Canberra, National Crime Prevention Unit, Attorney General's Department, cited O'Brien, Wendy Dr, Australian Crime Commission, *Problem Sexual Behaviour in Children: A Review of the Literature*, p.20.

6.1.2 Strong agency and community partnerships – the NSW Police Force

A positive relationship between local police officers and community members can have an extraordinary impact on the success of crime prevention initiatives, the ability to build intelligence holdings, and the willingness of victims and witnesses to report crime and become involved in the criminal justice system.

Particularly over the past 10 years, Police have recognised that developing strong relationships with local Aboriginal communities is fundamental to creating safe communities and, as a result, have made significant investments in ensuring that police commanders are measured against their success in this area.

Much of the related success Police have had in their work with Aboriginal communities can be attributed to the high visibility given to Aboriginal issues by the current and former Police Commissioner, and the leadership they have shown in ensuring that their police commanders meet many of the stated objectives of the Police *Aboriginal Strategic Direction* policy.

Police have continued their commitment to increasing their Aboriginal employment rate, including through establishing a range of successful school-based mentoring programs which provide supported pathways for Aboriginal young people into the Police force – most notably through the award winning IPROWD program, which has delivered strong results over recent years.⁹⁷

The Police have also built an impressive governance framework to drive the implementation of the *Aboriginal Strategic Direction*. When the most recent version of the *Aboriginal Strategic Direction* (ASD) was released in October 2012, enhancing accountability was a focus. In this regard, formal reporting processes were enhanced so that not only will the performance of commanders in locally implementing the plan be monitored through the ASD governance structure described below, but also through the Police operational crime review and performance management system known as COMPASS. An annual report on progress will be published, and the ASD document includes an invitation for the ongoing work of police in this area to be, once again, independently audited by this office.

Case study 3 – The Aboriginal Strategic Direction governance framework

Over the course of our four year audit program of the implementation of the NSW Police Force *Aboriginal Strategic Direction* (between 2003 and 2007), we identified that relationships between police and Aboriginal communities had improved significantly.

In our 2005 report on our audit, *Working with local Aboriginal communities*,⁹⁸ we noted that two key elements which contributed to these improvements were consultation by police with Aboriginal communities at every level within a command; and formal and informal contact with individual Aboriginal community members – which includes creating opportunities for positive interactions between Aboriginal people and police.⁹⁹

We also attributed this success to the strong governance framework which underpins the ASD. The NSW Police Force has adopted a three-tier structure to ensure strategic oversight of the plan's implementation:

- Police Consultative Committees – established in communities with high Aboriginal populations, they include local police, Aboriginal service providers and Aboriginal community members.
- Aboriginal Strategic Direction Steering Committee – chaired by the Corporate Spokesperson for Aboriginal Issues, an Assistant Commissioner with responsibility for ensuring the accountability of local area commands in achieving the ASD outcomes.
- Police Aboriginal Strategic Advisory Committee (PASAC) – chaired by the Police Commissioner, it includes senior police personnel, members of the Police Aboriginal Unit and representatives from key agencies, peak Aboriginal bodies and our office.¹⁰⁰

While the NSW Police Force is not the only agency with a commitment and strategic vision for improving its relationship with and outcomes for Aboriginal people, the hands-on and structured approach the agency has adopted and embedded into everyday policing over many years has paid dividends.

Through our participation on the PASAC, we have been able to hear about some of the very positive work that continues to take place through strong police and community partnerships. Outlined below are two examples.

97 See NSW Ombudsman, *Addressing Aboriginal Disadvantage: the need to do things differently*, October 2011.

98 NSW Ombudsman, *Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003 – 2005)*, A special report to Parliament under s 31 of the Ombudsman Act 1974, April 2005.

99 NSW Ombudsman, *Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003 – 2005)*. A special report to Parliament under s 31 of the Ombudsman Act 1974, April 2005, p.5.

100 NSW Police Force, *Aboriginal Strategic Direction 2012-2017*, 2012.

Case study 4 – Redfern’s *Clean Slate Without Prejudice* mentoring program

The *Clean Slate Without Prejudice* mentoring program – developed by a local Aboriginal leader from Redfern, Shane Phillips, and implemented in partnership with Redfern Police – targets young people at risk of offending, young people who have committed a crime but have not yet been sentenced, and young people exiting Juvenile Justice custody. Participants are assigned an Aboriginal mentor, who transports them to boxing training three days a week and, if needed, assists them to find accommodation, employment, and/or further education and training options. Redfern Police also attend and train with the young people. The initiative has resulted in the development of strong relationships between police and the local Aboriginal community, and is an example of how crime can be reduced through effective partnerships. We understand that BOCSAR¹⁰¹ is currently evaluating the impact of the program on juvenile crime rates.

Case study 5 – Bourke Police work in identifying at-risk young people at-risk

As part of our ongoing work with the Bourke community, we have witnessed over many years the sustained commitment that the Darling River Local Area Command and the PCYC¹⁰² have shown in building their relationship with local Aboriginal leaders. Since 2004, when we first audited the command’s implementation of the ASD, successive commanders and crime managers have continued to strengthen their relationship with the Bourke Aboriginal Community Working Party. Among other initiatives, this partnership led to the development of the impressive Bourke Alcohol Management Plan, which was driven by local Aboriginal Sergeant Mick Williams and supported by the Working Party. The plan received a national crime prevention award in 2011 and is being used as a model for other high-need communities in NSW. What stands out about Bourke police is not their sophisticated programs but their practical, roll-up-your-sleeves approach in looking out for vulnerable kids and staying in touch with local leaders. In fact, in public forums we have convened in Bourke over a number of years to examine ways to improve agency service delivery, community members have singled out the police as the only agency who ‘regularly give us information so we know how things are going – particularly with our young people’.¹⁰³ Bourke police have played a leading role in systematically identifying young people at-risk and bringing this information to the attention of partner agencies.

Against a background characterised by distrust and hostility, the turnaround in police and community relations over the past decade is commendable. From our ongoing work with Aboriginal communities, it is apparent, however, that there will always be a need to closely monitor the role of police in certain Aboriginal communities, particularly where significant community safety issues are in play. In this regard, the ASD provides a good framework for monitoring the specific progress of high-risk communities to see what other supports might be needed to stabilise crime and secure safety; including establishing partnerships with other justice and human service agencies.

6.1.3 Moving beyond the crisis response – the need for sustained and coordinated agency efforts in high-need locations

In order for government and non-government agencies to establish strong relationships with Aboriginal communities, they need to overcome the distrust that has been created by chronic staffing shortages, a revolving door of drive-in/drive-out services and, despite significant investments in government operated funded programs, poor service outcomes. These problems have directly impacted on the ability of agencies to work together in a coordinated and efficient way to tackle entrenched disadvantage, and contribute to an unsafe community environment.

Government agencies often expect that a relatively small number of community leaders will band together and help influence much needed change in highly disadvantaged communities. However, it is unreasonable to expect community people to step forward in leadership roles and to directly achieve change when basic safety issues are not being properly addressed. Nowhere is this more evident than in the neighbouring Aboriginal communities of Toomelah and Boggabilla, situated approximately 100km northeast of Moree and 20km from the Queensland border-town of Goondiwindi.

Although we have been careful throughout this report not to identify communities in a way that might unfairly stigmatise them, it is difficult to discuss the issue of community safety and not mention Toomelah (particularly given the wide-spread media exposure the community received about this issue in 2012). In making our decision, we were mindful of the recent remarks of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, when discussing lateral violence in his 2011 social justice report. Gooda highlighted the hesitation in adding to ‘bad news stories’ about Aboriginal and Torres Strait Islander peoples. However, he added, ‘achieving a balance between

101 NSW Bureau of Crime Statistics and Research.

102 Police Citizens Youth Clubs NSW.

103 Phil Sullivan, local Aboriginal leader and Deputy Chair of the Bourke Aboriginal Community Working Party, September 2010.

what could be seen as the identification of another dysfunction to be added to the "list" and the need to address a significant issue', was also important.¹⁰⁴

In direct response to the Toomelah community's frustration at the failure of a multitude of programs and services to assist vulnerable children and families and concerns around violence, state and federal government agencies started to work together much more closely to respond to the problems in Toomelah. Since that time, progress has been made across a range of areas including repairs and maintenance to housing and sewage, improved street lighting and new arrangements for the ongoing management of housing owned by the Local Aboriginal Land Council. Work has also been undertaken to identify a community leadership group. Police have recently filled vacant positions to increase their presence in Toomelah and Boggabilla, including establishing a dedicated youth liaison officer position to undertake positive work with young people.

While a strong policing presence alone will not build a strong community, it is an important first step. More needs to be done to help victims feel safe in coming forward to report abuse, and this involves more than simply reacting to reports of sexual assault when they are made. Building trust takes time. Child protection workers in Toomelah have been able to achieve this in the recent past by taking a community development approach. After a dedicated child protection team that had been located in the townships for some time left, our examination of child protection reporting for the relevant Community Services Centre covering Toomelah and Boggabilla showed that risk of sexual harm reporting dropped dramatically the following year.

Aboriginal people are much more likely to come forward about child abuse and domestic violence if solid relationships are formed with service providers and they can be confident that action will be taken to secure their safety. Encouraging reporting requires all components of the service system to be in place and operating effectively at a community level: prompt policing and child protection responses; access to counselling services; and safe and secure accommodation. This requires a coordinated effort by government to develop a combination of short and longer-term measures to properly address the immediate safety issues in Toomelah, and to build an efficient and responsive service sector that reaches those most in need.

6.1.4 Creating places of refuge for children

It is well documented that many Aboriginal people may be reluctant to report sexual assault and other forms of abuse because of the fear that their children will be removed and taken from their community. The Interagency Plan sought to address this barrier through Action 40, which directed Community Services to:

Develop options for increasing the provision of safe living environments including safe houses and refuges for victims, witnesses and families at risk of child sexual assault where required. This could include Indigenous-run emergency foster care and halfway houses in key locations as short-term options until suitable/stable placements can be arranged; and the use of NSW Aboriginal Land Council (NSW ALC) rural properties as respite centres for Aboriginal people at risk of violence.

In rural and remote communities, police have significant demands placed on them as one of the only 24 hour services available. They are frequently called on to provide support in areas that are the core responsibility of other agencies, particularly in relation to child safety. It is not uncommon for police in certain locations to find children younger than 10 on the streets late at night and, with few options available, they are often left with no choice but to return the children to less than ideal home environments. For this reason, police, along with leaders from across the Murdi Paaki region, have long argued for the establishment of a child safe house. In recent correspondence to our office on a related matter, the Police Commissioner noted that:

Overall, officers from the Darling River LAC¹⁰⁵ are of the view that one of the most beneficial resources that this region lacks is a safe house/hostel or bail house for short and long-term accommodation for young people in Bourke. Often police are very limited in their ability to manage children and young people that continue to roam the streets late at night unsupervised. A hostel would enable them to place these young people in supervised accommodation, providing a temporary place of safety for children from homes where alcohol abuse and domestic violence is present, and allowing children to develop outside of but close to, their home.

The Brewarrina Aboriginal Community Working Party specifically approached us in early 2009 to facilitate meetings with Community Services and other stakeholders such as the Children's Guardian and AbSec¹⁰⁶ to get a firm commitment to develop a safe house model for their community. The community proposed that the facility should also include a case management component to support families to provide safe and healthy environments for their children to avoid it becoming a 'band-aid' solution.

¹⁰⁴ Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2011*, Australian Human Rights Commission, p.52-53.

¹⁰⁵ Local Area Command.

¹⁰⁶ The Aboriginal Child, Family & Community Care State Secretariat (NSW).

In meetings between community members and Community Services during 2009-2010, it was agreed that a child safe place would only be successful if it formed part of a broader service reconfiguration in the town, not only for the purposes of identifying funding, but to address the existing inefficiencies and gaps in service delivery. For various reasons, progress around the child safe house stalled, but it remains a priority for not only Brewarrina, but for many Aboriginal communities across NSW. The need for child safe houses has been recognised by the Queensland Government, which has invested in establishing 11 such facilities in the northern part of that state. We met with the non-government organisation responsible for establishing the five safe houses in the West of Cape York during our visit there in 2011.

Case study 6 – Aboriginal child safe houses in Queensland

The former Queensland Government committed more than \$45 million over four years to establish 11 safe houses in Aboriginal and Torres Strait Islander communities in North Queensland.¹⁰⁷ The Department of Communities is providing funding of approximately \$3 million over four years to non-government service providers to run the child safe houses on its behalf, with the ultimate goal of handing the safe houses over to an Aboriginal organisation into the future.

The main aim of the child safe houses is to guard against children suffering the added trauma caused by being removed from their community and support network. Prior to the establishment of the safe houses, many children from the five remote communities were placed in care with non-Aboriginal or Torres Strait Islander families long distances away in regional centres such as Cairns and Mt Isa, due to a lack of available carers and/or facilities in their local communities.

Safe houses provide a secure place for Aboriginal and Torres Strait Islander children in the child protection system to stay within their own community and receive family support services while their longer-term needs are being assessed. There must be a current court assessment order, child protection order or care agreement in place prior to a child being placed in a safe house. Child safe houses are staffed by local workers and provide a safe home for up to six children, usually for a period of three months, while Child Safety Services carries out its investigation into allegations of child abuse or neglect. Children in the process of being reunited with their family are also able to reside in a safe house.

The safe houses each have a specialist dedicated to identifying and recruiting suitable local foster and kinship carers. The carers are trained, mentored and supported, providing safe and stable out-of-home care options. Each safe house has an Aboriginal Reference Group (ARG) made up of local community leaders, members and organisations. Their terms of reference may differ slightly, but the general purpose of these groups is to provide cultural advice to the operating agency on the facilities, recruitment of staff, children and quality of service. In Doomadgee, for example, the ARG made a list of all children in out-of-home care from their community and used it to track their progress with Child Safety Services and to ensure that they had input into the outcomes they expected for each child. In Pormpuraaw, the community lobbied for a family intervention component to be implemented within the child safe house environment. The intervention is supposed to occur as soon as the child is placed into the safe house with the aim of building the family's capacity to successfully reunite and reintegrate the child back into their family. If this process takes a sustained period of time, the intervention is also supposed to include the development of foster and kinship placements within the community.

In our discussions with the Department of Communities, it highlighted the critical importance of the intensive support families received to help reunite them with their children, including access to the Aboriginal-specific 'Positive Parenting Program'. One of the challenges facing the child safe houses is the issue of older children self-placing with family members or simply returning home. Clearly, this will also be an issue that has to be addressed in NSW if safe houses are trialled. In the longer term, the plan is for the operation of each safe house to be handed over to an Aboriginal organisation with an established ARG at an appropriate time.

6.2 Supporting child sexual assault leadership groups

The Interagency Plan recognised that strengthening Aboriginal leadership is inextricably linked to reducing the incidence of Aboriginal child sexual assault. In this regard, the growth and support of Aboriginal leadership was a goal and a strategic focus of the Interagency Plan. The Plan envisaged the following outcomes:

- Aboriginal communities understand, report and actively address the problem of child sexual assault.

¹⁰⁷ The safe houses are located in Kowanyama, Pormpuraaw, Aurukun, Napranum, Yarrabah, Doomadgee, Palm Island, Northern Peninsula Area, Torres Strait, East Cape York and Mornington Island. Safe house facilities have been established in the communities of Aurukun, Doomadgee, Kowanyama, Pormpuraaw, with the Napranum services operating from interim facilities.

- Government agencies engage in constructive partnerships with Aboriginal communities to encourage reporting and to ensure services are coordinated and culturally appropriate to Aboriginal communities and victims.
- Aboriginal leaders and advocates speak out on the issue of child sexual assault in Aboriginal communities.
- Increased capacity of Aboriginal communities to respond to child sexual assault, in collaboration with Government and non-government organisations.

The Interagency Plan also sought to encourage reporting through building a network of local Aboriginal reference groups. Action 80 required Aboriginal Affairs to:

- Develop a network of local Aboriginal reference groups in priority locations to help develop the service response, to link families with local services, and to raise the local public profile of child sexual assault within their communities. Where appropriate, this will utilise existing working parties and community level governance structures, and will include local agency representation.

Action 80 was linked to Action 58 of the Interagency Plan, which required the CEO's Forum to:

- Develop interagency protocols/governance frameworks for service delivery as part of local Aboriginal Child Sexual Assault Prevention (ACSAP) plans, covering allocation of personnel to regions, duration of service, referral between agencies, and engagement with Aboriginal communities, to facilitate the building of effective working relationships with Aboriginal communities. These should build upon the Interagency Guidelines.

Aboriginal Affairs implemented these actions primarily by establishing Local Aboriginal Reference Groups (LARGs) in the nine communities that formed part of its 'Focus Community' program.¹⁰⁸ These LARGs were tasked with developing local child sexual assault prevention plans.

The intent of these actions is laudable, particularly as it recognises the importance of local ownership and participation by Aboriginal leaders in the development of strategies to improve community safety and capacity. However, in practice, there were a number of impediments to establishing these reference groups and to developing the prevention plans and this led to significant delays in their establishment. For example, there was an understandable reluctance on the part of some Aboriginal leaders to join a forum with a specific focus on the sensitive topic of Aboriginal child sexual assault and concern by some that this might lead to retribution.

In responding to a requirement for information, Aboriginal Affairs listed the following impediments to the timely establishment of LARGs and local child sexual assault prevention plans:

- community members do not trust the service response at the local level
- community members are volunteers and may have limited ability or willingness to participate and commit on an ongoing basis
- community members holding other leadership roles may not necessarily be the most appropriate people to be involved in this issue, and
- existing representative or governance groups may not be the most appropriate forums in which to discuss the sensitive issue of child sexual assault.¹⁰⁹

We note that the delay in forming LARGs meant that opportunities to link these groups with other governance forums established to implement and oversee the Interagency Plan were also limited. This led to the Ministerial Advisory Panel (MAP) and the Aboriginal Child Sexual Assault Senior Officers Group having little input from local stakeholders on the ground. Our consultations with members of the various LARGs indicate that in turn they received little, if any, advice about broader priorities, achievements and initiatives being undertaken by the strategic governance group and the MAP.

However, during our consultations, we identified a number of community-led groups who were focused on addressing child sexual assault and were achieving significant results that were not necessarily part of any formal LARG structure. In many ways, the success of these groups can be attributed to the fact that they were established by community members themselves.

¹⁰⁸ The Focus Community Program is a component of the Interagency Plan. There are nine designated Focus Communities including regional, remote and metropolitan locations. The program involves the implementation of location specific actions in the Interagency Plan as well as initiatives developed at the state level that are implemented locally by agencies and service providers. The five Safe Families program sites are also included in the Focus Communities Program.

¹⁰⁹ Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 14 March 2012.

Case study 7 – Taree and Quirindi/Walhallow women’s groups

Through our audit, we met two remarkable Aboriginal women’s groups in Quirindi/Walhallow and Taree whose main focus is on child sexual assault and strategies to prevent it.¹¹⁰ As both groups had shown strong leadership and worked well with local police and schools, we brought representatives of these groups together for a two day forum in November 2011. About 30 women attended.

Our aim was to get a better understanding of their successes to date, and what else might be needed to sustain and support their work in each of their communities. At our suggestion, both groups also agreed there would be benefit in them meeting and discussing the scope to collaborate, and perhaps to create a collective voice, on child sexual assault issues.

The forum and the contributions from all of the women were invaluable. They highlighted significant and ongoing trauma that their communities continue to face today, particularly in relation to child sexual assault. Their views were often informed by direct experience in supporting family members or friends. Although many said it was painful to talk openly about such difficult and intimate issues, there was a strong consensus about the need for the ‘truth to be told’ about the extent of the problems. The women warned that the forum should not become a ‘talkfest’, stressing the need for ‘results’.

The women called for true partnerships with government that emphasise the principles of Aboriginal self-determination. They said they want: participation in decisions that affect their communities; the choice of how their communities are governed; control over creating a new vision for their communities; and the power to strengthen the capacity of individuals to take control of their own lives. More than anything, the women want to create communities that nurture their children and grandchildren, and give them a strong sense of identity and wellbeing.

At the end of the forum, the women wanted the following recommendations to be supported:

- The establishment of a state-wide network of Aboriginal women’s groups focused on preventing child sexual assault, to strengthen community leadership on this issue and support the wider community to stand up to offenders.
- The development of dedicated and ‘home grown’ Aboriginal women’s resources that can be used by the women’s groups to raise awareness of the issue of child sexual assault.
- The provision of additional funding and support to the Education Centre Against Violence programs – including extending its *Weaving the Net* to Aboriginal communities across NSW. (*Weaving the Net* is an educational program that aims to increase capacity in Aboriginal communities to respond to child abuse.)
- Formalising the role of community child protection groups to provide advice to Community Services on the placement of Aboriginal children in need of care.
- The development of ‘cultural spaces’ that could be used as places for healing and for creating a sense of sisterhood among Aboriginal women and girls.

Building a network of Aboriginal women’s groups across NSW who are connected through their commitment to raising awareness about child sexual assault – and other forms of abuse – has the potential to be an invaluable resource for government in planning and developing child sexual assault education programs and support services. Groups such as these also play a vital advocacy role for Aboriginal women and young girls more generally, and should be supported to grow even stronger.

6.3 Raising community awareness

The Interagency Plan contained four specific actions designed to improve awareness about child sexual assault in Aboriginal communities:

- Action 81 – Develop a suite of culturally appropriate awareness raising programs to target the causes and address the consequences of abuse, to build on existing programs, where appropriate, including prevention, education, community development and healing programs.
- Action 82 – Fund a multi-media campaign, initiated by the Aboriginal community, to educate people about child sexual assault and their legal rights.

¹¹⁰ The women provided their permission for us to tell their story.

- Action 83 – Expand funding and resources for community legal education and victim support for Indigenous child sexual assault, through the bilateral agreement with the Commonwealth.¹¹¹
- Action 84 – Extend initiatives to support Aboriginal women to be advocates and to access services. For example, distribute the ATSI¹¹² Women’s Key Phone Book, and increase provision of legal workshops to familiarise Aboriginal women with legal language and court processes, and to develop their leadership skills.

All of the above actions were implemented with varying degrees of success. In 2008, the Attorney General’s Division provided funding to Wirringa-Baiya Aboriginal Women’s Legal Service to determine the best way to develop a multimedia campaign to educate Aboriginal people about child sexual assault and their rights. A survey was developed and widely distributed, a number of face-to-face interviews were conducted, an inventory was undertaken of current resources, and statistical data about reported child sexual assault was examined. This was a valuable exercise.

Community responses to the surveys and consultations reinforced that a broad suite of resources was needed. The consultation report recommended the most effective ways to distribute child sexual assault information in Aboriginal communities, indicating that a variety of media need to be utilised, particularly community workshops, printed information, television and internet resources. It was also noted that information should be provided to children in school and through youth centres. In responding to a requirement for information, NSW Health advised us that educational resources to promote awareness of child sexual assault must be culturally appropriate and ensure that they target children, young people and adult survivors of sexual abuse, as well as communities more broadly, through a range of avenues.¹¹³

The flagship awareness raising resource developed under the Interagency Plan was known as *Speak Up* (discussed below). Although it was highly regarded by many, the implementation process for *Speak Up* has been mired in confusion, which has resulted in its distribution being very limited.

Case study 8 – The roll-out of the *Speak Up* resource

Responsibility for the development of an awareness raising program was initially assigned to NSW Health, but was subsequently reassigned to Aboriginal Affairs. In response, a DVD-based resource kit designed to support better understanding of child sexual assault was developed. Corrective Services took a lead role in developing the DVDs, which were funded with \$382,000 generated from inmate labour, and were produced in conjunction with members of the Shoalhaven, Toomelah and Boggabilla communities (a number of people from these communities appeared in the DVDs). The DVD resource was launched by the Minister for Justice in September 2009, and at least some stakeholders were of the understanding that it would be widely available thereafter.

In December 2009, community representatives raised concerns about arrangements for the distribution of the *Speak Up* DVDs with the Ministerial Advisory Panel. In particular, they were concerned that despite their involvement in producing the DVDs, they had not been given clear advice about how the DVDs would be used and distributed, and they were concerned that the DVDs would be rolled out without the support of skilled and trained facilitators.

As a result, it was decided that the *Speak Up* DVD resource kits would be trialled in the Nowra-Shoalhaven Aboriginal community before they were distributed more widely. While the resource received favourable community feedback, participants felt that the *Speak Up* resources should be rolled out on a more gradual basis to ensure that each community was ready to participate, appropriately skilled local facilitators would be on hand, and access would be provided to services to support the implementation of the resource.

In contrast, some agencies, including Corrective Services which funded the resource, believed that there had been extensive consultation with Aboriginal communities and agency representatives as part of *Speak Up*’s development, and it did not need extensive trialling. Corrective Services wanted the resource to be distributed without delay ‘in line with the needs and expectations of many Aboriginal communities’.

However, by the end of the Interagency Plan’s implementation period, the *Speak Up* DVD resource kit had not been extensively distributed or utilised. In its final report to the Minister on the Interagency Plan, the Ministerial Advisory Panel noted that the *Speak Up* DVD was a useful resource, but it also noted the concerns around the distribution of the DVD, in particular, the lack of clarity and subsequent confusion over how it would be used.

111 We have been advised that it was previously agreed with the Commonwealth at senior officer level that Action 83 would be considered in the development of the Overarching Bilateral Indigenous Plan. However, more recently the Commonwealth declined to include ‘safe communities’ as a joint priority area. As a result, it was recommended that reporting against milestones and measures for this Action be discontinued. Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 27 August 2011.

112 Aboriginal and Torres Strait Islanders.

113 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

It is disappointing that, after development of a valuable resource in conjunction with Aboriginal communities to raise awareness about child sexual assault, the process of getting it out to communities has become mired in confusion about how it should be appropriately distributed and utilised. Such an issue would not have occurred had an implementation plan for the resource been developed at the same time that the DVDs and associated materials were produced. This would have enabled community members participating and appearing in the resource to be consulted about the proposed approach for its distribution, and any issues or concerns on the part of stakeholders could have been addressed at the outset.

It is unclear why better use was not made of the governance structure established to oversee the implementation of the Interagency Plan to escalate and seek to resolve the difficulties that had arisen with *Speak Up*. Given the limited funding allocated to community education and awareness generally, it is also unfortunate that the contribution made by Corrective Services of \$382,000 led to so little. In this regard, it is important to note that the development of the DVD itself was a significant achievement. During recent discussions with the Shoalhaven community, we were told that local organisations had started to distribute the resource more widely throughout the community and had ensured that counselling supports were also made available.

There is a clear need for an ongoing investment in community education strategies to raise awareness of sexual assault. However, as the *Speak Up* experience has shown, if good quality awareness raising tools are developed, but there is no clear strategy to support their roll-out and distribution, then it is unlikely that they will have the desired impact.

Against this background, there would appear to be merit in designating an agency with lead responsibility for working with Aboriginal communities and other stakeholders to develop appropriate resources for raising awareness about child sexual assault.

NSW Health's Education Centre Against Violence (ECAV) specialises in the delivery of programs in the areas of sexual assault, domestic and family violence, and abuse and neglect of children. ECAV has more than 20 years' experience in delivering programs to Aboriginal workers and communities. ECAV was heavily involved in the planning and development of the *Speak Up* resource, and the resource is currently being used as part of a training course for Aboriginal workers.

Over the last six years, ECAV has also developed and delivered three other community programs aimed at addressing the impacts of violence and abuse – *Weaving the Net*, *Strong Aboriginal Women*, and *Strong Aboriginal Men*. While these programs did not fall under the umbrella of the Interagency Plan, they have been welcomed by communities, and the feedback from the related evaluations has been positive.

Weaving the Net was successfully rolled out in five communities, with a 2009 evaluation noting that there had been substantial progress as a result of the program, with Aboriginal community members and workers identifying increased awareness and confidence in understanding and responding to child sexual assault, child protection and family violence issues. Similarly, an evaluation of the *Strong Aboriginal Women* program found that 'this [program] has led women to better identify the indicators and impacts for their own children providing them with the confidence to respond and speak up on their behalf'.¹¹⁴

Given that Aboriginal communities have clearly indicated that access to resources aimed at raising awareness about child sexual assault and family violence is an important way to encourage reporting and prevent abuse, consideration should be given to designating responsibility to an agency such as ECAV for developing a plan for the ongoing development and delivery of such resources. A plan of this type should be developed in conjunction with an Aboriginal advisory group such as the Ministerial Advisory Panel on Aboriginal Child Sexual Assault, and should also include the participation of young people.

6.4 Educating children about protective behaviours

Providing children with information about how to recognise when they feel unsafe, and how to seek help in unsafe situations, is an invaluable strategy in preventing and responding to child abuse. In recognising the importance of educating children, Action 67 of the Interagency Plan required both Education and the Commission for Children and Young People 'to review resources for the teaching of existing sexual health and child protection education to ensure that suitable materials for Aboriginal students, including information on related services for young people, are identified in schools.' This action was also meant to include examining specific support roles for secondary schools in implementing 'talking sexual health and negotiating consent' with Aboriginal students.¹¹⁵

¹¹⁴ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

¹¹⁵ Action 81 also required the development of a suite of culturally appropriate awareness programs, including teaching Aboriginal children and communities protective behaviours, and providing Aboriginal children, young people, families and communities an understanding of the indicators of child sexual assault.

Education has advised us that in NSW government schools, it is mandatory for students from kindergarten to Year 10 to learn about respectful relationships, sexual health and protective behaviours. We have been advised that the *Negotiating Consent* kit targeting date violence and respectful relationships has been promoted as part of the *Teaching Sexual Health* professional learning program. This is part of a broader program targeting primary and secondary teachers of Personal Development, Health and Physical Education across the three education sectors. To date, more than 1,100 teaching staff across NSW have attended *Teaching Sexual Health* workshops. The workshops provide teachers with key messages about diversity and inclusive education (as well as presenting a holistic approach to teaching sexual health within schools). The workshops also provide strategies to cater for students from disadvantaged backgrounds, including Aboriginal students.¹¹⁶

We note the clear expectation that school students will be provided with an education about protective behaviours through the school curriculum, and the work being done by Education to help ensure that teachers receive quality training in this area. Schools are an ideal environment for this type of training, as they provide immediate access to adults in positions of trust such as teachers, counsellors and Aboriginal Education Assistants. These supports are crucial, as protective behaviours training revolves around the notion of children developing a supportive network of adults that they can trust and confide in. Also, as the risk of sexual harm reporting figures we discuss in Chapter 7 show, schools are responsible for about one third of such reports for Aboriginal children. However, in this regard it is important for schools to target those young people who have disengaged from the school system for participation in these programs given that they are among those most likely to benefit.

In addition to the general education provided to all school students, our consultations have highlighted a number of initiatives which have been specifically developed for Aboriginal children and young people which appear to be getting good results. The case studies below are examples of such programs. These programs not only focus on educating children, but efforts are also made to increase awareness among the children's parents and carers, teachers, and in the case of *Safe4Kids*, other community members and service providers.

Case study 9 – Got Ya Back Midiga

Got Ya Back Midiga (which means friend) is a primary school program to raise awareness of child sexual assault. The concept was proposed by members of the child sexual assault Local Aboriginal Reference Group and is coordinated by Aboriginal Affairs. The program is developed and delivered in partnership with Aboriginal staff from Health and Education, and members of the local Joint Investigative Response Team (JIRT). It provides students, parents and school staff with detailed information about child sexual assault, in the form of a series of workshops, puppet shows and information sessions, and highlights the responsibilities of parents and school staff to keep children safe and respond appropriately if a disclosure is made. The program is conducted over a six to eight week period and includes five stages:

- Training of school staff about how to handle disclosures of child sexual assault in a culturally appropriate way, building on *Keep Them Safe* training.
- Information sessions for parents and carers about how to engage children on the topic of child sexual assault.
- Puppet shows for students covering issues such as grooming, secrets, naming sexual assault, barriers to disclosure, indicators and protective behaviours.
- Follow-up sessions with students over four weeks exploring concepts raised during the puppet show, with key messages being identity, good secrets/bad secrets, good touching/bad touching, identifying feelings and personal strengths.
- A presentation where students are awarded with a certificate of participation.

530 students participated in the program across five schools, and 84% of participants were Aboriginal. In addition, 175 school staff and 41 parents attended the training. As a result of the program, a number of adults made disclosures of childhood sexual assault, as did seven children. The children's cases were subsequently investigated by the JIRT, and two of these were later substantiated.

Teachers and school staff who participated have reported an increase in knowledge and awareness around the type of language Aboriginal children might be likely to use when attempting to make a disclosure, increased skill in dealing with disclosures by Aboriginal children, and better information about reporting and investigative processes, as well as avenues of support for children and their families. Parents and carers made similar observations, and students said they learned more about sexual assault and how to protect themselves.

¹¹⁶ Department of Education and Communities' response to NSW Ombudsman Requirement for Information, 1 November 2012.

Case study 10 – Safe4Kids

Safe4Kids is a Western Australian organisation specialising in child protection education. The program was founded by Managing Director Holly-Ann Martin, who has worked with the Western Australia Department of Education and Training for over 25 years, and extensively in remote Indigenous communities in Western Australia, Queensland and the Northern Territory.

The program allows children to identify unsafe situations and find out how to seek help immediately. In addition to educating children, *Safe4Kids* attempts to engage adults in the community, such as school staff, parents and carers, local police, health workers, child protection staff and early years childcare and education workers.

From February to August 2012, *Safe4Kids* was delivered in nine communities in the Northern Territory. 957 people, including 583 school students, attended the training. Evaluation sheets completed by participants were glowing, and many participants commented on the importance of the training being held regularly – to reinforce the messages received, and to ensure that its impact is not lost when staff move elsewhere.

Not only does *Safe4Kids* aim to get all interested parties ‘on the same page’ in relation to child abuse prevention, it can also be tied in with broader strategies to increase community safety. When we met with Holly-Ann, she showed us how children draw a map of their local community and pinpoint where they feel safe and unsafe. As one police officer who witnessed Holly-Ann’s approach noted, through the mapping exercise children drew ‘where they feel unsafe, are having sex, buying drugs etc. Basically they showed us the areas that we need to patrol more regularly or property owners that should be spoken to about better lighting’.¹¹⁷ In this way, *Safe4Kids* is a valuable intelligence tool for local police.

Most importantly, *Safe4Kids* provides children with an opportunity to participate in decision making about their own safety and wellbeing.¹¹⁸ In recognition of the high quality of the *Safe4Kids* program, Absec has recently engaged Ms Martin to provide protective behaviours training to Aboriginal out-of-home care service providers in NSW.

These case studies demonstrate the value of protective behaviours and associated training in schools being provided alongside, or in conjunction with, strategies to better educate parents, carers, service providers and the broader community. Ensuring that good quality protective behaviours training programs are in place within schools should be an important part of any local community safety plan.

Action 68 of the Interagency Plan also required Juvenile Justice, Justice Health and Education to ‘introduce mandatory personal safety/protective behaviours courses in juvenile detention centres programming with an Aboriginal component’. During the period of the Interagency Plan, Juvenile Justice worked with the National Association for Prevention of Child Abuse and Neglect (NAPCAN) to adapt the *LOVE BiTES* program for use in juvenile justice centres.

LOVE BiTES is a domestic violence and sexual assault prevention program for young people which is based on best-practice standards, and recommended by the Australian Domestic Violence and Family Clearinghouse. The course, which aims to educate young people about respectful relationships and violence in the community, has Aboriginal-specific content.¹¹⁹ Juvenile Justice co-delivers training to Juvenile Justice staff, and the program is delivered to young people in Juvenile Justice custody and under community supervision. In 2011-2012, 31 young people successfully completed the *LOVE BiTES* program.

In addition, local Aboriginal men’s groups regularly hold group sessions with Aboriginal detainees at three juvenile justice centres, with discussions including respectful relationships, and helping young people find practical ways to put important concepts, such as those learnt in *LOVE BiTES*, into practice.¹²⁰ This involvement of Aboriginal community members to reinforce and reiterate key messages to detainees is a particularly valuable strategy.

The implementation of Actions 67 and 68 has led to some good protective behaviours programs being developed in conjunction with communities. There would appear to be scope for Education, Justice Health and Juvenile Justice to identify the components of the most successful programs being delivered in this area, and ensure that schools with significant Aboriginal populations (and all juvenile justice centres) are made aware of them. At an agency level it will also be important to ensure that individual schools and centres are delivering quality, culturally competent protective behaviours programs regularly, and wherever possible, involving local Aboriginal people in their delivery. Once again, the Education Centre Against Violence could also play an advisory role in this regard.

117 *Safe4Kids, Safe4Kids Helping Aboriginal Children Feel Safe in Their Communities – Final Report 31 October 2012*, p.37.

118 *The Convention on the Rights of the Child* came into force in September 1990 and was ratified by Australia in December 1990. <http://www.unicef.org.au/Discover/What-We-Do/Convention-on-the-Rights-of-the-Child.aspx>. Accessed 28 November 2012.

119 NSW Government, *Keep Them Safe Annual Report 2010-2011*, pp.46-47.

120 Juvenile Justice response to NSW Ombudsman Requirement for Information, 20 September 2012.

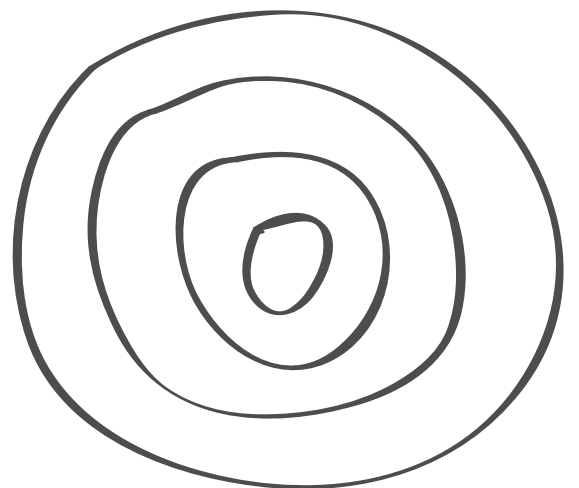
Recommendations

6. That the NSW Government gives consideration to designating a lead agency with responsibility for developing a state-wide strategy for:
- a) The development and distribution of resources aimed at raising awareness about Aboriginal child sexual assault. In doing so, the designated agency should utilise existing resources such as *Speak Up* and adapt their use for different target groups including making use of various media formats. The distribution strategy should be accompanied by direct access to appropriate support services for participants.
 - b) The delivery of community development programs aimed at raising awareness of child sexual abuse and family violence that have been the subject of positive evaluation such as the *Weaving the Net*, *Strong Aboriginal Women* and *Strong Aboriginal Men* programs developed by NSW Health's Education Centre Against Violence.

In developing this strategy, the designated lead agency should identify and work with a suitable group of Aboriginal advisors, such as the Ministerial Advisory Panel on Aboriginal Child Sexual Assault, and should also ensure the participation of young people.

7. That the NSW Government gives consideration to the following recommendations arising from the 2011 Aboriginal child sexual assault forum which brought together the Taree and Quirindi/Walhallow women's groups:
- a) That, to strengthen community leadership around Aboriginal child sexual assault, the NSW Government should support the creation of a state-wide network of Aboriginal women's groups focused on preventing Aboriginal child sexual assault and the establishment of an annual state conference for the network.
 - b) That a designated lead agency should work with Aboriginal women's groups to support them in developing 'home grown' resources that can be used by individual women's groups to raise awareness about Aboriginal child sexual assault in their communities.
 - c) That additional funding should be provided to support an extension of the Education Centre Against Violence's programs targeting child sexual abuse such as its *Weaving the Net* program to Aboriginal communities across NSW.
 - d) That community child protection groups should be formally recognised in legislation to enable them to provide advice to Community Services on the placement of Aboriginal children in need of care.
 - e) That dedicated 'cultural spaces' in communities for Aboriginal women and girls should be established as part of any state-wide healing strategy.
8. That the Department of Education and Communities, in conjunction with a group of suitable Aboriginal advisors, identifies successful personal safety/protective behaviours training courses for delivery within schools with significant Aboriginal populations, and that, in doing so, specific consideration is given to the *Got Ya Back Midiga* and *Safe4Kids* program models.
9. In light of the successful delivery of the *LOVE BiTES* personal safety/protective behaviours program in conjunction with Aboriginal men's groups in three juvenile justice centres, that Juvenile Justice and Justice Health explore the potential for delivering the program with input from local men's groups in all centres with high numbers of Aboriginal detainees on a regular basis.
10. That the Department of Families and Communities commits to the development and implementation of a child safe house trial in a select number of high-need Aboriginal communities in Western NSW.
11. That the NSW Government tasks lead human service and justice agencies with developing a cross-agency framework for community safety planning which addresses the issues identified in section 6.1 of this report to guide the development and implementation of local community safety plans in high-need Aboriginal communities. This framework should also be developed in conjunction with local government and have regard to the NSW Police Force's *Aboriginal Strategic Direction Plan*. If Government adopts this recommendation, it would need to be effectively integrated into any place-based planning model that it might ultimately adopt – see Chapter 21.

Responding to Victims



Chapter 7. Child protection reporting

Individuals who are employed to deliver services wholly or partly to children in a range of areas – from education and health to law enforcement and housing – are mandatory reporters under the *Children and Young Persons (Care and Protection) Act 1998*. Reports about the safety, welfare and wellbeing of children and young people can also be made by non-mandated reporters such as community members, parents, relatives and neighbours.

Although it is widely accepted that mandatory reporting data about Aboriginal child sexual abuse vastly under-represents the actual levels of victimisation, it remains a valuable indicator for estimating the prevalence and the disproportionate occurrence of sexual abuse in Aboriginal communities.¹²¹ Mandatory reporting data is useful for determining which locations should be targeted for specific initiatives aimed at addressing child sexual assault and can be a sign of the willingness of community members to step forward and report concerns.

Our ongoing role in reviewing the child protection system has also shown that Aboriginal child sexual assault commonly occurs in the context of broader child safety and welfare concerns. To increase the likelihood that child sexual assault will be uncovered, it is therefore important to look closely at the broad range of concerns that are reported about children in particular locations and the nature of the response that they receive.

In the context of discussing place-based service delivery later in this report, we highlight that mandatory reporting data is not the only valuable information source that can be utilised by agencies to identify those children most at-risk in high-need communities. For example, at a local level, Police, Health, Education and Housing also hold information that can be potentially used to provide a more complete picture of child safety and wellbeing issues.

Over several years, we have argued that the failure of agencies to apply sophisticated strategies for identifying vulnerable children and young people has stymied the early detection of, and response to, critical child protection risks. In particular, we have highlighted the need for an increased level of sophistication in identifying those children and families who are most vulnerable by advocating for the adoption of an intelligence-driven approach to child protection. We have also stressed the need for strong governance arrangements to drive interagency case management initiatives and to build a comprehensive, integrated service system over time. After several years of examining what early intervention and prevention should look like in high-need communities, we have concluded that the universal service sector will often be better placed than the statutory child protection agency to build the type of relationships necessary to provide Aboriginal families with much needed practical support, and to identify emerging child protection risks – including risk of sexual harm.

Most reports about sexual abuse meet the risk of significant harm threshold that was introduced on 24 January 2010. Therefore, Community Services' KiDS database is an important repository of information about child sexual abuse. At a strategic level, it is essential not only for Community Services but also for its partner agencies who share responsibility for child protection, to regularly review risk of significant harm data in order to discern trends in reporting and assessment outcomes (both generally and in relation to specific issues); and to analyse the reporting behaviour of various reporter groups. As part of our audit, we sought a range of information from Community Services to enable us to assess trends in reporting and assessment in the context of sexual abuse, and to compare localised mandatory reporting information with broader state-wide trends. As the publicly available data did not provide sufficient detail to allow us to examine trends for risk of sexual harm reporting in relation to Aboriginal children, we sought specific information from Community Services in order to obtain a more detailed breakdown of relevant information over the Interagency Plan's five year implementation period (2007 to 2011).

A common issue raised with us by community leaders, is the need for local level data about the child protection system's response to Aboriginal children, as well as information about a range of other related indicators.

In this chapter, we focus on what mandatory reporting data can reveal about sexual abuse. We also discuss how this type of information is being shared and utilised by agencies. However, much of what we say in relation to agency practice in utilising sexual abuse data applies to the use of child protection data more generally. Our audit has confirmed that at both a strategic and local agency level, there is scope for agencies to be provided with much more refined information about risk of significant harm reporting in order for it to be more operationally useful. This type of analysis is also crucial for the development of targeted training and related guidelines for frontline staff. In the second half of this chapter, we discuss how guidance can be improved in relation to two important risk areas that relate to sexual abuse. Through this audit and our other related child protection work, we have identified the need for much better guidance to assist agencies in assessing, and acting on, risks to children in the context of historical child sexual abuse allegations. This issue has particular relevance for Aboriginal children for whom inter-generational

¹²¹ To develop a comprehensive picture of the reported incidence of child sexual abuse, it is important that mandatory reporting information is read in conjunction with other key information sources such as criminal incident data and case information captured by the NSW Police Force's Child Abuse Squad.

abuse is reportedly an ongoing and significant problem within many communities. Similarly, our examination of the guidance provided to practitioners about the reporting of sexually transmitted infections (STIs) has revealed a range of inconsistent practices that can lead to confusion among frontline practitioners about their mandatory reporting responsibilities.

7.1 Interagency Plan Actions relating to mandatory reporting

Although the Interagency Plan purported to ‘thoroughly consider how child protection services operate’ to better support children at risk of sexual abuse, there are no actions specifically directed at examining the actual effectiveness of the child protection system.¹²² Given that the Interagency Plan was released a year before the Wood Inquiry was announced and was two years into its implementation before the Inquiry released its report, the extent of the structural problems with the child protection system would not have been fully appreciated during the Plan’s development and early rollout.

The Interagency Plan included three actions that were aimed at partner agencies encouraging both compliance with mandatory reporting laws and improving the quality of feedback provided to reporters. The Plan also singled out the need to improve the awareness of certain agency staff¹²³ to report STIs.

- Action 36 – for at-risk communities, encourage compliance with mandatory reporting obligations, conduct a re-education and awareness raising campaign around fines for non-reporting,¹²⁴ interagency guidelines on child protection intervention and child sexual assault indicators, and conduct targeted compliance work in those communities for breaches.
- Action 34 – DoCS review its procedures for providing feedback to mandated and non-mandated reports relating to Aboriginal children or young people and having regard to privacy considerations and risks to the family and the issues associated with ensuring reporters are encouraged to act in identifying abuse or ongoing abuse or neglect.¹²⁵
- Action 37 – Direct all frontline staff to report all STIs in children and young people under 16 years.

The suite of *Keep Them Safe* reforms has had a major impact on the systems for reporting concerns about the safety, welfare and wellbeing of children and young people. The key changes include:

- Raising the threshold for reporting concerns to Community Services from ‘risk of harm’ to ‘risk of significant harm’.¹²⁶
- The introduction of Child Wellbeing Units (CWUs) in the four government agencies responsible for the majority of child protection reports to the Child Protection Helpline (Police, Health, Education and Family and Community Services).¹²⁷
- Simplifying information exchange provisions to allow information relating to the safety, welfare and wellbeing of children to be readily exchanged between certain human service and justice agencies.

A major education program was also developed for mandatory reporters across the state as part of the implementation of the *Keep Them Safe* framework.¹²⁸

In assessing the implementation of the Interagency Plan it is therefore necessary to have regard to related *Keep Them Safe* initiatives. Some of the *Keep Them Safe* initiatives supersede certain actions in the Plan – while other initiatives expand the reach of certain actions. In conducting our audit, we particularly focused on assessing whether the intent of the Plan’s actions relating to the mandatory reporting of child sexual abuse was being addressed.

122 NSW Government, *New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, p.4.

123 Education, Health and Community Services.

124 Penalties for mandatory reporters who fail to discharge their reporting obligations have now been abolished.

125 In 2009, the Child Protection Helpline developed an automatic feedback facility for e-Reporters (other mandatory reporters receive semi-automated feedback via a standard letter). Community Services recognises that improving feedback to individual reporters is important and the effectiveness of its processes in this area should be regularly reviewed and discussed with partner agencies.

126 Two new legislative grounds for mandatory reporting were introduced relating to habitual non-attendance at school and giving explicit recognition to the cumulative nature of harm.

127 These units assess whether the concerns identified by their staff need to be reported to Community Services, and identify potential responses by the agency or other support services to help these families. These units also provide advice to frontline agency staff about child protection issues and discuss options for assisting the child or young person and their family.

128 The *Keep Them Safe* website notes that TAFE NSW delivered more than 560 initial information sessions to mandatory reporters between mid-October 2009 and late January 2010 about the *Keep Them Safe* changes. In 2010, TAFE and the Association of Children and Welfare Agencies jointly developed and delivered phase 2 training sessions to non-government mandatory reporters and the early childhood sector.

As part of the *Interim Review of Keep Them Safe*,¹²⁹ KPMG was engaged by the Department of Premier and Cabinet (DPC) in 2012 to undertake a survey of the mandatory reporting workforce¹³⁰ to understand the impact of *Keep Them Safe* on frontline workers across NSW. The survey focused on the following components:

- mechanisms aimed at supporting mandatory reporters including the *Mandatory Reporter Guide*, CWUs and Family Referral Services
- information sharing and collaboration including partnerships between government and non-government organisations
- working with Aboriginal children, young people and their families.

The survey also sought to obtain the perspectives of frontline workers on the effectiveness of the child protection system following the implementation of the *Keep Them Safe* reforms, and whether (and if so, how) these perceptions may have impacted on the achievement of its objectives.

The results of the Workforce Survey suggested that the *Mandatory Reporter Guide* has been a successful component of *Keep Them Safe*, with evidence of high engagement with the tool by many mandatory reporters. There was also evidence that many mandatory reporters had utilised the new information sharing and coordination provisions under Chapter 16A of the *Children, Young Persons, Care and Protection Act 1998*, although a significant number of participants also indicated that there had been 'no change to information sharing' practice. The results suggested that *Keep Them Safe* has had a varied impact across different sectors, which can largely be attributed to the circumstances in which mandatory reporters operate within each sector. The Survey identified a number of areas that warranted further investigation, including:

- the impact of the new reporting threshold on children, young people and their families, and on mandatory reporters
- the impact on NGOs of not having access to a dedicated CWU
- reasons why such a high number of respondents indicated that there had been 'no change' to information sharing.

In our 2011 report *Keep Them Safe?*, we also examined whether the post-reform capacity of the child protection system to respond to children at risk of significant harm had improved as a result of the increased reporting threshold. We found that despite a significant drop in demand as a result of changes to the threshold for making a child protection report to Community Services, fewer children were recorded as receiving a face-to-face assessment under the new system. We highlighted the reforms urgently needed to pave the way for substantial and long lasting improvements to child protection practices in NSW, especially in high-need communities. We stressed that Community Services needs to improve its ability to measure, and publicly report on, the outcomes for children and families in contact with the statutory child protection system. Community Services has recently advised us of an improvement in the number of children reported as at risk of significant harm who are receiving a face to face assessment, and of its commitment to better measure, and publicly report on, outcomes. We refer to other findings from our 2011 inquiry both in this chapter and throughout this report.

7.2 The need to collect and analyse mandatory reporting data about sexual abuse

Although Action 36 was a 'location-specific action' that foreshadowed targeted compliance work to examine mandatory reporting practices in at-risk communities, there were no specific actions relating to the ongoing provision or analysis of mandatory reporting data relating to Aboriginal children who are reported to be at risk of sexual harm in these locations. In order to test compliance with this action, at a minimum there should have been an attempt to collect and analyse relevant local data about reporting rates and related responses. As part of the analysis, there should have been an examination of which agencies and position types were (or were not) making mandatory reports in specific locations. However, neither Aboriginal Affairs nor the Aboriginal Child Sexual Assault Senior Officers Group (the ACSA SOG) sought this type of data from Community Services.

In February 2009, more than two years after the Interagency Plan was released, a program performance framework was developed to assess and monitor the progress of the Plan's implementation. The headline indicator for the Interagency Plan and the performance framework was:

Rate of Aboriginal children and young people involved in reports where secondary assessment determined harm or risk of harm where the issue is sexual.

¹²⁹ This Interim Review was developed as an initial assessment of the progress of the reforms in line with the actions identified within the *Keep Them Safe* Action Plan.

¹³⁰ Department of Premier and Cabinet, KPMG, *Keep Them Safe Workforce Survey – Final Report*, August 2012, pp.2-5

The performance measures were reported on only one occasion towards the end of the Plan, as agencies had difficulty sourcing data for a number of the measures. The final report on the performance framework was completed in November 2011 and it made a number of conclusions based on state-wide child protection data.¹³¹

The report found that the proportion of Aboriginal children involved in reports where secondary assessment determined actual harm or risk of harm where any issue was sexual, increased from 14% in 2005-06 to 20% in 2010-11. Over the same period, the number of Aboriginal children involved in substantiated reports where any issue assessed was sexual, also increased.

However, the framework did not seek to measure the outcomes of Community Services' assessment of child protection reports relating to Aboriginal children at either a state-wide level or in specific at-risk locations – for example, the nine communities identified by Aboriginal Affairs for participation in its Focus Communities program.¹³² This is concerning given the high case closure rates due to competing priorities at a number of Community Services Centres (CSCs) in Western NSW as a result of significant and long-standing resourcing challenges.

While high-level data of the type captured by the framework is useful for broad benchmarking purposes, it is not sufficiently detailed to identify the actual level of reported sexual abuse in specific locations nor whether cases are actually receiving a comprehensive assessment.

A month before the Interagency Plan officially ended, the Social Policy Research Centre (SPRC) completed a report for Aboriginal Affairs which reviewed the program performance framework.¹³³ The SPRC review was critical of the performance framework for failing to specify the 'jurisdictional level' at which data should be reported. The review highlighted that 'changes in outcomes in focus communities, particularly small communities, are hidden in these data sets'.¹³⁴ The review further noted that:

*Analysis of smaller areas is necessary to provide meaningful information on changes in specific communities. CS data is reported at state level, but is collected and tabulated at CS area levels. Agency data should be readily collected for local and regional areas.*¹³⁵

In reporting on the final status of the Interagency Plan in 2012,¹³⁶ the *Beyond the Interagency Plan* paper prepared by Aboriginal Affairs simply noted that there was: 'an increase in the proportion of Aboriginal children involved in substantiated child protection reports'. In commenting on future responses to Aboriginal child sexual assault, the paper said that:

While disaggregated data on Aboriginal child sexual assault are not available, data from the Department of Family and Community Services (FACS) for 2009-2010 and 2010-11 indicate that Aboriginal children and young people remain significantly over-represented in assessed reports of child abuse and neglect (including the sexual abuse sub-category).

The source relied on in the paper was FACS' publicly available Annual Statistical Report. There was no discussion of the earlier SPRC recommendations on the need for local agency level data. Nor was there any commentary about the type of risk-related data that should be routinely collected, analysed and shared between agencies to maintain a focus on, and assess improvements in responses to, Aboriginal child sexual assault into the future. Given the Interagency Plan's focus on location-specific responses, it is concerning that six years after the Plan's release, the extent of the analysis undertaken in relation to sexual abuse reporting and related outcomes has been so limited.

The SPRC's review of the program performance framework proposed a range of new indicators for measuring the aims of the Interagency Plan. However, it also highlighted that while some may require data development, there are a range of existing data or service outputs routinely collected by agencies that could be utilised. The review recommended the continued use of Community Services data – incidence data being a 'direct indicator' of sexual abuse – but cautioned against relying on state level information.

The *Beyond the Interagency Plan* paper recommends that the *Keep Them Safe* Senior Officers' Group takes responsibility for the oversight of activities focused on 'combating child sexual assault in Aboriginal communities'.¹³⁷ If this recommendation is adopted, it will be important for the *Keep Them Safe* Senior Officers' Group (SOG) to ensure that the evaluation framework being developed to measure the impact of the *Keep Them Safe* reforms is amended

131 Aboriginal Affairs, *Tier 1 and tier 2 Data for the Program Performance Framework, Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, November 2011 Reporting Cycle*, November 2011.

132 This program aimed, among other things, to raise public awareness and community support to help prevent and promote reporting of sexual abuse. The Focus Communities program includes the five Western NSW Safe Families sites.

133 The purpose of the review was to assess the framework and related documentation to develop an 'evidence-based performance monitoring and decision-making framework'.

134 Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to tackle Child Sexual Assault in Aboriginal Communities*, Final Report, November 2011, p.9.

135 Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to tackle Child Sexual Assault in Aboriginal Communities*, Final Report, November 2011, p.15.

136 Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 24 October 2012.

137 The *Keep Them Safe* SOG has indicated that it will consider the recommendations made by Aboriginal Affairs in its paper once it has had the opportunity to consider this report.

to include specific indicators relevant to assessing the reporting rate of sexual abuse and related assessment outcomes; and that this information is disaggregated by the age of the child, their Aboriginality and relevant CSC/Region. Consideration also needs to be given to the nature of the information that should be made publicly available.

As part of the process of refining the *Keep Them Safe* evaluation framework, the *Keep Them Safe* SOG should also consider the nature of other useful baseline data that should be collected to measure how well child sexual assault is being responded to generally, and specifically in relation to Aboriginal children. It is also important for consideration to be given to better aligning relevant mandatory reporting information with criminal incident and JIRT outcome data.

7.2.1 Providing partner agencies with operationally useful mandatory data

A focus for the Wood Inquiry and *Keep Them Safe* was on improving reporting pathways and the quality of mandatory reporting information to ensure that it was being used more strategically by Community Services and its partner agencies.

In considering the issue of performance monitoring and the related need for improved data collection and analysis, the Wood Inquiry recommended that to assist agencies to 'better educate' their mandatory reporting workforce, Community Services should provide them with aggregated data detailing the number, nature and outcome of child protection reports on an ongoing basis.¹³⁸ This became a specific *Keep Them Safe* action. Since 2010, Community Services has been publishing quarterly reports that provide high-level trend data in relation to risk of significant harm reports made by reporting agencies. Read in conjunction with Community Services' other statistical reports, they provide information about:

- The number of reports made to the Helpline by each mandatory reporting agency, including the proportion that met the risk of significant harm threshold, the urgency rating and the recommended response time allocated by the Helpline.
- The nature of reported concerns broken down by agency.¹³⁹

In our view, because the data that Community Services currently provides to partner agencies is not broken down in a way that reflects organisational business units, it is of limited operational use. For example, providing only organisational level data to Education and Police does not allow either agency to conduct a meaningful analysis of risk of significant harm reporting patterns across different geographical areas; within school districts or police local commands; or across particular roles. Given the significant concerns in relation to school attendance of Aboriginal children in a number of high-need locations across the state, it would be highly useful for Education to assess the school attendance data it collects against mandatory reporting for educational neglect and related assessment outcomes. This data could be read in conjunction with reports/contacts made with the Education CWU.

In the context of Aboriginal child sexual assault, examining more localised reporting patterns is particularly relevant given the well known challenges faced by Aboriginal health workers that often live, and work in, remote communities and small towns. Therefore, the type of information we outlined in section 7.2 should also be analysed against the 'reporter source category'.

As part of our audit, we asked the top reporting agencies for their views about whether they thought the information in the quarterly reports could be further disaggregated to make it more useful. They indicated that if 'risk of significant harm' data were to be broken down for their agency by location and organisational groups, this would be beneficial.¹⁴⁰

In a December 2012 progress update from Community Services in response to our *Keep Them Safe?* report, Community Services made a commitment to publish data detailing the outcome of child protection reports for the first time in 2013. The agency also indicated that as part of its new strategic plan, child protection and out-of-home care key performance indicators have been established. Community Services will track its performance against these indicators through a new regional performance monitoring framework that was due to commence in December 2012.¹⁴¹ This work is promising and if it is executed well, has the potential to deliver real improvements in Community Services' approach to working with highly vulnerable children and families. The progress made in this area provides a strong platform for Community Services to explore with its partner agencies the type of data that will help fulfil their shared child protection responsibilities.

¹³⁸ *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume 1, Recommendation 6.4, p.198.

¹³⁹ NSW Health receives this information broken down further than at a state-wide level as Local Health Districts are individual statutory authorities.

¹⁴⁰ NSW Health, and Department of Education and Communities responses to NSW Ombudsman Requirement for Information, (28 September 2012 and 27 July 2012).

¹⁴¹ Draft letter from Department of Community Services on 4 December 2012.

It is also important for Community Services' partner agencies to regularly refine and review their own information holdings for the purpose of identifying risks and opportunities for strategically using information and for sharing it with Community Services and other stakeholders. This process of ongoing refinement and related analysis of relevant data is integral to the development of an intelligence driven child protection system. To optimise practice in this area, both state-wide and local data needs to be accessed and utilised to better inform decision making. We are encouraged by the establishment of the *Keep Them Safe* Senior Officers' Group sub-committee on intelligence driven child protection that has been set up to take lead responsibility for driving important work in this area.

7.3 What our analysis of mandatory reporting data revealed

The Interagency Plan anticipated a possible initial rise in the number of child protection reports about Aboriginal children due to the increased focus on Aboriginal child sexual abuse.

In testing this assumption, we looked at a range of data (both state-wide and community specific) about child protection reports, including examining the source of reports, the nature of reported issues and the responses to these reports.

To examine trends in the reporting of sexual abuse of Aboriginal children from the 12 target communities,¹⁴² we also asked Community Services to provide us with data relating to these communities that covered the period of the Interagency Plan (2007 to 2011).

7.3.1 State-wide reporting trends – risk of sexual harm

Community Services' most recent publicly available data shows that in 2010-11, reports about sexual abuse for all children represented 15% of all risk of significant harm reports received that year. For the same period, reports about inappropriate sexualised behaviours represented 2% of all reports.

Table 1. Child protection reports made to the Helpline that included sexual abuse as a reported issue by Aboriginality and source, 2007 to 2011 – state-wide

Year	Mandatory reporter			Non-mandatory reporter			Grand total
	Aboriginal	Non-Aboriginal	Total reports	Aboriginal	Non-Aboriginal	Total reports	
2007	2,540	15,776	18,316	1,116	6,033	7,149	25,465
2008	2,885	16,157	19,042	1,123	5,630	6,753	25,795
2009	3,020	15,327	18,347	1,187	5,438	6,625	24,972
2010	2,214	14,289	16,503	910	4,548	5,458	21,961
2011	2,217	16,589	18,806	1,130	4,713	5,843	24,649
Total	12,876	78,138	91,014	5,466	26,362	31,828	122,842

Table 1 shows that for Aboriginal children, the reporting of suspected sexual abuse between 2007 and 2009 went up by 15% (as compared to 5% for non-Aboriginal children). Reports for Aboriginal children then dropped by 26% during the first year of *Keep Them Safe* (2010) – for non-Aboriginal children, the drop was only 9%. In 2011, reports for Aboriginal children then increased by 7% (as compared to a 12% increase for non-Aboriginal children).

7.3.2 State-wide reporting trends – inappropriate sexualised behaviours

Community Services makes a distinction between reports about sexual abuse and reports about the exhibition of developmentally inappropriate sexual behaviours. Again, to get a more comprehensive picture of reporting trends as they broadly relate to concerns about sexual harm, we asked Community Services to provide data in relation to child protection reports that raised issues about inappropriate sexual behaviours.

¹⁴² The 12 target communities for the purposes of our audit were the nine focus communities identified by Aboriginal Affairs through its Focus Communities program, as well as three additional communities we selected to ensure our observations took geographic differences into account as well as positive initiatives being driven by communities in relation to child sexual assault.

Table 2. Source of child protection reports that included child inappropriate sexualised behaviours as a reported issue by Aboriginality, 2007 to 2011

Year	Mandatory reporter			Non-mandatory reporter			Grand total
	Aboriginal	Non-Aboriginal	Total reports	Aboriginal	Non-Aboriginal	Total reports	
2007	490	3,373	3,863	187	962	1,149	5,012
2008	616	3,582	4,198	172	984	1,156	5,354
2009	668	3,523	4,191	192	927	1,119	5,310
2010	512	2,473	2,985	109	604	713	3,698
2011	638	2,843	3,481	142	586	728	4,209
Total	2,924	15,794	18,718	802	4,063	4,865	23,583

As the table above demonstrates, there are some differences in the reporting patterns in relation to inappropriate sexualised behaviours compared to the reporting of sexual abuse. For example, between 2007 and 2009, mandatory reports about inappropriate sexualised behaviour went up for Aboriginal children by 27%, and then decreased in 2010 by 28%. In 2011, inappropriate sexualised behaviour reports involving Aboriginal children rose by 20%. By way of contrast, between 2007 and 2009, mandatory reports about inappropriate sexualised behaviour for non-Aboriginal children went up by 4%. In 2010, these reports decreased by 30% and then rose by 13% in 2011.

In many instances, inappropriate sexualised behaviour is an indicator of sexual abuse and should also trigger referrals to therapeutic treatment; particularly when these reports are about the behaviour of younger children. In this regard, the data that we obtained from Community Services showed that the majority (57%) of reports about inappropriate sexualised behaviour that were referred to a CSC/JIRT for follow up involved children younger than nine. In Chapter 16, we discuss therapeutic responses for children under 10 who display problematic sexualised behaviour.

7.3.3 Local reporting trends – risk of sexual harm

Data relating to all reports that raise concerns about the suspected sexual abuse of Aboriginal children is presented in Table 3 below. We have not identified the actual locations as the numbers in certain small communities were too low. The table only presents the data for 11 of our 12 target communities as Community Services did not provide data for the relevant CSC covering town 5. When we requested this information, Community Services advised that it could not be retrieved in a timely fashion.

Table 3. All reports (ROSH and non-ROSH) relating to Aboriginal children that raised concerns about sexual abuse and were referred to a CSC in our 12 target communities, 2007–2011

CSC/relevant target community	2007	2008	2009	2010	2011	Total
1	82	76	82	73	81	394
2	93	72	128	51	76	420
3	112	135	128	89	93	557
4	98	124	32	112	66	432
5						
6	20	28	33	6	8	95
7	53	53	51	42	42	241
8 and 9	30	51	57	17	16	171
10	118	99	127	96	148	588
11	35	34	42	20	19	150
12	18	5	23	21	4	71
Total	659	677	703	527	553	3,119

Community Services was unable to provide us with 'town-level' data about the number of sexual abuse reports made in relation to children who reside in the 12 target communities. This is because mandatory reporting is captured on a CSC – and not town specific – basis in Community Services' database. Several of the target communities are also covered by CSCs that service large geographical areas; particularly those in New England and Western NSW.

Earlier, we referred to the SPRC review which noted the need for agency data to be collected and analysed in relation to local towns. This should be a relatively simple issue to address and warrants consideration by KPMG as part of its current review of the KiDS system. Clearly, if Community Services captured location specific data then it would be much better placed to identify and analyse relevant reporting trends.

However, notwithstanding this data weakness, we found that contextual analysis of relevant Community Services data at a CSC level is still useful. For example, it is clear that there were a relatively high number of sexual abuse reports that were received by particular CSCs servicing some of the smaller, more remote target communities (particularly compared to certain target communities in metropolitan and larger rural areas). In addition, there were significant variations in sexual abuse reports within individual CSCs across particular years – this should have been identified and analysed during the implementation of the Interagency Plan. For example, one CSC carried out intensive child protection work within a particular community for an extended period of time. Following the withdrawal of the team that carried out this intensive work, there was a substantial drop in sexual abuse reports.

7.3.4 The source of sexual abuse reporting

Currently, approximately three quarters of all child protection reports to the Helpline are made by mandatory reporters. Police have consistently been the biggest reporters, accounting for around one fifth of all child protection reports and more than one quarter of all mandatory reports each year since 2007.¹⁴³ Reporters from the Health and Education sectors are the next highest reporters; each responsible on average for around 15% of reports.¹⁴⁴ The non-government sector is responsible for 11% of all reports, and the three agencies that make up Family and Community Services (Housing; Ageing, Disability and Home Care; and Community Services) are together responsible for just over 5% of reports.¹⁴⁵ However, for sexual abuse reporting, the trend is somewhat different.

Table 4. State-wide child protection reports made to the Helpline that included sexual abuse as a reported issue by Aboriginality and source between 2010 and 2011

Mandatory Reporter	2010				2011			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
Police	605	15%	3,200	17%	650	15%	3,522	17%
Health	602	15%	2,992	16%	635	14%	3,303	16%
School/childcare	552	14%	3,681	20%	646	14%	4,386	21%
Non-government organisation	455	12%	1,822	10%	523	12%	2,151	10%
Other mandatory reporter	794	20%	2,594	14%	893	20%	3,227	15%
Non-mandatory reporter	910	23%	4,548	24%	1,130	25%	4,713	22%
Total	3,918	^100%	18,837	^100%	4,477	100%	21,302	^100%

^ Percentages may not total 100 due to rounding.

As Table 4 shows, for both Aboriginal and non-Aboriginal children, reports about risk of sexual harm are fairly evenly spread across the range of mandatory reporting agencies.

In 2010 and 2011, Police, Health and Education were each responsible for less than a fifth of the risk of sexual harm reports involving Aboriginal children. For non-Aboriginal children, staff from the Education sector were responsible for the highest number of reports (around 20%), followed by Police and Education (at 17% and 16% respectively).

Since 24 January 2010, the proportion of reports from the Education sector about risk of sexual harm concerning Aboriginal children rose from 14% of all reports in 2009 to 18% in 2010.

143 Community Services Quarterly Reports to Partner Agencies – 1 January 2012 to 31 March 2012.

144 Community Services Quarterly Reports to Partner Agencies – 1 January 2012 to 31 March 2012.

145 Family and Community Services: Community Services, 2012, *Annual statistical report 2010/2011*, Information Management Branch Planning and Corporate Performance Directorate, p.31.

Over the same period, the proportion of sexual abuse reports that were made by mandatory reporters who Community Services classify as 'other mandatory reporters', has shown a steady increase. For example, in 2011, 20% of reports about suspected sexual abuse of Aboriginal children came from this group – this represents a 68% increase from 2009.

While shifts in state-wide reporting trends warrant ongoing analysis, it is perhaps of even greater importance to be cognisant of local mandatory reporting patterns.

In the context of child sexual assault and other child protection issues in Aboriginal communities (and in the broader community), examining the source of mandatory reporting data in particular locations (and comparing differences in reporting behaviour within various communities) provides an important indication of whether the *Keep Them Safe* vision of shared responsibility is working effectively. Once again, the more specific the data capture – both in terms of source and location – the better the evidence base from which one can draw valid conclusions.

For example, Aboriginal Health workers – such as those working in Aboriginal Medical Services or in connection with the Aboriginal Maternal Infant Health Strategy – should be well-placed to develop relationships with families, including those who are vulnerable. Aboriginal School Liaison and Education Officers also work with families in communities, including in those locations where school attendance is particularly poor and is often linked with child protection risks such as sexual abuse.

Overcrowded housing is frequently cited as a contributing factor in increasing the risk of child sexual assault. In the context of mandatory reporting, overcrowding is often coupled with reports of other forms of abuse and neglect. Housing officers in both the public and community housing sector who undertake home visits are in a strong position to pick up on signs of neglect or other possible child protection risks. In performing their role, they face difficult ethical decisions around when a mandatory report should be made.

However, mandatory reporting data is not broken down by Housing division – currently, Community Services' partner agency reports only provide information about the reporter category of 'Housing NSW'. There is also no specific category for the community housing sector or Aboriginal land councils.

As previously noted, this lack of specificity in relation to sources of mandatory reporting data is not limited to Housing. It is for this reason, that we have highlighted the importance of better identification of which groups (and sub-groups) are reporting in individual locations. Consistently, during our audit, it has been suggested to us that certain groups or key individuals are reluctant reporters. Without better and more refined data capture of the kind we have suggested, the extent of shortcomings in practice, and the related solutions, will be hard to identify.

7.3.4.1 NGO reporting – issues identified

After the new reporting and referral pathways were implemented at the end of January 2010, non-government organisations and non-mandatory reporters recorded the highest proportion of all reports that were 'rejected' by the Helpline: that is, reports that were screened out as non-ROSH.¹⁴⁶ For example, around one third of NGO reports about sexual abuse were 'screened out' by the Helpline before *Keep Them Safe* but now close to half (46%) of all NGO reports on this issue are screened out.

A number of NGOs we consulted during our audit have indicated that they would benefit from having access to a CWU. This issue was also one of the areas identified as warranting further investigation by the recent *Keep Them Safe Workforce Survey*.¹⁴⁷ In 2012, the NSW Government amended the regulations to permit NSW Health to take a step in this direction, by extending the reach of its Health CWU to staff working in Affiliated Health Organisations, Aboriginal Community Controlled Health Organisations (ACCHOs), and member organisations of the Aboriginal Health and Medical Research Council of NSW. In addition, on an 18-month trial basis, General Practitioners and nurses in certain locations are now able to access the Health CWUs to report concerns and seek advice on child protection and wellbeing matters. This is an excellent initiative, and has the potential to enhance the response to Aboriginal child sexual assault.

The potential importance of this initiative to the issue of Aboriginal child sexual assault is well illustrated by the data. Close to a quarter (22%) of all risk of significant harm reports made by ACCHOs in 2011 raised concerns about possible sexual abuse.¹⁴⁸ Since January 2010, risk of significant harm reports made by ACCHOs that raised concerns about risk of sexual harm have increased, and are now the 'leading' issue reported by these organisations.

¹⁴⁶ Reports that are screened in by the Helpline require further assessment by local CSCs. Reports 'rejected' by the Helpline because they were not considered to meet the threshold for statutory intervention do not get referred to a CSC for further assessment.

¹⁴⁷ KPMG, *Keep Them Safe Workforce Survey – Final Report*, Report to the Department of Premier and Cabinet, August 2012, p.3. In relation to assessing the potential benefits of NGOs having access to a CWU, it will be important to identify clearly what particular support a CWU might provide (for example, specific child protection advice and/or the provision of more generic advice?).

¹⁴⁸ Family and Community Services: Community Services, 2012, *Quarterly Report to Partner Agencies*.

7.3.4.2 *The value of community reporting*

Reports made by community sources to the Helpline are another important indicator of the level of confidence in the child protection system.

Even with the introduction of the raised reporting threshold, reports from non-mandated reporters (that is, relatives, neighbours and community members) have shown a steady increase over the course of the Interagency Plan. For example, in 2008 and 2009, non-mandated reporters made 1,123 and 1,187 reports respectively about Aboriginal child sexual abuse. After a slight drop in 2010, immediately following the change in reporting threshold, the number of reports from non-mandated reporters about Aboriginal sexual abuse peaked at 1,130.¹⁴⁹

It is also significant that in half of the target communities during 2011, non-mandated reporters were responsible for over one third of the total number of sexual abuse reports about Aboriginal children that were referred to a CSC.

When the Interagency Plan commenced in 2007, data relating to the source of reporting at local CSC level showed that for eight of the 10 CSCs covering the target communities, non-mandated reporters were by far the largest reporters of Aboriginal child sexual abuse. Furthermore, as we have noted earlier in this report, we found that in target communities within CSCs where we identified strong community leadership in relation to child sexual abuse, the levels of 'community reporting' were at their highest. Importantly, in these locations there also existed strong working relationships between Aboriginal leaders and agencies (particularly with local police and schools).

7.3.5 *Responding to child protection reports*

The Community Services' Helpline makes an initial determination of whether a report of risk for a child meets the threshold of risk of significant harm. If a report meets the threshold, the Helpline refers it to a CSC for assessment, along with a recommended response timeframe. CSCs then 'triage' reports, and may determine that on the available information, reports about other children may present a higher likelihood of risk of harm. If resources are unable to meet demand, the report will not be allocated to a caseworker for assessment. After a period of time, and if resources do not become available, the report may be closed without further action.

A key finding of the Wood Inquiry was that too many reports were being made to Community Services that did not warrant the exercise of its statutory powers. As a result, much effort was expended by Community Services in processing incident-based reports and many children and young people were receiving little in the way of assistance; often having their cases closed without the necessary assessment work being carried out to determine their circumstances.

At the time we released our *Keep Them Safe?* report, data provided by Community Services for the first year of the new system's operation showed that for all child protection reports referred to a CSC or JIRT:

- 21% received a comprehensive face-to-face assessment
- 52% were closed following limited inquiries such as reviewing database holdings or making a telephone call to the reporter or support services involved with the child, and
- 25% were closed without any assessment due to 'current competing priorities'.

However, recent advice from Community Services indicates that over the last year, it has implemented a range of productivity measures that have resulted in a 29% increase in the number of reports that receive a face-to-face assessment. There has also been a 50% decrease in the number of reports that were closed without assessment for the 2010-11 and 2011-12 reporting periods. This is a very positive development.¹⁵⁰ Nevertheless, it will be important for Community Services to assess the impact of these measures on Aboriginal children, particularly in relation to those CSCs that have consistently struggled to attract staff (for example, the Western region).

7.3.5.1 *Responses to risk of sexual harm*

As part of our audit, we sought the following information from Community Services on the outcome of risk of significant harm reports about sexual abuse and inappropriate sexualised behaviour.

¹⁴⁹ Reports by these reporters have a relatively high 'rejection' rate – meaning they are not referred to a CSC for further assessment.

¹⁵⁰ Advice provided by Department of Family and Community Services, 11 December 2012.

Table 5. Community Services' response to risk of significant harm reports that included sexual abuse as a reported issue, 24 January 2010 to 31 December 2011 – state-wide

	No. of risk of significant harm reports referred to a CSC/JIRT for action	
	Aboriginal	Non-Aboriginal
Reports that received a comprehensive assessment (face-to-face contact) ¹⁵⁰	3,582	12,772
actual harm substantiated ¹⁵¹	1,065	4,066
risk of harm substantiated	619	1,809
Reports closed after limited additional inquiries ¹⁵²	2,448	11,535
Reports closed without any assessment due to 'current competing priorities' ¹⁵³	441	3,136
Total	6,471	27,443

The data shows that 55% of risk of sexual harm reports involving Aboriginal children across the state resulted in a face-to-face assessment over the period. The response rate compares favourably with the 21% state-wide face-to-face assessment rate for all risk of significant harm reports for all children in 2010. For non-Aboriginal children, the proportion of face-to-face assessments for risk of sexual harm reports across the state was lower at 47%. Also, for non-Aboriginal children, a slightly higher proportion of reports of this type were closed due to 'current competing priorities' during the period (11%) compared to Aboriginal children (7%). Therefore, there is evidence to suggest that, overall, Aboriginal children received a more comprehensive response to risk of sexual harm reports.

Data relating to responses in the target communities

However, as Table 6 shows, our examination of Community Services' local data for CSCs covering the 12 target communities revealed a different picture.

Table 6. Community Services' response to risk of significant harm reports that included sexual abuse as a reported issue, 24 January 2010 to 31 December 2011

CSC/Target community	Face-to-face contact		Closed without further assessment due to current competing priorities	
	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal
1	15%	19%	1%	0.2%
2	28%	13%	31%	45%
3	27%	21%	2%	6%
4	24%	21%	12%	12%
5				
6	20%	25%	30%	-
7	29%	32%	15%	7%
8 & 9	25%	-	11%	29%
10	27%	19%	7%	17%
11	32%	29%	5%	4%
12	29%	13%	18%	18%

151 Comprehensive assessments include not only face-to-face contact with the child and their family, but may also involve discussions with other agencies and obtaining information from other sources.

152 Substantiation data provided to us by Community Services forms a sub-set of the comprehensive assessment category.

153 This first stage of the assessment process occurs prior to a field response and generally involves office-based inquiries and information gathering, but no face-to-face contact with the child and their family. It may involve follow-up with the reporter or another agency involved with the family.

154 Community Services' case closure policy specifies that in principle, all reports which reach a CSC or JIRT should receive a comprehensive safety and risk assessment. The policy does, however, allow for reports to be closed at any time because the CSC has insufficient resources to respond. The basis for closing cases in these circumstances is the level and immediacy of risk to a particular child in comparison to the level and immediacy of risk to other reported children in the context of the CSC's capacity to respond. Our work illustrates that a matter can be closed even when the information at the time indicates that a child may be at risk of significant harm.

For example, the table demonstrates that for risk of sexual harm reports relating to Aboriginal children, the face-to-face assessment rate for CSCs in all the target communities averaged 26%. This was far below the state-wide average of 55%. For non-Aboriginal children in the target communities, the situation was much the same (19%).

Five of the 10 CSCs covering the target communities also had a higher closure rate due to competing priorities than the state-wide average of 7%. In fact, the table shows that two involved CSCs had significantly higher closure rates due to competing priorities for reports about risk of sexual harm involving Aboriginal children – one was a metropolitan CSC which had the highest closure rate (31%) for these reports¹⁵⁵ and the CSC with the second highest closure rate (30%) was in a remote location.

This illustrates why relying on state-wide data alone constitutes a very crude measure. In fact, as the data presented throughout section 7.3 demonstrates, strategically reviewing child protection data must involve location specific information and related analysis in order for the data to be meaningful. While this is relevant in the context of child protection reporting more generally, it is particularly important in seeking to assess progress in the area of Aboriginal child sexual abuse. In relation to this important issue, it is pleasing to note that Community Services has recently advised that it shares our concerns about the importance of improving the capacity to respond to reports of sexual harm in the target communities, and also recognises the potential of improved data analysis and reporting.

7.4 Responding to Aboriginal child sexual abuse: critical areas for practice review

To assist mandatory reporters to conduct risk assessments and navigate the new reporting pathways established by *Keep Them Safe*, a practice resource known as the *Mandatory Reporter Guide*¹⁵⁶ was developed. The Guide systematically leads reporters through a series of questions to help them decide whether concerns meet the threshold for making a report to Community Services, and recommends a course of action based on the assessed level of risk.

The *Mandatory Reporting Guide* (MRG) is a highly valuable resource and should be the go-to tool for frontline practitioners in relation to a range of practice issues. We examined the MRG's guidance on a number of areas of risk relating to sexual abuse during our audit. We identified two areas where guidance could be improved – the handling of historical allegations of child sexual abuse and the reporting of STIs. Both of these issues are discussed below.

7.4.1 Historical allegations of sexual abuse

Breaking the Silence referred to the issue of sexual abuse of Aboriginal children spanning a number of generations in some communities. For this reason, a sophisticated child protection and criminal justice response to historical child sexual abuse is of vital importance in tackling the issue of Aboriginal child sexual assault. In addition, Aboriginal adult victims are now coming forward in greater numbers to report the sexual abuse that they experienced as children – 8% of all sexual abuse reported during the five-year period of the Interagency Plan's operation came from adults reporting historical child sexual abuse. This adds further weight to the need to respond appropriately when allegations of historical abuse are made.

7.4.1.1 Reporting allegations of historical child sexual abuse to police as crimes and identifying current child protection risks to children

In 2010, we investigated a number of matters which involved allegations of historical child sexual abuse that had come to the attention of Community Services; had not been reported to police for criminal investigation; and had not been identified as a 'risk of significant harm' to 'a class of children or young people' (i.e. those children with whom the alleged perpetrator may currently be in contact). In a number of these cases, the perpetrator continued to work in child-related employment and/or had access to children in other ways.

Our office also identified cases in which Community Services failed to report serious criminal allegations to police: this included (but was not limited to) matters involving allegations of historical sexual abuse. We noted that when these reports were received at the Helpline, the guidance for frontline staff was inadequate in assisting them to determine whether to make a report to police. In response, Community Services developed draft policy principles to provide guidance on serious criminal allegations that warrant police referral – the draft principles defined serious criminal allegations as those which meet, or for historical abuse allegations would have met, the JIRT criteria. Our office drew attention to the need for the guidelines to also promote referral of allegations which do not meet the JIRT

¹⁵⁵ The CSC had an even higher closure rate due to competing priorities for non-Aboriginal children (46%).

¹⁵⁶ The Mandatory Reporter Guide (MRG) is an interactive online tool that helps people to decide whether to make a report to the Helpline that a child or young person is at risk of significant harm. The tool asks the user a series of questions, designed to work out whether there is a current risk of significant harm to a child. Based on the user's answers, it generates advice on whether to make a Helpline report or to take some other action.

criteria but which nonetheless, warrant reporting to police. This includes 'allegations or evidence of inappropriate or improper conduct which strongly suggest the possible commission of a sexual offence against a child or young person, but where the alleged victim, or witness, has not specifically alleged the commission of a sexual offence.'¹⁵⁷

Community Services agreed to our proposed amendments. We have recently been informed that a trial has commenced at three CSCs. During the trial, all reports that meet the agreed criteria – including allegations of historical child sexual abuse – will be referred to police.

7.4.1.2 Improving guidance for mandatory reporters in responding to historical allegations

As part of an investigation of Community Services' handling of one particular allegation of historical child sexual assault, we raised concerns about the *Mandatory Reporter Guide's* failure to accurately identify risks to children when allegations are made that relate to conduct that occurred some years ago.

We were concerned that in light of the seriousness of the historical allegations in this, and other, matters we were investigating – including a victim's concerns that the alleged perpetrator may have abused other children, and that an alleged perpetrator was still engaged in child-related employment at the time the allegation was made – this presented clear risks of significant harm for 'a class of children' that warranted action by Community Services.

At the time we began our investigation into the particular matter that highlighted the policy weakness, the MRG only referred to risks to a 'child/ 'young person'. Although it could be argued that this reference could apply historically – as the victim was a child at the time of the alleged conduct – we were concerned that it lacked clarity, and was not a sufficient prompt to mandatory reporters to report their concerns to Community Services. In addition, the MRG did not prompt the user to consider whether there may be a current risk to children other than to the alleged victim(s) – in particular, where risks exist for a 'class of children'.

We also had concerns in relation to the tool used by the Helpline to determine whether a report should be 'screened in' as indicating a risk of significant harm. In this regard, we noted that the Helpline tool 'screened out' historical allegations that were over one year old in circumstances where the person causing harm no longer had access to the involved child; and it was silent on the issue of the need to consider any current risk to a 'class of children' from an alleged perpetrator.

In response to our concerns, Community Services' Helpline subsequently issued a 'Practice Reminder' to staff on the need to include within their assessment of historical allegations whether there is a risk of significant harm to a 'class of children'.

In response to our broader policy concerns, Community Services also took a number of steps to refine the MRG and the internal Helpline screening tool, so that both can better accommodate historical child sexual abuse allegations.¹⁵⁸

In addition, following Community Services recently receiving legal advice which supported our view that the term 'class of children' should be interpreted broadly, Community Services advised us that its Helpline screening tool is going to be further amended to reflect this interpretation.

We continue to see cases where historical allegations involving current risks to children are not identified as constituting a risk of significant harm to children. It is important to recognise that allegations of this type present significant practice challenges. However, they also present opportunities to provide redress to adults whose rights were violated when they were children. Developing an understanding of what constitutes best practice in this area is vital in helping to break the cycle of intergenerational sexual abuse that can destroy the fabric of Aboriginal (and non-Aboriginal) community life. With the recently established Federal Royal Commission, there is an opportunity to examine past failures in our response to historical allegations with the aim of developing the kind of sophisticated and multi-faceted response that is required in cases of this kind.

7.4.2 Improving guidelines on reporting Sexually Transmitted Infections (STIs)

No Australian jurisdiction currently has a legislated requirement for the reporting of STIs diagnosed in children to a child protection authority. However, several jurisdictions provide guidance to frontline staff principally through mandatory reporting guidelines, including NSW. During our audit, we identified that there are inconsistencies between the guidance provided on this issue to health practitioners through various NSW Health policies and that which is provided to all mandatory reporters through the MRG.

¹⁵⁷ We also suggested that reports to police should involve matters where there is "an allegation or evidence of a serious physical assault which, while not resulting in significant harm or injury to a child or young person, can reasonably be considered to be the result of a hostile action with the potential for causing significant harm or injury to the child or young person. The harm or injury may be the result of a single action or an ongoing situation."

¹⁵⁸ Community Services, in consultation with *Keep Them Safe* agencies, updated the MRG. The current edition of the MRG, published in May 2012, now includes: an explanatory paragraph about historical child sexual abuse allegations on the opening screen; a definition of 'historical allegation' in the Glossary to the MRG Manual; and a definition of 'class of children/ young people' in the Glossary to the MRG Manual.

ACSAT responded to community concerns about STIs in children by recommending that NSW Health direct medical practitioners to report STIs in children and young people under 16 years as a child protection concern.¹⁵⁹ The Interagency Plan reflects this recommendation in Action 37, which states:

Direct all frontline staff to report all Sexually Transmitted Infections (STIs) in children and young people under 16 years.

NSW Health had lead agency responsibility for this Action, but Education and Community Services were identified as partner agencies. Documentation provided to us during our audit from Aboriginal Affairs indicated that Action 37 has been 'completed'. However, as we discuss in section 7.4.4, the guidance provided to health practitioners is not in fact consistent with this Action.¹⁶⁰

STIs are significant to the question of sexual abuse because they provide evidence of sexual activity. It is generally accepted that the presence of an STI, particularly with an older child, is not always a sign of sexual abuse.¹⁶¹ However, it is also recognised that the younger the child, the more likely it is that the STI will point to sexual abuse.¹⁶²

For this reason, the question of whether and at what age reporting of STIs in children to child protection authorities should be mandatory is somewhat vexed. The *Little Children are Sacred* report neatly summarised the concerns commonly expressed, noting that 'central to the policy debate is whether to define an age at which abuse will be assumed, and therefore require mandatory reporting of the infection...' and further that:

*...from a health perspective, a critical concern... is that mandatory reporting of all STIs, even for children under 16 years, may deter a young person from seeking treatment, resulting in the risk of negative outcomes in the longer term, and of further spreading of the disease.*¹⁶³

If the reporting of STIs was mandated for all children under the age of consent (i.e. under 16), it might also lead to unintended criminal consequences for the young people involved. As we discuss in Chapter 14, whilst there are a number of challenges in the current criminal justice response to matters of adolescent peer sex, it is possible for these matters, if reported, to be handled effectively, and in a way which minimises the negative consequences for those young people who are involved in consensual sexual activity.

The child protection system must both protect children who are too emotionally immature to consent to sexual activity, whilst recognising that a significant proportion of teenagers are engaging in consensual sexual activity prior to the age of consent. In balancing these issues, we need to ensure that incidences of sexual abuse are seen as such. Children who grow up in highly dysfunctional families where abuse is commonplace, may be less able to identify abuse when it occurs to them. As we discussed in Chapter 6, there are also a number of factors which may prevent children from reporting sexual abuse, even if they are specifically questioned about sexual activity by a health practitioner. Making clear in policy those circumstances in which a diagnosed STI must be reported through the child protection system potentially allows for a more consistent and integrated approach to be developed to this issue.

7.4.3 What do the guidelines say?

In NSW, although there appears to be an intention to set an age below which evidence of sexual activity (such as an STI) must be reported, it is unclear what this age is. The principal interagency guideline in this area is the MRG, which leaves the decision about whether or not to report to the judgement of each individual health practitioner. As we discuss below, a range of other policy documents provide conflicting advice as to whether and when reporting should be mandatory.

The MRG provides the following advice about when and in what circumstances a diagnosis of an STI should trigger a notification to the Child Protection Helpline (emphasis added):

SEXUAL ABUSE OF CHILD (AGE 0 to 15 YEARS)

Did child make a clear, unambiguous statement of sexual abuse?

OR

*Is the child pregnant or has a medical professional diagnosed the child with a sexually transmitted infection (STI) or trauma to genital area, **and are any of these conditions believed to be the result of sexual abuse?***

...

159 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing Child Sexual assault in Aboriginal communities in NSW*, 2006, Recommendations 38 and 66.

160 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

161 For example, the *United Kingdom National Guidelines on the Management of Sexually Transmitted Infections and Related Conditions in Children and Young People 2010* states that the presence of an STI in a young person may indicate that sexual abuse has occurred, 'but other methods of transmission should be considered'. (at 3.1); and the Northern Territory guidelines on the sexual health of children and young people make clear that a positive laboratory result for an STI in a child or young person could be due to a range of reasons, including but not limited to sexual abuse.

162 See for example: the *Guidelines on the Management of sexual health issues in children and young people*, NT Department of Health and Families, July 2010, p.39.

163 *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, p.107.

ANSWER YES IF:

...

*A child is pregnant, or a medical professional diagnosed a child with an STI or trauma to the genital area **AND** you have concerns that the child has been sexually abused.*¹⁶⁴

The MRG therefore allows for some discretion, even in circumstances where a medical professional has diagnosed an STI in a child under 16. If a view is formed that the diagnosis of the STI is believed to be the result of sexual abuse, then an immediate report should be made to Community Services. Further guidance is then provided to reporters about what constitutes age appropriate sexual behaviour, as well as what might be regarded as abusive sexual behaviour. The guidance indicates that 'consensual' sexual activity among peers between the ages of 13 and 17 may not be necessarily abusive if there is no suggestion of coercion. However, it does not make explicit that the diagnosis of an STI in a child under the age of 13 should automatically trigger a report to Community Services.

While the guidance in the MRG is useful, as we indicated earlier, the difficulty is whether a health professional, who is heavily reliant on the information provided directly by the young person, will be well placed to determine 'consensual' activity. If they 'decide' that the activity is consensual, the diagnosis of an STI will not be reported to Community Services; and as a result, this information will not be assessed against existing risk related information about the child. Conversely, in cases where a health practitioner does report an STI diagnosis to Community Services, the JIRT Criteria state that diagnosis of an STI in a child is definitive of child sexual abuse, and the report is referred to the JIRT.¹⁶⁵ The STI diagnosis is then subsequently assessed in conjunction with any other information held by the JIRT agencies about the child – arguably, this allows for a more informed decision to be made as to whether the STI was the result of sexual abuse.

In the case study below, we reviewed the records held by the Office of the Director of Public Prosecutions. The involved girl was younger than 11 years of age when she was diagnosed with genital warts by two doctors – neither doctor reported their diagnosis to the Helpline. The girl did not make a report to police about sexual abuse until many years later. In these circumstances, a report by the doctors to the Helpline may have presented an opportunity for earlier investigation and support.

Case study 11

Towards the end of 2008, a 14 year old girl made disclosures to police that she had been indecently assaulted by a family member when she was aged between seven and eight years. At the time of her disclosure, the same family member was awaiting trial for a number of other historical child sexual assault offences involving the girl's older sister.

The disclosure made in 2008 was investigated by the JIRT and charges were laid. A referral was made for the girl to see a Sexual Assault Service counsellor. While the matter was still awaiting trial, the counsellor contacted police and advised that the girl had disclosed an additional offence of sexual assault by the defendant. Police then conducted another interview with the girl, during which she alleged that she had sought treatment for genital warts from two doctors when she was 11 and, at this time, she was being abused by the defendant.

Police subpoenaed records from the two doctors. From these records it appeared that the doctors had asked the young girl if she was sexually active and she had denied this. Our review of Community Services' records revealed that neither doctor had made a report to the Child Protection Helpline.

At court it could not be conclusively determined that the girl's presentation with genital warts was linked to the defendant. The defendant was found not guilty of all of the charges relating to the girl. However, in a separate trial he was convicted of multiple sexual offences against her sister.

7.4.4 Health's policies

Against the background of the above case, it is worthwhile considering Health's policies in relation to STI reporting.

Health practitioners are required to comply with a NSW Health Policy Directive which ensures compliance with a statutory obligation to report certain diseases. This directive is called the *Notification of Infectious Diseases under the Public Health Act 1991*, and it mandates that all notifiable infectious diseases under legislation must be reported to the local Public Health Unit (PHU). In addition, certain 'control guidelines' for infectious diseases stipulate that if a doctor reports particular STIs¹⁶⁶ in a child to the PHU, the PHU must in turn advise the doctor of their obligation to

¹⁶⁴ Mandatory Reporter Guide, p.73.

¹⁶⁵ JIRT Induction Package, 31 October 2010, p.36 and/or NSW Police Intranet. Accessed 13 November 2012.

¹⁶⁶ Such as syphilis, chlamydia or gonorrhoea.

notify the Helpline if the doctor considers that the child is at risk of significant harm. The doctor is advised to use their professional judgement, having regard to the MRG, as well as the following factors (emphasis added):

- *If the sexual activity disclosed by a young person was between peers – consensual peer sex is not of itself an indicator of risk of significant harm.*
- *The age of the child (any sexual activity in a child aged 12 years or younger¹⁶⁷ would not generally be considered consensual).¹⁶⁸*

While it is concerning that the two doctors in the case study above did not report the girl to the Child Protection Helpline after her denial of sexual activity given her young age, it is conceivable that it did not occur to them to take any further action because genital warts are not a notifiable disease under the Public Health Act. If she had presented with a notifiable disease, the doctors would have been obligated to report the matter to the PHU, and this would have triggered the PHU to remind them of their reporting obligations to Community Services – which is likely to have then led to an intervention for that child.

In addition to this guidance on infectious diseases, Health has a standard operating procedure manual which includes general advice about identifying the risk of significant harm in children who present to a sexual health service. When we asked NSW Health for its view on mandatory reporting of all STIs diagnosed in children under 16 years of age, as set out in the Interagency Plan, its response included the following comments:

The diagnosis of a sexually transmissible infection may be the result of a young person engaging in consensual sex with their peers. It is therefore important that young people are not discouraged from seeking diagnosis and treatment of infections. Mandatory child protection reporting of diagnoses of sexually transmissible infections should consider the context in which the infection occurred.¹⁶⁹

We support Health's position on the need to support young people seeking diagnosis and treatment for STIs. However, as the case study above well illustrates, the challenge relates to the need to ensure that the judgement calls being exercised are consistent and based on sufficient evidence of 'the [real] context' in which STIs are being contracted. In our opinion, given the scope for poor professional judgement, the different pathways through which these types of matters can enter and traverse the health system, and the various policy documents relating to this issue, it is important to consider whether there are currently unacceptable risks in terms of the right decisions being made in these very difficult cases.

7.4.5 Data relating to STI infection rates

As part of our audit, we asked Health to provide 2007-2011 Public Health Unit data on STI rates for children under 16 years of age. The data indicated that the number of reported STIs climbed steadily over the period: from just over 250 reported cases in 2007 to almost 450 reported cases in 2011. Health data also shows that the number of these STIs among children under 14 years of age also increased from 2008; reaching a peak of 48 children in 2011.¹⁷⁰

Infection rate data provided by Health indicates that STI infection rates for children under 16 years of age were higher in more remote areas of NSW.¹⁷¹

Although Health did provide data from the PHU in relation to Aboriginal children diagnosed with an STI, the data is unreliable. In this regard, we note comments attributed to Health in reports provided by Aboriginal Affairs noting that:

...notifications of Chlamydia (which make up the bulk of the STI notifications in those aged under 16 years) are reported by the laboratory who does not know the Aboriginal status of the child. While we are working on improving this, we are currently unable to report on rates amongst Aboriginal children.¹⁷²

According to the recent *Bloodborne viral and sexually transmitted infections in Aboriginal and Torres Strait Islander people surveillance and Evaluation report*, NSW falls short of most Australian jurisdictions in its reporting of Aboriginal status.¹⁷³ It is essential that NSW improves its data collection practices in this area as part of informing this state's ongoing response to the issue of Aboriginal child sexual assault.¹⁷⁴

167 This is consistent with the MRG on sexual abuse.

168 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

169 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

170 Health noted in relation to the data provided that 'while all care is taken to ensure the quality of the data, data entry errors may occur in entry of DOB [date of birth] of some cases'.

171 Western LHD and Northern LHD recorded the highest infection rates in 2011.

172 Office of Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 14 March 2011.

173 *Bloodborne viral and sexually transmitted infections in Aboriginal and Torres Strait Islander people surveillance and Evaluation report*, The Kirby Institute for infection and immunity in society, University of New South Wales, 2011, p.6.

174 Such data must be interpreted with caution as many factors may contribute to the number and rate of STI infections in a particular location or among a particular group. For example, specific STI testing programs may be funded in particular locations and may increase STI diagnoses for the period during which they operate.

Recommendations

12. As part of the process of monitoring the child protection system, the *Keep Them Safe* SOG should consider:
 - a) The nature of the baseline data that should be collected to measure how well child sexual assault is being responded to generally, and specifically, in relation to Aboriginal children. This consideration should include determining the best use of relevant mandatory reporting information (including assessment and outcome data) with criminal incident and JIRT outcome data as discussed in chapters 7, 8, 9 and 12 of this report.
 - b) The type of data that should be collected, analysed and publicly reported about Aboriginal child sexual assault to enable an assessment of whether progress is being made against this issue. This consideration should also include identifying the type of state-wide and local data that should be made publicly available.
13. That Community Services provides its partner agencies with more detailed breakdowns of risk of significant harm reporting data to assist them to fulfil their shared child protection responsibilities. In determining, in consultation with partner agencies, the type of data required, consideration should be given to providing a specific breakdown against categories such as: organisational business unit; particular roles within organisations; reported issue type (including risk of sexual harm) and Aboriginality.
14. That Community Services improves the guidance in the *Mandatory Reporter Guide* in relation to the reporting of diagnosed STIs in children in light of our observations in Chapter 7 of this report.
15. That Community Services and NSW Health, ensure that the *Mandatory Reporter Guide* is regarded as the single authoritative source in relation to health practitioner's obligations to report STIs diagnosed in children.
16. That JIRT partner agencies delete or amend existing policies to ensure there is alignment with the *Mandatory Reporter Guide* in relation to guidance relating to STIs diagnosed in children.
17. That, following the review of the *Mandatory Reporter Guide* referred to in Recommendation 14 above, NSW Health nominate an organisational unit to be responsible for providing educational material to mandatory reporters in the broad health system, including information about reporting STIs and sexual activity in children.
18. That NSW Health improves its data collection practices in relation to capturing the 'Aboriginality' of children under 16 years diagnosed with an STI whose details are recorded on the Public Health Unit database.
19. Given the need to develop and promote best practice in relation to:
 - Prompt and appropriate reporting to police of actual and possible child sexual abuse and other serious criminal matters involving children; and the reporting and assessment of historical allegations (and the responses to these allegations).

Community Services should work with the other JIRT partner agencies in seeking to progress and enhance the practice initiatives that we have discussed in section 7.4. In addition, Community Services should seek to evaluate the success of its current and future initiatives in this area both in terms of the impact on its own agency, other relevant government agencies and the broader community services sector.

Chapter 8. Crime data about child sexual abuse

It is well documented that a substantial proportion of sexual assaults and other incidents of sexual abuse are not reported to police,¹⁷⁵ and that under-reporting of sexual violence is an issue that can particularly affect Aboriginal communities.¹⁷⁶

This chapter outlines data and analysis from the NSW Bureau of Crime Statistics and Research (BOCSAR) about the 48,404 alleged incidents of adult and child sexual abuse that were reported to the NSW Police Force during the five years of the Interagency Plan (2007-2011), with a particular focus on victims and suspects identified in connection with recent reports.¹⁷⁷

At the outset of our audit, we arranged for BOCSAR to provide us with regular trend and other reports about sexual assault and sexual abuse. In this regard, we worked closely with BOCSAR to customise the specific data that was collected throughout our audit to enable us to report on Aboriginal child sexual abuse and sexual assault trends.

To obtain a better understanding of the reporting of these issues at an individual community level, we supplemented the data that BOCSAR provided with information that we required directly from the NSW Police Force regarding all reported sexual abuse in the 12 target communities we focused on during our audit.¹⁷⁸ Our analysis of those records found that there were 248 Aboriginal victims of sexual abuse aged 15 years or younger in those communities between 2007 and 2011. This group was used as the focus for a more detailed analysis. Using the NSW Police Force's and Community Services' databases, we then screened each report for information about those 248 Aboriginal child victims, including any prior contact that child victims of sexual abuse might have had with the child protection system.

In this chapter, data on the reporting of 'sexual assaults' includes alleged incidents that police categorise as sexual assault, aggravated sexual assault and assault with intent to have sexual intercourse. 'Sexual abuse' is broader. In this context it is used to refer to all sexual offences – including sexual assaults, indecent assaults, acts of indecency and other sexual offences.¹⁷⁹

8.1 Victims of sexual abuse

Victims of sexual abuse – NSW

In 2011, the final year of the Interagency Plan, reports to police show that there were 8,857 adult and child victims of sexual abuse in NSW. The BOCSAR data about these victims shows:

- 651 (7.4%) were Aboriginal.
- 4,859 (54.9%) were aged 15 years or younger.
- There were 476 Aboriginal victims aged 15 years or younger – which represents 9.8% of all NSW sexual abuse victims aged 15 years or younger, or 73.1% of all Aboriginal sexual abuse victims. Aboriginal children make up 4% of children in NSW.

Some adult victims report incidents of sexual abuse that occurred when they were a child. Using the information about the date of the incident (as distinct from when it was reported) to distinguish these historical incidents of abuse,¹⁸⁰ the incidents reported between 2007 and 2011 included 3,787 (7.7%) involving adults reporting historical abuse. Most (69.6%) were made by women.

Victims of sexual assault – NSW

BOCSAR's data on sexual assaults reported to police shows that there were 3,822 adult and child victims of sexual assault across NSW in 2011. Of these:

- 319 (8.3%) were Aboriginal.

175 Australian Institute of Family Studies, *Child protection and Aboriginal and Torres Strait Islander Children*, June 2012. See also K O'Brien, C Jones and V Korabelnikoff, *What caused the decrease in sexual assault clear-up rates?* BOCSAR December 2008.

176 A Cossins, *Alternative Models for Prosecuting Child Sex Offences in Australia*, Report of the National Child Sexual Assault Reform Committee, University of New South Wales, 2010.

177 The reference for all BOCSAR is nm1210538, except for the data in Table 7, for which the reference is DG 12/10431.

178 The 12 target communities for the purposes of the audit were the nine focus communities identified by Aboriginal Affairs through its Focus Communities program, as well as three additional communities we selected to ensure that our observations took geographic differences into account, as well as positive initiatives being driven by communities in relation to child sexual assault.

179 At our request, BOCSAR provided information on all sexual offences, including information about the more serious sexual assault offences. In this context, 'sexual assault' refers to any 'aggravated sexual assault' offence listed under Subdivision 0311 'Aggravated Sexual Assault' – Australian and New Zealand Standard Offence Classification (ANZSOC) 2011 (3rd Edition). 'Sexual abuse' refers to all 'sexual assault and related offences' under Division 03 – 'Sexual Assault and Related Offences', Australian and New Zealand Standard Offence Classification, 2011 (Third Edition).

180 This is calculated on the total number of victim reports created by police.

- 2,067 (54.1%) were aged 15 years or younger.
- There were 217 Aboriginal victims aged 15 years or younger – 10.5% of all NSW sexual assault victims aged 15 years or younger, or 68.0% of all Aboriginal victims.

The sexual assault data provided by BOCSAR included an analysis of the number of reported incidents of child sexual assault for the 10 years to 2011. Using the Kendall rank-order correlation test, BOCSAR found consistent increases in the reporting of Aboriginal child sexual assault over an extended period.¹⁸¹

Table 7. NSW sexual assault reports that identify victims aged 15 years and younger, 2002-2011

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Annual % change (2010-11)	Annual % change (2007-11)	Annual % change (2001-11)
Aboriginal	117	159	152	148	161	171	217	255	283	265	Stable	Up 11.6%	Up 9.5%
Non-Aboriginal	1,792	1,802	1,916	1,939	1,842	1,951	2,118	2,266	2,156	2,091	Stable	Stable	Up 1.7%
Aboriginality unknown	370	368	427	339	313	278	200	169	290	159	Down 45.2%	Stable	Down 9.0%
All reports	2,279	2,329	2,495	2,426	2,316	2,400	2,535	2,690	2,729	2,515	Stable	Stable	Up 1.1%

Source: NSW Bureau of Crime Statistics and Research.

The reporting of Aboriginal child sexual assault rose strongly throughout the five years of the Interagency Plan. The average annual percentage change over that period was 11.6%. The reporting of incidents involving non-Aboriginal child victims remained stable over that period. A recent BOCSAR update that includes data to September 2012 shows that reporting of child sexual assaults involving Aboriginal victims continues to rise strongly. As victim surveys and other research show that a substantial proportion of sexual assaults are not reported to police,¹⁸² the increases might reflect an increased willingness to report offences, rather than a rise in the actual incidence of child sexual assaults. This is consistent with recent BOCSAR surveys showing that public confidence in the NSW criminal justice system has increased significantly in recent years.¹⁸³

Table 7 also shows a fall in the number of reports where the Aboriginal status of the victim is 'unknown', indicating improvements in the accuracy of police recording of the Aboriginal status of child sexual assault victims.

Victims of child sexual abuse – target communities

Our own analysis of the information provided directly from the NSW Police Force indicated a relatively high level of Aboriginal reporting of sexual abuse and sexual assaults in the 12 target communities. We found that between 2007 and 2011, there were 1,066 reported victims of sexual abuse aged 15 years or younger in those communities. Of these, 248 (23%) were Aboriginal, whereas Aboriginal children make up 12% of all children living in those locations.¹⁸⁴

There were variations from one community to the next. For some target communities, the reporting of Aboriginal child sexual abuse was high in comparison to the number of Aboriginal children living in that community. For example, in Community 3 there were 170 reports of child sexual abuse in the five year period. Of these, 38 (22%) involved Aboriginal victims. Aboriginal children make up 9% of all children living in Community 3.

In most other communities, the levels of reporting were more proportionate to the number of Aboriginal children living in that location. This included Community 2, where 43 (8%) of its 555 reports identified Aboriginal victims. Aboriginal children make up 5% of all children living in that location. Similarly, there were 27 reports in Community 5. Of these, 23 (85%) related to Aboriginal victims – 84% of all children in Community 5 are Aboriginal.

Our review of police reports relating to sexual abuse in the 12 target communities also examined issues of repeat victimisation. Of the 248 Aboriginal child sexual abuse victims in these locations:

- 205 (83%) were reported in relation to one incident between 2007 and 2011.
- 43 (17%) were reported as victims more than once. This included 15 who were identified in three or more reports. One child was identified as a victim in eight reports.

181 For more information, visit <http://www.bocsar.nsw.gov.au>. Accessed 22 November 2012.

182 Australian Institute of Family Studies, *Child protection and Aboriginal and Torres Strait Islander Children*, June 2012. See also K O'Brien, C Jones and V Korabelnikoff, *What caused the decrease in sexual assault clear-up rates?* BOCSAR, December 2008.

183 L Snowball and C Jones, *Public Confidence in the NSW Criminal Justice System: 2012 update*, BOCSAR, December 2012.

184 We derived the Aboriginal populations of these target communities from relevant Indigenous Area or Indigenous Location, Australian Bureau of Statistics 2006 Census data.

As part of our analysis of the 248 Aboriginal child victims in the target communities, we checked how many of these children had previously been the subject of child at risk reports to Community Services. Almost all of the child sexual abuse victims had a prior history of child protection reports.

Table 8. Number of prior child protection reports* about the Aboriginal sexual abuse victims aged 15 years or younger in the 12 target communities, 2007-2011

Age of child	0 child protection reports	1-9 child protection reports	10-19 child protection reports	20+ child protection reports	All children in this age group	This age group as a % of all Aboriginal children
0-4 years	1	10	5	6	22	8.9%
5-9 years	1	15	24	22	62	25.0%
10-15 years	3	50	42	69	164	66.1%
All children	5	75	71	97	248	

Source: NSW Police Force's COPS database and Community Services' KiDS database.

* Reports include all reports to the Child Protection Helpline and reports to Child Wellbeing Units since changes to mandatory reporting requirements introduced on 24 January 2010.

As Table 8 shows, most of the Aboriginal victims of child sexual abuse in these communities had been the subject of numerous 'child at risk' reports prior to the sexual abuse that was reported to police during our review period. Two thirds of the children had been the subject of 10 or more reports to Community Services, including 97 (39%) who had each been reported 20 or more times. Among these most frequently reported children were nine children who had been the subject of 50 or more reports each, a further three who had 100 or more reports, and one child who had more than 200 reports.

It was rare for the child sexual abuse victims to have no history of child protection reports. Just five of the 248 children had never been reported to Community Services prior to the incident of sexual abuse. Only one of the children with no prior history of reports was aged younger than five. In fact, many of the children under five had numerous reports. Half of them had been the subject of 10 or more reports prior to the sexual abuse incident.

8.2 Suspects

Child sexual abuse suspects in NSW

BOCSAR's data on all NSW sexual abuse incidents reported to police in 2011 shows that there were 4,876 suspects of all ages identified in connection with these incidents. Of these:

- 312 (6.4%) were Aboriginal.
- 1,021 (20.9%) were juveniles aged 17 years or younger.
- There were 93 Aboriginal suspects aged 17 years or younger – which represents 9.1% of all juvenile suspects, or 29.8% of all Aboriginal sexual abuse suspects.

Analysis of those sexual abuse incidents that included the victim's age, as well as the suspect's Aboriginality and age, showed that both adult and juvenile suspects were frequently implicated in child sexual abuse incidents. This showed that:

- Of all the sexual abuse incidents attributable to adult suspects, 45.1% of their alleged victims were children aged 15 years or younger.
- Of all the sexual abuse incidents attributable to juvenile suspects, 84.5% of their alleged victims were children 15 years and younger.

Child sexual assault suspects in NSW

The sexual assault incidents reported to police in 2011 identify 2,440 suspected offenders of all ages across NSW. Of these:

- 163 (6.7%) were Aboriginal.
- 520 (21.3%) were aged 17 years or younger.
- There were 54 Aboriginal suspects aged 17 years or younger – 10.4% of all juvenile suspects, or 33.1% of all Aboriginal sexual assault suspects.

Child sexual abuse suspects in the target communities

Our own analysis of the sexual abuse reports relating to the 248 Aboriginal child victims in the 12 target communities identified 218 individual suspects who were linked to these cases. The identified suspects included four Aboriginal children who were aged under 10 years at the time of their alleged involvement in the sexual abuse. Our analysis about the ages and Aboriginal status of the sexual abuse suspects in Table 9 (below) excluded the four boys who were below the age of criminal responsibility.

Table 9. Suspects identified in police reports of Aboriginal child sexual abuse in the 12 target communities 2007-2011, by age and Aboriginal status

Suspect's age	Aboriginal	Non-Aboriginal	Aboriginality unknown	All suspects	Aboriginal suspects as a % of age group	% Aboriginal population at each age group *
10-17	67	9	9	85	78.8%	11%
18+	80	23	10	113	70.8%	5%
Unknown	1	0	16	17	5.9%	-
Total suspects	148	32	35	215[^]	68.8%	5%

Source: Data on children the subject of sexual abuse reports was provided by the NSW Police Force.

[^] One suspect appeared in two age groups: once in the 10-17 group and once in the 18+ group

* Aboriginal target community populations from relevant Indigenous Area or Indigenous Location, ABS 2006 Census data.

Of the Aboriginal child sexual abuse reports involving an identified suspect in the communities targeted for closer analysis, the suspect's age *and* Aboriginality were known in relation to 83% of cases. While there were more adult than juvenile suspects identified in connection with this child sexual abuse, the figures in Table 9 show that most (68.8%) of the reported sexual abuse of Aboriginal children in the 12 communities involved an Aboriginal suspect.

- Of the 113 adult suspects linked to reports of Aboriginal child sexual abuse in these communities, 71% were Aboriginal, whereas 5% of all adult residents in the 12 target communities are Aboriginal.
- Of the 85 juvenile suspects, 79% were Aboriginal, whereas Aboriginal children make up 11% of all children and young people aged 17 years or younger in these locations.

The relatively high proportion of Aboriginal suspects implicated in the reported incidents of Aboriginal child abuse in these locations suggests that many of the suspects were known to the victims and/or were from the victim's neighbourhood or community.

Our analysis of this group also showed that 46 (21%) of the identified suspects had been implicated in two or more incidents. One suspect was named in connection with 12 reports from the same community.

8.3 The relationship between child sexual abuse victims and suspects

When recording certain types of crime, including allegations of sexual and physical abuse, police are required to note information (where available) about the relationship between the suspect and the victim.¹⁸⁵ In cases involving multiple suspects, this relationship information is linked to the main suspect. We asked BOCSAR for data on sexual abuse reports that included this relationship information.

BOCSAR cautioned that the reliability of this data was affected by the high number of reports in which this information was missing or entered incorrectly. In addition, as the Aboriginal Child Sexual Assault Taskforce (ACSAT) observed in its *Breaking the Silence* report,¹⁸⁶ some of the categories for the relationship field in the police COPS system are aggregated or grouped at too high a level and/or some overlap in meaning. For instance, the taskforce noted that 'parent/guardian' is the only option for recording biological parents, step-parents and foster parents. It said it would be useful for reporting of this information to be able to easily distinguish between these different care relationships. The taskforce also observed that it was common for Aboriginal households to include extended family and kin, who could be recorded either as a 'household member' or 'other member of the family'.

Relationship between child sexual abuse victims and suspects in NSW

Despite these limitations, the information about sexual abuse reported to police was the best available information on the relationships between Aboriginal children and suspected sex offenders. Table 10 (below), summarises the information from reported sexual abuse incidents about the victim's relationship with the suspect.

¹⁸⁵ NSW Police Force, Business and Technology Services, Event Creation Streamlining, User Guide, Version 1.4, September 2002, p.25.

¹⁸⁶ Aboriginal Child Sexual Assault Taskforce (ACSAT), pp.73-75.

Table 10. Sexual abuse reports for victims aged 15 years or younger by relationship status, 2007-2011

Child victims (aged 0-15) Suspect's relationship to victim	Aboriginal		Non-Aboriginal		Unknown		Total	This relationship as a % of all child reports
	Number	% of all Aboriginal reports	Number	% of all non-Aboriginal reports	Unknown	% all unknown reports		
Relationship unknown or unstated	528	23.0%	4,949	22.2%	442	20.6%	5,919	22.1%
Not known to victim	93	4.1%	1,209	5.4%	89	4.2%	1,391	5.2%
Known, not classified elsewhere	662	28.9%	6,497	29.1%	616	28.8%	7,775	29.0%
Person in authority	25	1.1%	702	3.1%	44	2.1%	771	2.9%
Boy/girlfriend	149	6.5%	1,342	6.0%	153	7.1%	1,644	6.1%
Family or household relationships:								
Parent or guardian	270	11.8%	3,400	15.2%	404	18.9%	4,074	15.2%
Other member of the family	368	16.0%	2,560	11.5%	213	9.9%	3,141	11.7%
Sibling	105	4.6%	832	3.7%	113	5.3%	1,050	3.9%
Household member	42	1.8%	303	1.4%	26	1.2%	371	1.4%
Partner/spouse or Ex-partner/spouse	12	0.5%	55	0.2%	4	0.2%	71	0.3%
Carer	17	0.7%	174	0.8%	9	0.4%	200	0.7%
Child	23	1.0%	319	1.4%	29	1.4%	371	1.4%
All family or household relationships	837	36.5%	7,643	34.2%	798	37.3%	9,278	34.6%
All child victim reports	2,294		22,342		2,142		26,778	

Source: NSW Bureau of Crime Statistics and Research.

The large proportion (22.1%) of sexual abuse reports in which the relationship between the suspect and victim was recorded as 'unknown', underlines the caution expressed by BOCSAR about the reliability of this data. In a number of categories, 'unknown' suspects were greater than the total number of Aboriginal suspects.

Of those sexual abuse reports where the relationship status was noted, by far the largest group was the 34.6% of reports where the suspected offender was a member of the victim's household or family. For reports relating to non-Aboriginal child victims, the suspect was more likely to be a parent or guardian (15.2%). For Aboriginal children, the suspect was more likely to be 'some other member of the family' (16.0%).

Of the remaining sexual abuse cases, 29% recorded the relationship as 'known, not classified elsewhere'. This group included relationships where the suspect and the victim were acquainted, but not related, such as when the suspected offender was a neighbour or a friend of the victim or the victim's family. In addition, 5.2% of suspects were not known to the victim. The likelihood of the identified suspect being a stranger was marginally higher for non-Aboriginal child victims than for Aboriginal victims.

8.4 Types of premises

Police are also required to record information about where the alleged sexual abuse was reported to have occurred. Table 11 (below) summarises information from the 26,778 reports of child sexual abuse between 2007 and 2011, about where the alleged child sexual abuse was said to have occurred.

Table 11. Premises in reports of victims of sexual abuse aged 15 years and younger, 2007-2011

Premises type	Aboriginal		Non-Aboriginal		Aboriginality unknown		All reports	
	Reports	% Aboriginal	Reports	% non-Aboriginal	Reports	% unknown	Reports	% all reports
Residential	1,761	76.8%	16,230	72.6%	1,642	76.7%	19,633	73.3%
Outdoors–public place	184	8.0%	1,902	6.0%	128	8.3%	2,214	8.3%
Education	61	2.7%	1,325	5.2%	111	5.6%	1,497	5.6%
Other*	79	3.4%	1,396	4.4%	95	5.9%	1,570	5.9%
Unknown	209	9.1%	1,489	7.7%	166	7.0%	1,864	7.0%
Total reports	2,294		22,342		2,142		26,778	

Source: NSW Bureau of Crime Statistics and Research.

* Other includes adult entertainment, business/commercial, car park, health, industrial, law enforcement, licensed premise, marine transport, public transport, recreation, religious, rural industry, transport, utilities and vehicle.

Table 5 shows that most (73.3%) incidents of child sexual abuse were reported to have occurred in a residential environment. A further 8.3% were reported to have occurred outdoors or in a public setting. By comparison, the information on all (adult and child) sexual abuse reports shows that 66.5% of incidents were reported to have occurred in the home, and 13% were reported to have occurred outdoors or in a public setting.

While all children appeared to be at greater risk in residential settings, the information in Table 11 suggests that, compared with non-Aboriginal children, Aboriginal children are more likely to be abused in a residential setting, and less likely to be abused in an educational setting.

8.5 Criminal charges for child sexual offences

Compared with non-sexual offences, the percentage of sexual assault offences that are reported to police, proceed to court and ultimately result in a conviction has always been low. For instance, a 2008 BOCSAR report notes crime victim surveys estimating that only 15 to 20% of female sexual assault victims report the incident to the police and, of those sexual assault matters that are reported, the clear-up rate is also very low.¹⁸⁷

In reviewing the information about child sexual assault, we sought further advice directly from the NSW Police Force about how many reported incidents of alleged sexual abuse led to a suspected offender being charged. Table 12 shows police data relating to all child sexual abuse incidents against children aged 15 years or younger during the period of the Interagency Plan (2007-2011), and how many of those reported incidents led to a suspect being criminally charged.

Table 12. NSW child sexual abuse incidents leading to an offender being charged, 2007-2011

	Aboriginal children	Non-Aboriginal children*
Number of incidents, sexual abuse victims 15 years and under	4,672	23,084
Number of child sexual abuse incidents leading to a criminal charge	481	2,522
% of child sexual abuse reports leading to a criminal charge	10.3%	10.9%

Source: NSW Police Force, provided 13 December 2012.

* Includes children whose Aboriginality was unknown.

The analysis provided by the NSW Police Force shows that 10.3% of Aboriginal child sexual abuse incidents over the five year period led to a suspect being criminally charged. This is similar to the 10.9% of non-Aboriginal child sexual abuse incidents that led to a charge.

Table 13 (below) presents the same information, but on an annualised basis. It also includes data about incidents reported in 2012 (up to 11 December).

¹⁸⁷ K O'Brien, C Jones and V Korabelnikoff, *What caused the decrease in sexual assault clear-up rates?* BOCSAR December 2008.

Table 13. NSW child sexual abuse reports leading to an offender being charged, 2007-2011

	2007		2008		2009		2010		2011		2012 ^	
	Aboriginal	Non-Aboriginal *	Aboriginal	Non-Aboriginal *	Aboriginal	Non-Aboriginal *	Aboriginal	Non-Aboriginal *	Aboriginal	Non-Aboriginal *	Aboriginal	Non-Aboriginal *
Number incidents	778	4,108	866	4,467	995	4,676	953	4,663	1,080	5,170	1,005	5,001
Incidents that led to a charge	85	484	111	516	108	484	105	530	72	508	80	537
% charged	10.9%	11.8%	12.8%	11.6%	10.9%	10.4%	11.0%	11.4%	6.7%	9.8%	8.0%	10.7%

Source: NSW Police Force.

* Includes children whose Aboriginality was unknown.

^ The data for 2012 is the year to date total of matters entered onto COPS from 1 January to 11 December 2012, and verified by 12 December 2012.

As the annual figures show, the proportion of Aboriginal child sexual abuse reports that led to a criminal charge was lower in 2011 and 2012. The number of 2012 incidents that result in a charge will almost certainly rise as investigations relating to incidents that were reported in recent months are finalised, and a decision is made regarding whether to bring a charge before the court in relation to some of those cases. While acknowledging the noticeable dip in the number of 2011 charges, police warned that the charge data can be 'fluid', even for the figures relating to 2011 and earlier. Because of this 'lag' effect, we were told it was too early to identify factors associated with the recent fall, and whether it might represent a trend.¹⁸⁸

Additional data and a discussion of the issues relating to investigating and prosecuting child sexual abuse matters are considered in more detail in the following chapters.

8.6 Future data needs

In its 2011 report on the performance framework used to assess outcomes achieved by the Interagency Plan, the Social Policy Research Centre (SPRC) noted that a lack of meaningful local-level data had crippled Aboriginal Affairs' ability to monitor what, if any, changes might have been occurring in high-need Aboriginal communities that agencies had targeted for particular attention. The SPRC said that although high levels of under-reporting of sexual offences meant that police data cannot be used to indicate the actual incidence of sexual violence, the growing volume of offences being reported to police can provide valuable insights into the current demands on government and non-government services required to respond to this violence.

In our work directly with frontline agencies and in our earlier reports,¹⁸⁹ we have stressed the crucial role that child protection agencies and universal service providers can play in identifying opportunities to intervene early and to prevent sexual and other abuse against children. Child protection and criminal justice agencies in NSW have an array of valuable records that could be used to strengthen the service response to child sexual abuse. For this reason, we recommended in Chapter 7 that state-wide and local level crime data about child sexual abuse and sexual assault of the type that we specifically sought from BOCSAR and the NSW Police Force for this audit should – along with child protection reporting and outcome data – be collected and analysed as part of the *Keep Them Safe* performance framework to measure future responses to Aboriginal child sexual abuse.

¹⁸⁸ Information provided by the NSW Police Force, 14 December 2012.

¹⁸⁹ NSW Ombudsman, *Addressing Aboriginal Disadvantage: the need to do things differently*. A special report to Parliament under s31 of the Ombudsman Act 1974, October 2011.

Chapter 9. The operation of the JIRT

It is widely accepted that child sexual assault has particular features that make it one of the most difficult crimes to prosecute. In many cases, there is a high likelihood of the prosecution having to rely on a child as the most important and, frequently, the only witness. And in many cases, the defendant is highly likely to be a trusted family member or a friend of a family member. As Cossins' 2010 report for the National Child Sexual Assault Reform Committee explains, these:

...difficulties with prosecuting child sex offences raise obvious problems for the prevention of child sexual abuse given its prevalence in Australia and the number of cases substantiated by community services agencies per year.¹⁹⁰

Allegations of child sexual assault and serious cases of child abuse and neglect are typically responded to in NSW by the Joint Investigation Response Team (JIRT). This year, marks the 15th year of the JIRT program's operation. Established formally in 1997, the JIRT model was founded on the recognition that an effective response to serious child abuse requires the involvement of multiple agencies in order to address the safety requirements and therapeutic needs of the child, while simultaneously conducting a criminal investigation. The JIRT aims to provide a collaborative, interagency response to reports of serious child abuse through the joint investigation of cases by Police and Community Services, with support from NSW Health professionals. There are now 22 JIRTs operating across NSW and about half of these teams have co-located staffing arrangements in place.

There have been several incarnations of the JIRT over the last decade or so. A Joint Investigation Team involving Police and Community Services was first established in the early 1990s on a trial basis. This model was the precursor to what became known as the Joint Investigation 'Response' Team (JIRTs) and over the years, the number of teams continued to grow. The first four metropolitan JIRTs started operating in Ashfield, Liverpool, Parramatta and Penrith by July 1997 and additional teams were established in The Entrance, Newcastle, Wollongong and Kogarah later that year. By 1998, Police and Community Services officers in rural NSW were trained to undertake joint investigations although they did not operate within a co-located structure.¹⁹¹ Under the original JIRT model, NSW Health (Health) was responsible – primarily through its Sexual Assault Service – for providing medical and forensic examinations, counselling, and other health services as required. Health became a formal partner in the program in 2006.

The value of the JIRT multi-agency model was well summarised by Justice Wood in his report relating to the 2008 Special Commission of Inquiry into Child Protection Services in NSW.¹⁹² He noted the JIRT's ability in practice to:

- provide a timely and comprehensive investigative process, drawing upon the combined expertise and experience of the team members
- enhance the quality of investigations and the preparation of briefs of evidence
- where the case involves intra familial abuse, pave the way for the victim and non-offending family members, to have timely access to therapeutic interventions and counselling
- lessen the stress for victims by providing a more child focussed interview structure that should avoid the need for repetitive interviewing
- allow, in conjunction with the investigative process, case planning for the well-being and welfare of the victim
- facilitate better and more comprehensive exchange of information between partner agencies, and
- provide a platform for greater interagency cooperation and cross jurisdictional training in the complex and challenging issues that arise in relation to child sexual and physical abuse, and neglect.

Since its establishment, the JIRT has been the subject of a number of reviews and evaluations, each making valuable recommendations to improve its effectiveness. The various recommendations have been adopted by the partner agencies and have been progressively implemented. The most comprehensive review of the JIRT took place in 2006, and the recommendations it made largely form the basis of most of the JIRT-related actions contained in the Interagency Plan.

While local police, child protection and health workers operating outside of the JIRT also play an important role in responding to child sexual abuse, the JIRT is the primary vehicle for responding to the majority of these cases. An increasing proportion of these cases now involve Aboriginal children. Examining the operation of the JIRT has therefore been an important component of our audit.

¹⁹⁰ A Cossins, *Alternative Models for Prosecuting Child Sex Offences in Australia*, Report of the National Child Sexual Assault Reform Committee, UNSW 2010.

¹⁹¹ Cashmore, J, Taplin, J and Green, V, Evaluation Summary Report of the Joint Investigation Team Strategy, June 2002.

¹⁹² Report of the Special Commission of Inquiry into Child Protection Services in NSW, November 2008, Volume 1, p.321.

There have been a range of significant initiatives that have been developed by the JIRT over recent years aimed at making the program more responsive to the needs of Aboriginal children. However, the success of these initiatives is dependent on the JIRT operating effectively.

Our audit has involved reviewing a range of JIRT referral and outcome data; individual case reviews; meetings with JIRT partner agencies; and responses to information requirements issued by our office. From these information sources, we have identified a range of issues that have adversely impacted on the effectiveness of the JIRT program.

Due to the multi-faceted and complex nature of the JIRT, there are a myriad of practice issues, developments and achievements that could be canvassed in this report. Instead, we have sought to highlight the fundamental challenges currently facing the JIRT partnership, which in our view, must be given attention. If this does not occur, it will be difficult for many of the positive reforms implemented by the JIRT State-wide Management Group to achieve the intended outcomes. Our audit has identified that the majority of the problems stem from chronic staffing shortages across the JIRT partnership and highlight the need to strengthen accountability, data collection and case management systems in the monitoring of, and reporting on, JIRT outcomes.

In various ways, these resourcing problems have impacted on core practice issues which go to the heart of the JIRT partnership: for example, the ability of Police and Community Services workers to meet their commitment to jointly interview children and to conduct local planning and response briefing and debriefing meetings for individual cases.

In 2011, we also received a complaint about the effectiveness of the policing arm of the JIRT. We initiated a separate inquiry into this complaint which we discuss later in this chapter. This complaint precipitated a comprehensive review of the Child Abuse Squad's operations, which is still ongoing. Through our inquiry, and our ongoing oversight of individual cases handled by the JIRT, we will continue to examine practice and systems issues as they unfold.

Finally, in examining the challenges confronting the JIRT, it is also necessary to look back at what recent reviews and inquiries have said about how the JIRT needs to improve, as well as those areas where progress has been made; particularly in relation to more effective engagement of Aboriginal children in the JIRT program.

9.1 The Interagency Plan's focus on JIRT and improving its response to Aboriginal children

9.1.1 Actions under the Plan

As previously noted, the Interagency Plan commenced in January 2007. It listed 'Improved communication and operational protocols for JIRTs' as one its five 'Immediate State-wide Actions'. The Plan also highlighted the high drop-out rate of Aboriginal sexual abuse victims from the point of reporting to police up to the completion of the court process. The drop-out rate was attributed to a range of issues including:

...the delay between disclosure and the JIRT interview process, difficulties around language used for evidence and disclosure, the formality of the recorded interview process and the rigour of the JIRT guidelines around disclosure.

At the time of the Interagency Plan's release, the 2006 JIRT Review had only just been finalised. Therefore, it is understandable that much of the focus of the Interagency Plan's actions that were directed at the JIRT, relate to the implementation of the 18 recommendations from that review. In this regard, the Plan appears to recognise that the overall efficient operation of the JIRT is critical to Aboriginal children being provided with a good quality investigative and therapeutic response. The 2006 JIRT Review also made a number of recommendations aimed at improving the accessibility of the JIRT to Aboriginal children and their families.

The JIRT Chief Executive Officers accepted all of the 2006 Review recommendations. The majority of these have now been either implemented or subsumed into related work associated with the *Keep Them Safe* reforms. A number of these recommendations have also been adjusted due to both current capacity challenges being experienced by the partner agencies and organisational changes that have occurred over the last six years. For example, improving access to both forensic medical examinations for child sexual assault victims and counselling services (which we discuss in detail in Chapters 10 and 11) are being addressed through a broader work program being carried out by Health and overseen through *Keep Them Safe*.¹⁹³

Altogether there were six actions in the Interagency Plan directed at the JIRT partner agencies. Action 26 required the partner agencies to 'Implement the findings of the JIRT Review [See Actions 27 to 31]'. These actions relate to:

- Action 27 – improved data collection systems to capture JIRT processes and outcome data for children – it was intended that these systems would support information sharing and quality improvement.

¹⁹³ Response by JIRT State-wide Management Group to NSW Ombudsman Information Requirement, 8 October 2012.

- Action 28 – reviewing and enhancing JIRT operational procedures and protocols across nine areas including (but not limited to): the criteria for acceptance of cases and the focus on a child’s disclosure; processes for assessment and referral decisions; initial response meetings between agencies; victim communication protocols; and safety planning.
- Action 29 – enhancing interagency protocols for timely exchange of information; functioning of local coordinating groups; and resolving operational management issues.
- Action 30 – resolving workforce issues including increasing the number of Aboriginal staff employed in the JIRT and retaining them through improved staff development (also a focus of Action 66); and expanding the availability of medical services, such as forensic medical services, through improved networking and training of medical practitioners.
- Action 31 – developing strategies for effective liaison and engagement with Aboriginal communities including: placing JIRTs in locations with significant Aboriginal populations; developing engagement and community education plans; cultural awareness training for staff; having a designated support person during the JIRT process to assist the child and family.¹⁹⁴

9.1.2 Weakness in the governance arrangements

While the list of actions is sound and reflected the then reform agenda, the program’s performance framework established to measure the impact of the Interagency Plan, did not seek to test whether these actions led to an increase in the number of Aboriginal children being referred and accepted into the JIRT program, or the nature of the child protection, therapeutic and investigative responses these children ultimately receive.

The performance framework included only two measures relating to the JIRT:

- Percentage of Aboriginal children and young people involved in reports referred to a CSC/JIRT for further assessment, where any report is sexual.
- Percentage of JIRT officials who have had cultural awareness training.

As we discussed in Chapter 7, the first performance measure was only reported on once at the end of the Plan, and did not include any analysis of outcome data.

The November 2011 review of the performance framework conducted by the Social Policy and Research Centre (SPRC)¹⁹⁵ identified the gap in outcome data and recommended that a future indicator against the first measure should be the ‘proportion of investigations finalised by the time taken to complete investigation.’ However, as the Plan had almost ended by the time that the SPRC review was completed, no action was taken to address this issue.

Therefore, we could find no evidence indicating that Aboriginal children’s access to the JIRT program had been examined during the five year period of the Plan’s implementation. This failure to assess the level of access is particularly disappointing because the drop-out rate for Aboriginal victims after the police reporting stage had been singled out in the Plan as a key concern.

In addition, there was no assessment undertaken of each partner agency’s performance in responding to Aboriginal children who were referred to the JIRT program. Basic indicators might have included:

- The number of Aboriginal children referred to the JIRT program and the proportion who were accepted
- The number of child interviews conducted
- The number of children and their non-offending parents/carers referred to counselling and the acceptance rate
- The number of forensic medical services provided
- The nature of protective action taken by Community Services, and
- The number of arrests and charges; and prosecutions.

Furthermore, there appears to have been no attempt to link the Interagency Plan governance structures with the governance arrangements associated with the annual reporting process to the JIRT CEOs. While the JIRT CEOs’ annual report card does not contain all of the above measures – for example, data is not broken down in relation to Aboriginal children – it does include a range of useful high level indicators relating to the performance of the overall JIRT program. Had an attempt been made to integrate the two governance processes, action could have been taken to use the annual CEO reporting process to disaggregate the headline data indicators against the Aboriginality

¹⁹⁴ Actions 39 was directed at Corrective Services and required Probation and parole to link with JIRTs to inform pre-sentencing reports and community-based supervision of offenders. This action was completed.

¹⁹⁵ Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, Final Report, November 2011.

of children referred to the JIRT, thereby enabling an assessment to be undertaken of the outcomes for Aboriginal children.

We believe that this failure to analyse those cases referred to the JIRT which involve Aboriginal children, has contributed to a number of the problems now facing the JIRT. In particular, its limited capacity to provide prompt and comprehensive responses to referrals ought to have been detected, and acted on, at an earlier stage in the Plan's implementation.

Instead, the monitoring of the JIRT's operations throughout the Interagency Plan tended to focus on activities associated with community engagement, Aboriginal staffing numbers and the cultural competency of non-Aboriginal JIRT staff. While these are all worthwhile activities, it is concerning that more wasn't done by the Aboriginal Child Sexual Assault Senior Officers Group (ACSA SOG) to track critical JIRT data relating to Aboriginal child sexual assault victims.

Having said this, there are a number of very good initiatives that were introduced during the five year period of the Interagency Plan's operation which focussed specifically on enhancing the JIRT's response to Aboriginal children. These are discussed below.

9.2 Significant developments following the 2006 JIRT review

As we have previously noted, the most comprehensive review that has been undertaken of the JIRT took place in 2006. The recommendations from the review have played a major role in setting the direction of the JIRT since that time.

The review identified a number of important areas for improvement - many of these remain relevant. A major weakness of the program at that time was the inconsistent application of the JIRT criteria. This was evidenced by significantly different acceptance rates between individual JIRTs. (At that time, each JIRT was responsible for assessing the referrals that fell within their area.) Additional problems included:

- delays in interviewing children
- an over dependence on the need for a disclosure from the victim
- a lack of reliable and accessible data on JIRT processes and outcomes
- a lack of timely referral to forensic medical services and to other allied health services, such as counselling - we discuss these issues in detail in chapters 10 and 11
- difficulties in engaging Aboriginal children, and
- the need for more integrated decision-making and input from partner agencies.

At the time of the Wood Inquiry, many of the 2006 recommendations were still being bedded down. The Inquiry commented on the need to address the problems identified by the Review but also noted the progress that had been made since the JIRT's inception in the early 1990s. It supported the JIRT's continuation and the plans to complete the reform process set down by the 2006 review.

However, Justice Wood observed that:

...the full involvement of Health as a JIRT partner, enhancement of the Forensic Medical Service, and implementation of the strategies designed to make the JIRT process more accessible and productive in relation to the Aboriginal community, will involve a substantial commitment of resources on the part of all partners that will have financial implications. The Inquiry, however, considers that there is no alternative other than to complete the reform program, and to maintain an auditing and monitoring process in order to identify whether any of the issues mentioned above continue to emerge, or whether new problems arise that need to be solved.¹⁹⁶

Justice Wood also cautioned that although the planned reforms following the 2006 JIRT Review were likely to address a number of the issues that had been raised with the Inquiry, 'the fact is that they have caused problems in the past, and unless suitably addressed, they are likely to re-appear.' Against the background of his Honour's comments, it is therefore useful to consider some of the significant developments for the JIRT post the 2006 Review.

9.2.1 The establishment of the JIRT Referral Unit (JRU)

From around 2005, our office had raised concerns with Community Services relating to inconsistent decision-making across the JIRTs, particularly in the context of initial assessment decisions. In September 2008, the JIRT Chief Executive Officers Group established a trial of a centralised decision-making team – known as the JIRT Referral Unit (JRU) - with participation from each of the three partner agencies. The aim of the trial was to address some of the 'quality and workload issues' facing the local JIRTs at that time. The JRU's primary role was to conduct joint

¹⁹⁶ Report of the Special Commission of Inquiry into Child Protection Services in NSW, November 2008, Volume 1.

assessments of all referrals as a way of achieving consistency across acceptance and rejection decision-making. This was seen as a fundamental 'desired outcome' for the JRU. Another central aim of the JRU was to free up local JIRTs from assessment work in order to give them more time to collaboratively plan and investigate individual cases.

During the JRU's nine month trial period, 64.5% of all referrals (relating to both physical and sexual abuse) were accepted into the JIRT program, compared to 56% before the trial. A review of the trial predicted that the 8.5% increase in the acceptance rate would continue to increase. As we discuss later, the acceptance rate for referrals has increased at a much greater rate.¹⁹⁷

By all accounts, the JRU appears to make consistent, well-considered decisions and has helped build strong collaborative working relationships between the three partner agencies.

Despite the JRU's success, a decision has not yet been made to establish the Unit permanently. We understand that the JRU is currently being funded through *Keep Them Safe* up until the end of 2014. In light of the crucial role that the JRU plays in providing consistent and high quality decisions, we believe that its future should be secured.

9.2.2 The Aboriginal Community Engagement Guidelines

The Wood Inquiry recognised the importance of developing guidelines to assist JIRT officers to engage with Aboriginal communities about the complex range of issues involved in investigating sexual assault cases. The Inquiry heard evidence from certain communities about the divisions that had been caused when sexual assault investigations were not handled carefully. Community members highlighted the need for these cases to be managed sensitively to avoid victims withdrawing from the process and to minimise the risk of valuable corroborating evidence not being provided by witnesses. Understanding community dynamics and the risks for victims and others who provide support in these very delicate situations, is therefore essential for JIRT officers working in Aboriginal communities.

At the time of his Inquiry, Justice Wood acknowledged the development of a community engagement protocol by Police and Community Services. The protocol that was developed involves a suite of measures including:

- making a support person available to a victim during a JIRT intervention
- utilising Aboriginal agency staff for a JIRT consultation
- improving JIRT staff cultural awareness, and
- informing the JIRT's engagement with Aboriginal communities through a community awareness and education package.

The JIRT Aboriginal Consultation Protocol was implemented in 2009 and the Engagement Guidelines were the subject of a phased state-wide implementation that was completed in April 2010.

In June 2012, the JIRT State-wide Management Group (SMG) endorsed a proposal by Community Services to review the effectiveness of the implementation of the Engagement Guidelines, and to develop a more user-friendly fact sheet for frontline staff. So far, Community Services has reviewed all local management group minutes for 2012, and telephone interviews have been conducted with Managers Casework across all JIRTs. Community Services has also indicated that it will provide us with a draft of the new fact sheet in the near future.

According to recent advice provided by the JIRT SMG, its survey work has revealed a greater level of engagement with Aboriginal communities by JIRT staff; including participation in Aboriginal community events and stronger links with Aboriginal service providers.

The JIRT has also been approached by several Aboriginal women's groups, service providers and other community leaders over the last year have asked for training on how to handle disclosures, including advice about the best way to support victims without compromising investigations. This type of targeted community education work with Aboriginal women's groups should remain a focus for the JIRT.

9.2.3 The impact of the Bourke JIRT

The Bourke JIRT was established in July 2009. At this stage, it is a temporary unit and has been funded so far through Safe Families program funds which are due to expire at the end of June 2013. It was intended that the Bourke JIRT should complement the work of the Safe Families program which, has as one of its main aims, raising awareness about child sexual assault across the program's five sites in Western NSW. Police provided us with information about the activities of the Bourke JIRT, over the period July 2009 to December 2011.

Although, compared to other JIRTs, the Bourke JIRT has not experienced a high level of demand over the last two years, referrals are increasing, and the level of engagement and educative work that the team has carried out across

¹⁹⁷ NSW Police Force response to NSW Ombudsman Requirement for Information, May 2012.

the Orana Far West region has been extensive. Much of this work has been undertaken in partnership with the Broken Hill JIRT.

The Bourke JIRT should be commended for its efforts in engaging a broad range of community groups and service providers, including those in smaller remote communities. There has been a particularly strong focus on educating health workers and schools.

The feedback that we have received about the team during our visits has been positive, and we have detected a high level of awareness about the existence of the Bourke JIRT. The team appears to have fulfilled its brief to raise community awareness of the issue of child sexual abuse, as well as the role of JIRTs. Police and other agency representatives are strongly of the view that the Bourke JIRT should be maintained, and that its future should not be tied to the Safe Families program. In our opinion, the existence of the Bourke JIRT in the Orana Far West region is an important symbol of a commitment by government to providing support for child sexual assault victims in remote parts of the state.

9.2.4 Enhanced JIRT services to Aboriginal children and young people

The *Enhanced JIRT services to Aboriginal children and young people* protocol was introduced in May 2010 to complement the community awareness raising and support work being undertaken through Aboriginal Affairs' Focus Community Program (which includes the five Safe Families program sites), and to meet the objectives of the Interagency Plan. These more flexible assessment processes were implemented for Aboriginal children in recognition that referrals can be rejected on the grounds that a disclosure is 'third hand' or 'not sufficiently comprehensive' to meet the JIRT's accepted case threshold.

When referrals that do not meet the usual JIRT criteria are received by the JRU about an Aboriginal child, in addition to the standard information gathering processes, the JRU will source local knowledge about the child (and their community) to assist in deciding whether to accept the referral.

In addition to a matter being referred to a local JIRT, all accepted referrals should be promptly referred to a Sexual Assault Service; and in Safe Families locations, the Manager Casework for Community Services. The relevant Safe Families team is also notified when a referral has been accepted for JIRT intervention.

The acceptance rate for Aboriginal children the subject of sexual abuse referrals has dramatically improved since the introduction of the Enhanced JIRT Services Protocol. By 2010, the acceptance rate into the JIRT program for Aboriginal children had increased to 70% and by 2011, it had risen to 80%. The average acceptance rate for all children in 2011 was 66%.¹⁹⁸

Both the establishment of the JRU and the introduction of the Enhanced Services protocol have delivered good results in relation to improving Aboriginal children's access to the JIRT program.

However, our analysis of Aboriginal children's access to the JIRT program has highlighted a decline in the referral acceptance rate for non-Aboriginal children reported to be at risk of sexual harm. In 2009, the acceptance rate for non-Aboriginal children was 58% and this decreased slightly to 54% in 2011.¹⁹⁹ This raises questions about whether or not the JIRT sexual abuse criteria should be interpreted more broadly for *all* children. In this regard, we note that the 2006 JIRT Review also highlighted concerns about the 'over-reliance on a disclosure' for acceptance into the JIRT program. However, we recognise that any consideration given to broadening the sexual abuse criteria must take place in conjunction with a review of the JIRT's current resourcing capacity.

9.2.5 Other reforms and initiatives

Another significant structural reform has involved the decision by Community Services to remove operational reporting for the JIRT away from its regions and to adopt a more streamlined reporting and accountability model under the authority of a JIRT Director. This decision has been an important step in giving the Community Services' arm of the JIRT program stronger and more cohesive leadership.

Leadership of the overall JIRT program has also been enhanced by including more senior representation on the JIRT SMG. The JIRT SMG is responsible for leading a range of cross-agency JIRT-related initiatives, as well as quality assurance and identifying opportunities for ongoing system improvement across the partnership. The JIRT SMG reports to the CEOs of the three partner agencies, principally through an annual Report Card, which contains a range of 'Headline indicators' against which performance is measured.

Other major developments resulting from the 2006 Review include:

- revising arrangements for local management groups

¹⁹⁸ Information provided by the NSW Police Force in response to NSW Ombudsman Requirement for Information, May 2012.

¹⁹⁹ Information provided by the NSW Police Force in response to NSW Ombudsman Requirement for Information, May 2012.

- completing a new induction kit for JIRT staff
- reviewing the JIRT foundational training program and developing a new curriculum
- the development and implementation of a vast array of procedures and directives to provide better guidance to the field (however, these documents are yet to be consolidated into the *JIRT Procedures Manual* which has not been updated since 2001), and
- the carrying out of an audit into the level of adherence by JIRTs to established Local Planning Response Procedures – this is the first area to be audited as part of an ongoing three yearly audit program.
- NSW Health's establishment of an 'initial JIRT workforce' of 25 Senior Health Clinician positions in 2009, most of which have been filled as at December 2012. While this is a positive step by Health, against a background of significant capacity challenges in the counselling sector, it will be important for any broader review of the JIRT's resources to include an examination of Health's current and anticipated resourcing requirements to enable it to fulfil its JIRT responsibilities.

9.3 The impact of the JIRT Referral Unit on workloads

While it is clear that a number of the developments since the 2006 Review have been positive, a number of significant challenges have also arisen for the JIRT.

By way of background, as part of our audit we asked Police to provide us with three years of JIRT referral and assessment data – from 2009 to 2011. We were particularly keen to examine the impact of the increase in accepted referrals on the capacity of local JIRTs to respond. The data showed that, during this period, the acceptance rate had increased by 25% from the pre-JRU period. However, the resulting increase in workload has not been matched by an increase in resources.

Given that the accepted referral rate appears to have now stabilised, it would be timely for a review to be conducted into the level of JIRT resourcing against the increased demand. This review would need to consider the current resources of the three partner agencies. However, it would be inappropriate to suggest that reviewing the capacity of JIRT should only be about ascertaining whether there is a need for more resources. As we have seen from our review of the child protection system more broadly, examining resourcing without also examining productivity is likely to be an unproductive exercise. This fact has been well illustrated in our recent examination of the Police Child Abuse Squad.

9.4 Current challenges facing the Police Child Abuse Squad

Earlier in this chapter, we referred to having received complaints about the operations of the policing arm of the JIRT. These complaints were brought to our attention over 12 months ago via concerns raised both in the media and directly with our office.

The complaints, inter alia, alleged that child sexual abuse cases were being shut down too early. In support of their allegations, the complainants referred to a marked decrease in charge and arrest rates for JIRT cases, particularly in certain locations.²⁰⁰

Our early inquiries into this issue revealed that the then recently appointed Commander of the Child Abuse Squad, had already identified a number of problems relating to policing performance within particular JIRTs, had taken steps to explore the causes and had begun to put in place remedial action.

However, in light of the importance of the issues raised, we formally required Police to provide us with productivity, and related outcome data, from across all of the JIRTs. In response, Police provided us with a state-wide workload analysis report for the Child Abuse Squad covering a ten month period in 2011. This report provided us with valuable insights into the performance of individual JIRTs. It also highlighted the type of key performance data that can be easily captured from the JIRT database.

9.4.1 Findings from our analysis of Police JIRT outcome data

For example, the workload analysis provided the following information:

- authorised staff allocated to each JIRT
- allocated jobs for each JIRT and average jobs per officer
- the number of child interviews conducted, average number of interviews conducted per officer, and the proportion of interviews conducted per allocated number of jobs

²⁰⁰ Resulting largely from the introduction of the JRU in late 2008 and a change in the policy for assessing 'adolescent peer sex' cases.

- the number of arrests/charges carried out, average arrests per officer, the proportion of arrests per allocated jobs, and the proportion of arrests per interviews conducted.

Upon analysing this information, we noted the following:

- Of the 22 JIRTs, the average number of 'jobs per officer' for each JIRT ranged from about 11 jobs per officer in the lowest ranked JIRT to 49 in the highest ranked JIRT.²⁰¹
- As the average number of jobs per officer does not reflect the work involved in each job, we also considered the proportion of jobs allocated where a child victim was interviewed. Once again, we detected significant variations across JIRTs in relation to their per officer interview rates. It was interesting to note that two of the JIRTs with the highest work volume and number of 'allocated jobs per officer,' were among the lowest for the number of child interviews conducted on a per officer basis.
- In addition to gauging the rate of child interviews, two other important measures relating to work performance are the numbers of arrests and charges per officer as a proportion of all jobs allocated.²⁰² Those JIRTs with the highest volume of jobs would be expected to be among those with the highest number of arrests. However, the data showed otherwise.
- Given the connection between interviews and resulting arrests, we also looked at the proportion of arrests per the number of interviews conducted. We found evidence of JIRTs conducting relatively high numbers of interviews per officer, but with low resulting arrest rates. In order to better understand why arrest rates might be low for particular JIRTs (and higher for others) it is necessary to conduct comparative analysis of other data fields in the JIRT database relating to interview outcomes (such as: 'parents desired no action'; 'no complaint from child'; 'victim unwilling to give statement'; and 'victim unwilling to go to court).
- However, what was particularly significant was one high volume JIRT that stood out in relation to its performance against all the measures. This JIRT had the second highest arrest rate and the second highest rate of jobs per officer. Although this JIRT was managing a high volume of work, it also had the highest percentage of interviews against allocated jobs.

From our review of the data, we believe that the Police JIRT workload analysis report is an excellent tool for assisting in identifying relative productivity, and associated outcomes, across the various JIRTs. In November 2012, we discussed the potential benefits of using this report as a performance measure with senior representatives from the Child Abuse Squad and the State Crime Command. In commenting on our analysis, Police supported our findings regarding the data showing marked variations between JIRTs in relation to key outputs/outcomes. However, they noted that recent discussions with a number of JIRTs indicated that the significant variations may, in part, be due to a failure by some JIRTs to capture relevant outcomes.

Given that this issue of data integrity should be able to be easily resolved by police, we believe that the state-wide workload analysis report should form part of the introduction of an improved performance monitoring regime for each JIRT.

In this regard, we were pleased to be advised recently that JIRT senior managers will now use the workload report to regularly track the performance of each JIRT. It is also encouraging that as a result of the Squad Commander's review of the performance challenges facing the Child Abuse Squad, the Human Resources Command is now carrying out further work on how to enhance productivity and address workload challenges. A working party has been established which is due to report its findings to the Deputy Commissioner, Specialist Operations, early in 2013.

In addition, in the last 12 months, four new Inspectors have been installed to support the Squad Commander in implementing a range of new systems. Significant time has also been invested in addressing a range of human resource problems that were impacting heavily on the JIRT.

Other initiatives that have been put in place by the Child Abuse Squad's Senior Management Team to improve performance, include:

- A Team Development Review process that was implemented in 2011 and will now be conducted annually. The process will be used to review the performance of individual JIRTs and to promote best practice. A comprehensive analysis of output and outcome measures will be considered, and will take place in a group setting to allow individual JIRTs to benchmark their own performance.

²⁰¹ However, it is important to take other factors into account in assessing this information. For example, JIRTs operating in rural and remote locations with significant Aboriginal populations can spend a considerable amount of time travelling and engaging with community groups and carrying out information and awareness sessions in schools to increase reporting. This is particularly the case in relation to the Bourke and Broken Hill JIRTs. For these JIRTs, the introduction of the *Enhanced protocol for disclosures from Aboriginal Children and young people* has involved spending more time on rapport building with alleged victims.

²⁰² Arrests and charges are separately recorded. This is because workload is measured more accurately by arrests than by the number of charges laid, as one offender may be subject to multiple charges. Having said this, processing and preparing briefs of evidence in relation to multiple charges also impacts on resourcing. Once again, these factors need to be taken into account when reviewing statistics.

- Inspectors now being tasked with tracking the performance of the different JIRTs within their area of responsibility (utilising the workload output/outcome measures that have been, and are being, developed – for example, each JIRT’s ranking against child interview, charge and arrest rates).
- Inspectors increasing their mentoring activities with individual JIRTs, and conducting more regular field visits for this purpose. Prior to these visits, Inspectors will analyse performance data enabling them to conduct more targeted monitoring of performance.
- The establishment of a Child Abuse Response Team in 2012 to provide support to JIRTs in relation to complex and protracted investigations. The State Crime Command has also committed to supplying additional support when necessary.

Furthermore, notwithstanding the legitimacy of a number of the concerns that were raised in the complaints made to our office, we were pleased to note that, over the past few years, there has been a significant increase in the use of pro-active investigative measures by JIRTs (such as, search warrants and covert techniques). The most profound increase occurred during 2012. As Table 14 below demonstrates, by the end of 2012, the use of proactive investigative measures was four times higher than it was in 2009. This is a positive sign of cultural change across the Child Abuse Squad.²⁰³

Table 14. Proactive policing activities

Applications	2009	2010	2011	2012
Covert measures	9	15	20	73
Search Warrants	40	55	62	120

In addition, recent information that we required from Police indicates that there has been an improvement in the child sexual abuse charge rates for 2012. As we discussed in the previous chapter, the increase was from 9.8% in 2011 to 10.7% in 2012 (with a likely further rise once charges for the year have been processed).

Notwithstanding the importance of these recent endeavours, it would be naive to suggest that the issue of variable performance within JIRTs has now been effectively dealt with. During our extensive consultations with senior members of the Child Abuse Squad on this issue, they were open in discussing the challenges in attracting sufficient numbers of high quality police to the JIRT. In this regard, they noted that the emotionally confronting nature of the work means that many police will continue to choose to avoid child protection work. In addition, they discussed that being located in a JIRT both physically and operationally, disconnects police from the larger structure which many police perceive as providing pathways to promising career and development opportunities.

In addition, serious child abuse work traditionally attracts a larger number of female officers who are often juggling family responsibilities, thus making the absence of shift-work appealing. However, a sizeable female workforce has created significant resource management challenges for the Child Abuse Squad. The JIRT has the highest proportion of female and part-time officers, as well as the highest proportion of officers on maternity leave. And while the average number of female officers across the NSW Police Force is 27% – for the JIRT, it is 65%.

Senior management of the Child Abuse Squad also acknowledged the need to improve day-to-day supervision of cases. However, effective supervision requires sufficient numbers of high quality and experienced police to carry out this work. Currently from a squad of 141 officers, the senior management of the Child Abuse Squad comprises:

- a detective superintendent
- four Inspectors²⁰⁴ who each share responsibility for managing the performance of the 22 JIRTs
- five detective senior sergeants (two are located at the JRU and three are located centrally and form part of the Senior Management Team), and
- 19 detective sergeants who hold the position of ‘Team Leader’ who are responsible for the day-to-day supervision of JIRTs (several Team Leaders in rural locations have responsibility for two JIRTs).

Despite the need for improved supervision, we have been advised that Inspectors in the Child Abuse Squad are responsible for three to four times more staff than Inspectors across the State Crime Command generally. In addition, JIRT inspectors are also required to travel much greater distances to supervise teams within their geographic zones. Therefore, in terms of our earlier commentary about the need to review the capacity of the JIRT against the background of increased demand, these supervisory issues, should also be considered as part of any proposed review.

²⁰³ Information provided by the NSW Police Force, 5 December 2012.

²⁰⁴ One of these Inspectors also now holds the human resource management portfolio.

Furthermore, while there is already the potential to introduce much more rigorous performance monitoring of JIRTs – consistent with what already takes place under the Local Area Command structure – such a system needs to be fully functioning.

As we have noted previously, even if productivity/outcomes are substantially improved, this will not guarantee that all serious child abuse matters – including child sexual assault – are able to be responded to appropriately. For this reason, increasing the resources of the NSW Police Force to deal with these serious child abuse matters will, in all likelihood, need to be considered, along with improvements in productivity.

We also believe that expanding the capacity of the NSW Police Force to deal with serious child abuse ought to include careful consideration of whether, in certain circumstances, Local Area Commands might be able to play a greater role in dealing with serious child abuse cases.

Finally, given the critical importance of this issue, it will be essential for the NSW Police Force to be open and transparent about the extent to which they are effectively responding to the challenge of improving its practice in this area – this will require regular and ongoing reporting of key performance data.

9.5 Strengthening the JIRT together

Having discussed the initiatives that Police are, and will need to, undertake to drive improvements in its JIRT-related performance, it is important to recognise that changes police may make in the JIRT field, have the potential to impact on its JIRT partners. For example, if through a combination of improved productivity and resourcing enhancement, police substantially improve their capacity, this will inevitably place a greater resource burden on its JIRT interagency partners. For this reason, any significant changes made by any of the JIRT partners in relation to their involvement in JIRT should be carried out in consultation with their JIRT counterparts.

Recently, we have seen a number of examples of why it is essential for each JIRT partner agency to recognise the symbiotic nature of the JIRT relationship. These include:

- Cases where Community Services and Police have failed to pass on critical child protection information to each other.
- Unacceptable risks posed to children arising from circumstances in which Community Services' staff have not been readily available to join police in JIRT operations.
- A high percentage of mandatory joint briefings not taking place between JIRT partner agencies, notwithstanding the risks that this poses to good practice.
- Acknowledgement by each partner agency of the adverse JIRT practice and performance implications arising from poor data collection systems across the JIRT partnership (and the need to jointly address this issue).

Therefore, despite the high quality individual and collective contributions made by members of the JIRT SMG, in order to avoid the performance of this group being overly dependent on the particular leaders of the group at any point in time, we believe that the JIRT CEO Group should develop a more robust framework – than the annual CEO report card – to enable it to more effectively oversight and take responsibility for the ongoing health of JIRT. In doing so, we would also recommend that they pay adequate regard to the need to continue to improve the JIRT's performance in Aboriginal child sexual assault.

Recommendations

20. **That the respective heads of the three JIRT partner agencies should individually and severally carry out a review of the JIRT program that focuses on:**
 - a) **Whether the resources available to deliver on the key components of the JIRT program are adequate.**
 - b) **Establishing a solid framework (and related evidence base) for better ongoing monitoring of the performance of the key components of the JIRT program. In establishing the framework, the respective heads of the three JIRT partner agencies should pay particular attention to the following:**
 - i. **Enhancing the JIRT program's case management information system(s).**
 - ii. **Effectively utilising the Child Abuse Squad's state-wide workload analysis reports.**
 - iii. **Continuing to strengthen the role of the JIRT State-wide Management Group in relation to its audit role and its leadership, and evaluation of, cross-agency JIRT-related development initiatives.**

- iv. Enhancing the output/performance data currently reported to the respective heads of the partner agencies by the JIRT State-wide Management Group.
 - v. Ensuring that there are adequate systems in place for assessing the ongoing impact of the Enhanced JIRT Services to Aboriginal children and young people protocol. (And its potential applicability to non-Aboriginal children).
 - vi. Whether there is ongoing practice improvement in relation to the exchange of critical information between JIRT partners.
 - vii. The extent of compliance with Local Planning Response Procedures.
 - viii. Whether there is ongoing progress in relation to the implementation of the *Aboriginal Community Engagement Guidelines*.
 - ix. Whether there is continuing high quality performance in relation to the operations of the JRU.
21. In consultation with its JIRT partners, the NSW Police Force should continue its ongoing review of its practices and performance as the lead criminal investigative body of JIRT. In doing so, the NSW Police Force should seek to:
- a) Enhance its monitoring systems of its individual JIRT teams in line with the rigorous monitoring system it already has in place under the COMPASS performance management system.
 - b) As previously noted, seek to effectively utilise the Child Abuse Squad's state-wide workload analysis as a performance monitoring tool.
 - c) Consider whether the allocation of supervisory JIRT positions is adequate.
 - d) Consider innovative strategies for making JIRT a more attractive operational policing unit.
 - e) Consider the scope for, and appropriateness of, Local Area Commands carrying out increased work in relation to serious cases of child abuse.
22. That the NSW Government commits to permanently funding the JRU and the Bourke JIRT.

Chapter 10. Meeting the demand for counselling

Quality support services are an essential component of a response to child sexual assault. An important way to encourage reporting is for Aboriginal communities to see that children and their families are being actively supported when they come forward about sexual abuse.

Keep Them Safe recognises the critical support role that sexual assault counsellors play in the coordination of responses for child and adult sexual assault victims, including 'arranging medical responses, providing crisis and ongoing counselling, support and court preparation'.²⁰⁵

JIRT's Policy and Procedures Manual recognises that:

*Research indicates that children/young people and families who receive an immediate crisis response and counselling following a disclosure of sexual abuse, experience reduced long-term effects of trauma. There is also a reduced likelihood for associated problems such as substance abuse, youth homelessness and adult mental health issues requiring health services.*²⁰⁶

The 2006 report by the Aboriginal Child Sexual Assault Taskforce (ACSAT), *Breaking the Silence: Creating the Future*, identified that there was a significant shortage of sexual assault counsellors and Aboriginal counsellors.²⁰⁷ Accordingly, the Interagency Plan had a strong focus on expanding the capacity of counselling services for victims through the following Actions:

- Action 44: Expand regional and state-wide sexual assault counselling capacity, provide additional Aboriginal specialist child sexual assault counsellors, and establish 'special response groups' to travel to communities as required and to work with local service providers (assigned to NSW Health).
- Action 73: Review the (then) Area Health Service counselling services, including best practice techniques, principles and models for counselling Aboriginal people including those in correctional facilities, the need for a register of Aboriginal counsellors and review of specialised medical service delivery in rural and remote areas. Implement findings of this review as appropriate (assigned to NSW Health).
- Action 85: Monitor and extend strategies to increase the number of Victims Services Approved Counsellors experienced in Aboriginal issues (assigned to the Attorney General's Division).

The shortage of counsellors, including (but not limited to) designated Aboriginal positions, was reiterated in 2008 by the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry).²⁰⁸ When *Keep Them Safe* was released in March 2009 in response to the Wood Inquiry, it acknowledged that while NSW Health has a broad network of sexual assault services for children and adults, workforce recruitment and retention are 'significant issues' and committed to a process for auditing vacancy rates that would be developed by the end of 2009.²⁰⁹

The shortage of counsellors was once again confirmed in a review of NSW Health counselling services conducted during 2010 (the Health Counselling Review), which was completed in response to Action 73 of the Interagency Plan.²¹⁰

Both the Wood Inquiry and the Health Counselling Review also raised concerns that a large number of children were not receiving counselling because of the need for NSW Health Sexual Assault Services, the primary provider of specialist services, to prioritise referrals for children under the age of 14 if the matter has been formally reported and substantiated.²¹¹

In examining whether the relevant Interagency Plan Actions have been implemented, we also considered the findings of these more recent inquiries and reviews which took place during the five year period of the Plan. Our aim was to assess the overall enhancement in the capacity of counselling services for Aboriginal victims of child sexual assault and child victims more generally.

NSW Health, Community Services and the Attorney General's Division all either directly provide, fund or administer the provision of counselling services for victims of child sexual assault. From our audit, it is apparent that whilst

205 NSW Government, *Keep Them Safe: A shared approach to child wellbeing*, 2009, p.13.

206 *Joint Investigative Response Teams Policy and Procedures Manual*, p.19.

207 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.171.

208 Honourable James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW, November 2008*, Volume 1, p.238.

209 NSW Government, *Keep Them Safe: A shared approach to child wellbeing*, 2009, p.13.

210 ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence services mapping. Final Report to NSW Department of Health*, February 2011, p.89.

211 Honourable James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW, November 2008*, Volume 1, p.309; ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence services mapping. Final Report to NSW Department of Health*, February 2011, p.vi.

work was undertaken by NSW Health and the Attorney General's Division to implement the relevant Actions, their efforts were hampered by the capacity²¹² constraints of the counselling sector as a whole, and the impact of these constraints on any efforts to improve services specifically to Aboriginal children.

While two of the three counselling-related Actions are directed to Health and one to the Attorney General's Division, the Interagency Plan did not direct any actions to Community Services, despite its role in funding the non-government sector to provide child and adolescent sexual assault counselling services; nor did the Plan seek to examine the extent to which there are service gaps or whether child sexual assault counselling services are being delivered in a coordinated and integrated way.

For the majority of existing counselling services across the sector, there has been no funding enhancement over the life of the Interagency Plan. NSW Health did establish seven additional Aboriginal counsellors in response to Action 44. However, their impact has for the most part been limited to one Local Health District. Having said this, it is important to recognise that these positions appear to have led to a substantial increase in the number of Aboriginal children who have received sexual assault counselling in the Hunter-New England district since their creation, and highlight the valuable role played by Aboriginal counsellors. More generally, agencies have continued to struggle filling positions in regional and remote areas, and have had difficulty across NSW in filling positions which are identified as Aboriginal.

As a result, many victims of child sexual assault in NSW simply do not have access to counselling. In particular, there are fewer services available in rural and remote areas relative to the major centres, and fewer services available which provide a culturally appropriate service to Aboriginal clients relative to non-Aboriginal clients. Many services are unable to respond to clients with complex needs. It is difficult for children to access services if they have not made a formal disclosure to police or Community Services. There are very few services available for adult survivors of child sexual abuse, and with the exception of a recent program trial by the Department of Attorney General and Justice, there are no dedicated services directed at sexual assault victims in custody – even though Action 73 made specific reference to this group.

In addition to the overall capacity challenges faced by services, we also identified a range of organisational and structural issues relating to the effectiveness of counselling referral pathways; how different services work together; and the flexibility of services. These problems are exacerbated by the fact that NSW Health Sexual Assault Services have very limited capacity to monitor the demand for their services or the extent to which their services are meeting this demand, due to significant shortcomings in their data collection processes and capacity. We note in particular, that NSW Health was not able to provide us with accurate or meaningful data on their Sexual Assault Services when we requested it. Whilst steps are now being taken to address this issue, had the Interagency Plan included adequate data measures in order to assess outcomes against the relevant Actions, it is possible that this gap would have been rectified earlier.

As the main government provider of counselling services for victims of child sexual assault, much of the discussion in this chapter relates to the operation of the NSW Health Sexual Assault Services. However, it is clear from our consultations that similar challenges in relation to funding, recruiting staff, and gaps in the provision of services apply across the child sexual assault counselling sector.

10.1 Current capacity challenges

There are a number of different counselling providers in NSW who offer services to child sexual assault victims which meet each agency's particular service criteria. NSW Health is the principal provider of sexual assault services, both directly through the Sexual Assault Service (SAS), and through the funding of non-government organisations such as the NSW Rape Crisis Centre. In addition, Community Services funds a number of non-government child and adolescent sexual assault counselling services. Within the Attorney General's Division, Victims Services funds approved private practitioners to provide counselling to victims of crime through the Approved Counselling Scheme. However, the distribution and coverage of these services across the state varies.

In areas where there are multiple services available, our audit has highlighted that this diversity has a range of benefits for victims, such as providing them with the flexibility to select a service which they believe best suits their needs. As we discuss later in this section, it is apparent that almost universally, the available specialist child sexual assault counselling services are not able to meet current demand. For many communities, this means that not only is there an absence of choice in service providers; there are no service providers at all to meet the needs of child sexual assault victims.

In order to develop a true picture of the capacity challenges across the child sexual assault counselling sector, it is first necessary to understand the type of service that each agency is responsible for delivering (including what they do not deliver), and the unique challenges they each face in providing the service. From our review of this area, it

212 Such as delivering services to rural/remote areas, access to transport and discretionary funds.

is clear that current service gaps could at least in part, be addressed by the three lead agencies responsible for delivering counselling services taking a far more collaborative approach to service planning and related funding. We discuss this issue later in this chapter.

10.1.1 Victims Services Approved Counselling Scheme

Victims Services, an agency within the Department of Attorney General and Justice, provides counselling to victims of certain crimes through the Approved Counselling Scheme. In order to become an 'Approved Counsellor', a practitioner must be a registered psychologist, clinical psychologist, psychiatrist, or social worker in private practice, with a minimum of two years' experience working with victims of crime as a registered provider.²¹³ As at June 2012, the scheme had a total of 316 active approved counsellors, of whom 269 were located in NSW.

Under the scheme, counselling is available to adults and children who have been the victim of an act of violence. It is not necessary for a formal report to have been made or for criminal proceedings to have been commenced to be eligible for the service; however, there must be sufficient evidence to prove that an act of violence occurred.²¹⁴

The scheme is primarily intended to provide a medium-term intervention for victims, although in some circumstances, Approved Counsellors will be used to provide a short-term or immediate response, particularly where there is no SAS counsellor available. The scheme does not operate a waiting list and aims to provide a counselling service within 48 hours of an application being approved. There is currently no time limit on when counselling can be accessed relative to when an incident occurred and as a result the scheme is also an important access point for providing counselling to adult survivors of child sexual assault.

The operation of the Approved Counsellor Scheme is mandated by the *Victims Support and Rehabilitation Act 1996*. Payments for counselling under the scheme are made from the Victims Compensation Fund, which also disperses awards of victims compensation. In the 2011-12 financial year, \$3.39 million was paid to Approved Counsellors from the Compensation Fund. Overall, the Compensation Fund made payments worth \$63 million.²¹⁵

There are significant concerns that the Victims Compensation Fund is not financially sustainable in the longer term. Over the five years from 2007-08 to 2011-12, Victims Services has received an average of 8,121 applications for victims compensation each year, and has finalised an average of 4,796 claims each year.²¹⁶ This has seen the number of pending claims increase from 10,241 in 2008, to 21,911 in 2012,²¹⁷ with an estimated value in excess of \$200 million.²¹⁸

In August 2011, the Attorney-General announced that PricewaterhouseCoopers would conduct an independent assessment of the Victims Compensation Scheme.

The review covers:

- examining the long-term viability of the Victims Compensation Fund Corporation
- analysing and evaluating the statutory compensation scheme, and
- examining strategies and options for service provision to victims of violent crime.²¹⁹

Our consultations have highlighted that for many victims (who for whatever reason have not pursued criminal charges), access to compensation or counselling through Victims Services can validate the process of making a disclosure, and provide acknowledgement of the harm which has been caused to them. As we discuss in section 10.3 of this chapter, there are only limited counselling services available for victims of child sexual assault who have not made a formal report and as such Victims Services plays a critical role in providing an alternative access point to support.

Whilst we acknowledge that the Victims Compensation Fund in its current form is not financially sustainable, the current review of the fund provides an important opportunity to improve and make more accessible an essential component of the support system for victims.

213 Victims Services, *Applying to be an Approved Counsellor*, www.lawlink.nsw.gov.au. Accessed 24 November 2012.

214 We have been advised by Victims Services that it applies a 'balance of probabilities' test to applications for counselling, with a higher burden of proof required for compensation claims. There were in excess of 6,500 applications for counselling in 2010-11, and according to verbal advice from Victims Services, approximately 98% of applications were approved.

215 Victims Services, *Victims Compensation Tribunal Chairperson's Report 2011-2012*, www.lawlink.nsw.gov.au. Accessed 24 November 2012.

216 Victims Services, *Victims Compensation Tribunal Chairperson's Report 2011-2012*, www.lawlink.nsw.gov.au. Accessed 24 November 2012.

217 Victims Services, *Victims Compensation Tribunal Chairperson's Report 2011-2012*, www.lawlink.nsw.gov.au. Accessed 24 November 2012.

218 PricewaterhouseCoopers, *Issues Paper: Review of NSW's Victims Compensation Scheme*, 22 March 2012, p.2.

219 PricewaterhouseCoopers, *Issues Paper: Review of NSW's Victims Compensation Scheme*, 22 March 2012, p.2.

10.1.1.1 **Increasing the number of counsellors experienced in Aboriginal issues – implementing Action 85**

Action 85 of the Interagency Plan directed the Attorney General's Division to 'monitor and extend strategies to increase the number of Victims Services Approved Counsellors experienced in Aboriginal issues'.²²⁰

Victims Services has implemented a process of identifying counsellors who have a specialty working with Aboriginal or Torres Strait Islander clients. As at June 2012, the Approved Counsellor scheme had only two Aboriginal counsellors out of a total 316 active counsellors registered under the scheme. There are, however, 169 counsellors (including the two counsellors who identify as Aboriginal) registered as having a specialty with Aboriginal clients. Victims Services has partnered with the NSW Health Education Centre Against Violence (ECAV) to provide mandatory training as a pre-requisite for Aboriginal specialty registration (unless a counsellor can clearly demonstrate that they have exclusive experience working with Aboriginal clients).

Whilst Victims Services does not have any processes in place to evaluate the effectiveness of the training, the level of participation in the ECAV training by Approved Counsellors and the substantial increase in counsellors who have expertise in working with Aboriginal people is a positive initiative. We note that ECAV has an extensive history in providing training to workers who deliver services to Aboriginal children and adults who have experienced sexual assault; domestic or family violence; and physical and emotional abuse and neglect. As we discuss in Chapter 20, we believe that there is the potential for ECAV to play a much greater role in working with agencies to improve the cultural competence of services.

10.1.2 **Child and Adolescent Sexual Assault Counselling**

The Department of Family and Community Services (FACS) funds a number of non-government organisations to provide Child and Adolescent Sexual Assault Counselling (CASAC) services. There are currently 11 funded CASAC services in NSW.

The services provide a flexible long-term therapeutic response. Although the policy differs between services, most CASAC services will accept referrals where there has been no formal report of the sexual assault, or where the assault has not been substantiated. Most CASAC services also provide services for adult survivors of child sexual assault.

The CASACs are a critical component of the service landscape, as they allow for a service to be provided to victims who either do not meet the criteria for counselling under the SAS or Victims Services, or who require a type of service which other providers are not able to deliver. The services face high demand, and we have been advised that some CASAC services have waiting lists of up to two years.

In 2011, the Community Services Grants Program (under which the CASAC services were previously funded) was re-aligned to reflect the direction of *Keep Them Safe*. This involved the introduction of two new funding programs, the Community Strengthening, and Early Intervention and Placement Prevention programs.

The activities of the CASAC services are outside of the scope of the new funding programs and, as such, they were categorised as 'preserved services' during the funding transition. 'Preserved services' have received transition funding; however, the funding for CASAC services is not currently guaranteed beyond June 2013.

Given that these services fill a number of the existing service gaps that we have identified in section 10.3 of this chapter, we are concerned that the continued operation of the CASAC services beyond June 2013 is unclear.

10.1.3 **Sexual Assault Service**

According to the *Child Wellbeing and Child Protection – NSW Interagency Guidelines*, NSW Health has the responsibility to:

*...conduct medical examinations and assessments, and provide medical treatment, crisis and ongoing counselling, therapeutic group work and advocacy services for children and young people who have been, or are suspected of having been, physically, emotionally or sexually abused or neglected as well as their non-offending family or carers.*²²¹

NSW Health's SAS is the primary vehicle through which it provides a response to children who have been sexually abused. The SAS also provides a service to adult victims of sexual assault. There are 55 SAS dedicated service response sites across the state,²²² as well as three sexual assault services which are combined with child protection

220 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.28.

221 NSW Government, *Child Wellbeing and Child Protection – NSW Interagency Guidelines*, www.community.nsw.gov.au. Accessed 25 September 2012.

222 Four of these sites only provide a service to adults and young people aged 16 and 17, with some additional services for children aged 14 and 15. These services are all located in Sydney metropolitan areas where children can receive a service from the Child Protection Service or Child Protection Units.

services.²²³ This makes the SAS the most substantial service provider of its type, with greater coverage, and more capacity, than any other service in NSW.

NSW Health operates through 15 Local Health Districts, as well as three specialist networks including the Sydney Children's Hospital Network. The Local Health Districts manage the individual SAS dedicated service response sites within each District, which range in number from 16 sites in the Western NSW Local Health District and 12 sites in Hunter New England Local Health District to one site in each of the Central Coast, Far West, and South-East Sydney Local Health Districts.²²⁴

Adults and children aged 14 and over can access the SAS through a number of different pathways; however, children under the age of 14 must be referred to the service as part of a formal investigation process. In most instances a referral to the SAS will only be accepted for a child under 14 where the sexual assault has been substantiated.

The SAS allocates services to clients based on the following priorities:

1. children and adults, where the sexual assault has occurred within the past seven days
2. any disclosure of sexual assault by a child or young person under the age of 16
3. any disclosure of sexual assault by a young person aged 16-18
4. adult victims sexually assaulted in the last year
5. any sexual assault victim requiring court preparation and support or cases where the assault is the subject of some investigation which does not fit into categories one to four
6. adults who have been sexually assaulted as adults more than one year ago, and
7. adults who have been sexually assaulted as a child.²²⁵

10.1.3.1 Expanding the capacity of sexual assault counselling – implementing Action 44

Action 44 of the Interagency Plan directed NSW Health to 'expand regional and state-wide sexual assault counselling capacity...'²²⁶ In order to assess whether there has been an increase in the capacity of sexual assault counselling offered by NSW Health, we sought information from NSW Health about the operation of the SAS. We received responses from each of the 15 Local Health Districts, as well as from the Sydney Children's Hospital Network in relation to the two Child Protection Units that operate within the network.²²⁷

In 14 of the 16 responses, we were advised that the funding and staffing of sexual assault counselling services has not kept pace with increases in demand over the past 10 years. With the exception of one Local Health District (which did not provide the relevant information), all of the responses stated that apart from the 8 Aboriginal positions employed within Sexual Assault Services (six of which were funded under Action 44), there have been no budget enhancements to the SAS in NSW to increase the number of counsellors required. In the case of two Local Health Districts, the total number of fulltime equivalent staff has decreased over the past 10 years as a result of the restructure from Area Health Services to Local Health Districts. This is despite the goal of Action 44 to 'expand regional and state-wide sexual assault counselling capacity'. However, we note that NSW Health has funded 25 JIRT Senior Health Clinicians to coordinate the provision of counselling services to children.

In order to examine the take-up of counselling across the state, we asked NSW Health to provide us with data on the number of children, and the number of Aboriginal children, who have received counselling from the service over the life of the Interagency Plan. NSW Health was unable to centrally provide this information at a state-wide level.

We received complete data from six Local Health Districts as well as the Sydney Children's Hospital Network, and we received partial data from a further four Local Health Districts. In total, we received information relating to 41 of the 58 service response sites. There was only limited reliable data readily available on the Aboriginal status of clients; for example, one Local Health District advised us that it could only provide this information by manually interrogating the file of each client to check whether they had been recorded as being Aboriginal. In many cases, the overall data was also noted to be both unreliable and inconsistent across different types of services (both between and within Local Health Districts). One Local Health District, for example, advised us that:

...there have been a number of changes in relation to the way that data is entered and collated in recent years. This has resulted in significant challenges in relation to the reliability of the following counselling data.²²⁸

²²³ The Northern Sydney Local Health District has a Child Protection Service, and the Sydney Children's Hospital Network operates two Child Protection Units.

²²⁴ NSW Health has undergone significant restructure during the life of the Interagency Plan, including a change from eight Area Health Services to 15 Local Health Networks in January 2011, and subsequently to Local Health Districts in August 2011.

²²⁵ NSW Health, *Sexual Assault Services policy and procedure manual (Adult)*, May 1999, p.6.

²²⁶ NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities: 2006-2011*, January 2007, p.20.

²²⁷ These two units are located in Randwick and Westmead.

²²⁸ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

Another Local Health District advised us that:

Locally the services have different registration and data collecting systems and subsequently there is no reliable way of gathering this data directly from local services.²²⁹

The information that was provided indicates that over the five year period from 2007 to 2011 there has been a significant increase in the number of Aboriginal children receiving counselling. However, it is not clear how much of this increase is the result of improved recording practices in relation to identifying victims' Aboriginality.²³⁰ The information also indicates that despite no significant additional staff or funding increases over the life of the Interagency Plan, these sites have nonetheless been able to steadily increase the total number of children who receive counselling (with an increase across all 41 sites of approximately 19% over the same five year period).²³¹ In doing so, the Local Health Districts have advised us that the SAS is under increasing pressure, and that its capacity to provide a service to a larger number of individuals has come at the expense of its ability to provide these clients with a comprehensive service.

It is worth noting that, despite it being an important indicator of the impact of Action 44, the performance framework developed to measure the success of the Interagency Plan did not seek to track the rate of counselling provided to Aboriginal children during the five year period.

10.1.3.2 Providing access to a discretionary fund for frontline SAS staff

In addition to the overall budget constraints of the SAS, our consultations with NSW Health personnel identified that some services experience difficulties in delivering a quality service due to a lack of flexibility in managing their budget, and a lack of discretionary funds for expenses other than staffing. In some parts of the state, we were advised that issues with vehicle availability, combined with an absence of brokerage funds to facilitate alternative transport for clients, have resulted in appointments being cancelled due to the inability of counsellors to travel to victims within their outreach area, or vice versa. Counsellors also told us of having to buy incidental items, such as art supplies for children, out of their own pocket as a result of not having access to any discretionary funds. The NSW Health Counselling Review confirmed that more than half of the SAS surveyed did not have a protected goods and services budget, and that services reported 'having small or insufficient funds available to cover expenses such as office items and staff training'.²³²

The issue of having access to a discretionary fund for incidental items came up repeatedly during our consultations with frontline staff. It is also apparent that individual services need to have access to flexible funds in order to meet client needs in relation to counselling. While these expenses are not frequent or substantial, having access to brokerage funds for emergency accommodation, local transport, or other services or incidental costs, would significantly improve the capacity of the SAS to provide flexible services to victims.

Local Health Districts also indicated that the ability of the SAS to meet demand for counselling services has been affected in recent years by an increasing proportion of complex matters requiring greater intervention; increased administrative responsibilities; a greater number of adult survivors of child sexual assault requiring services as a result of progressing complaints through the criminal justice system; and increased travel and outreach demands.

10.1.3.3 The response to the NSW Health Counselling Review – implementing Action 73

Action 73 of the Interagency Plan directed NSW Health to conduct a review of the (then) Area Health Service counselling services, and to implement the findings as appropriate. In 2010, ARTD Consultants were commissioned to conduct the review. In that year, Aboriginal Affairs noted that there had been 'major slippage' with the completion of this Action.²³³ In February 2011, the NSW Health Counselling Review was finalised.

This report included a full review of NSW Health's specialist network of counselling services for sexual assault, child abuse and neglect, including the SAS, and also included the development of draft key performance indicators for the services.

The report made 18 findings, including that:

- Given the inevitable increase in demand for services ...there is an urgent need for a review of budget allocations for NSW Health counselling services, and NSW Health could consider re-quarantining funds to these services (finding 8), and

²²⁹ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

²³⁰ Information provided by the Local Health Districts indicates an increase of almost 60% across the period (from 158 children in 2007 to 251 children in 2011).

²³¹ For the 41 services where data was provided, the total number of children who received counselling each year was 1,612 in 2007; 1,684 in 2008; 1,761 in 2009; 1,834 in 2010; and 1,920 in 2011.

²³² ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence services mapping. Final Report to NSW Department of Health*, February 2011 p.47.

²³³ Advice provided by Aboriginal Affairs about status of Actions, 6 December 2012.

- many of the same gaps and barriers to services for Aboriginal people identified in the *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW (ACSAT)* report remain. Services are attempting to increase access to services for Aboriginal communities, but only those services with additional resources to reach and engage with Aboriginal communities appear to be making progress in engaging with and providing services to Aboriginal communities (finding 9).²³⁴

In April 2011, the Ministry of Health completed an internal analysis of the review. This internal analysis made 21 recommendations.

In relation to finding 9, the internal analysis recommended that 'NSW Health... establish additional specialist Aboriginal sexual assault counselling positions if state-wide funding becomes available'²³⁵ (recommendation 13). The internal analysis on this failed to note the challenges of recruiting and retaining Aboriginal staff which we discuss in section 10.2 below and the need for additional strategies to be implemented to attract more Aboriginal people into the Health workforce.

In relation to finding 8, the internal analysis notes that the review:

...did not collect baseline data. This data will be required to assist the Primary Health and Community Partnerships Branch to assess the appropriateness of seeking to quarantine funding.

The internal analysis made one recommendation which was linked to this finding; namely, that the Ministry of Health:

Ask Local Health Network Chief Executives to provide... information regarding budget allocations and staffing Full Time Equivalent (FTE) establishment and staffing FTE vacancies for Child Protection and Sexual Assault Counselling Services and Child Protection Units.

We sought clarification from the Ministry of Health as to whether any additional steps had been taken to address the capacity challenges of the SAS. We are advised that 'the NSW Ministry of Health has been working with Local Health Districts to develop state-wide permanence management systems to accurately assess service demand and capacity for the [SAS]'.²³⁶

The NSW Health Counselling Review identified that the existing data systems which are used by the SAS are difficult to use, require the same data to be collected multiple times, and do not facilitate the extraction of data from one system to another. The review also found that most services believe the current systems do not provide them with the information they need, concluding that:

*The current complex and overlapping data collections being used by services are burdensome but still do not provide the required data. Current data collection processes and systems at service level, AHS and state level, urgently need review.*²³⁷

As part of the NSW Health Counselling Review, ARTD Consultants developed a draft monitoring framework for the counselling services provided by the SAS. NSW Health advises that since the review was released in February 2011, the Ministry of Health has been working with SAS to refine and develop this monitoring framework, however, it has not yet been finalised. Once this monitoring framework is complete, the Ministry of Health will begin the development of a new data capture and reporting system. NSW Health provided us with a draft version of this monitoring framework.

In reviewing the current draft version of the monitoring framework, we note that whilst reporting against this framework would result in significantly more data capture than is currently available, there are additional data measures which are important for measuring the capacity and demand of the SAS: including the number of referrals which are not accepted by the SAS (and the reasons); the number of cases which are referred to other services; and the number and proportion of referrals accepted for certain priority groups (such as adult survivors of child sexual assault).

It is concerning that NSW Health identified the limitations in its capacity to collect appropriate data in a submission to the Aboriginal Child Sexual Assault Taskforce in 2005, yet despite these data issues being identified prior to the commencement of the Interagency Plan, there appears to have been very little progress to date.

The consequences of this absence of data include that NSW Health appears to be hamstrung in its ability to increase the capacity of the SAS, despite clear and apparent shortfalls in capacity, because it does not have the data it needs to determine the demand/capacity.

We agree with the conclusion reached by ARTD consultants, that there is merit in providing Local Health Districts with dedicated funds for the SAS. Having said this, we appreciate the difficult budgetary and resourcing challenges

²³⁴ ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence Mapping. Final Report to NSW Department of Health*, February 2011, p.xi.

²³⁵ Ministry of Health, *Analysis of the Report of the Review of NSW Health Child Protection, Sexual Assault and mapping of Domestic and Family Violence Counselling Services*, 6 April 2011, p.10.

²³⁶ NSW Health response to NSW Ombudsman Requirement for Information, 6 November 2012.

²³⁷ ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence Mapping. Final Report to NSW Department of Health*, February 2011, p.147.

being faced by NSW Health across the board. Given the current demands on the health system, any increase in the SAS budget must be carefully considered and based on clear evidence of demand.²³⁸ It is nonetheless apparent that more sexual assault counselling staff are urgently needed across NSW. It is critical that the extent of these staffing shortages is identified as a priority, and that consideration is given to allocating additional funds to the SASs that require staffing enhancements.

10.2 Recruiting and retaining staff

Action 63 of the Interagency Plan directed agencies, including NSW Health, to 'develop and implement incentives packages to attract experienced staff to service agencies in rural and remote areas.'²³⁹

Difficulties in recruiting and retaining staff were repeatedly identified during our consultations as a fundamental barrier to services being able to meet demand, particularly in rural and remote locations. As we have discussed in Chapter 20, addressing funding challenges alone is unlikely to result in consistent improvements in service delivery unless it is combined with a whole-of-government approach to attracting and retaining staff to the relevant positions in hard to fill locations.

According to the information that we received from Local Health Districts, the ability of SAS to recruit staff with the right skills varies across the state. Not surprisingly, the Local Health Districts which reported the highest vacancy rates and the greatest difficulty filling positions are those which cover rural and regional parts of the state. Across NSW, the information provided by the Local Health Districts and the Sydney Children's Hospital Network indicates that as at September 2012, there were approximately 145 fulltime equivalent sexual assault counsellor positions within NSW Health, with a vacancy rate of 17%. Within the metropolitan Local Health Districts, the vacancy rate was 13%, and in rural and regional Local Health Districts it was 22%.²⁴⁰

This vacancy rate has a clear impact on the capacity of the SAS to provide a service to victims. For example, in our consultations with one SAS in Western NSW, we were advised that the only counsellor position had remained vacant for the duration of the position-holder's previous maternity leave, due to unsuccessful recruitment attempts. At the time of our consultation in 2011, the counsellor was working on a part-time basis, and the service had attempted unsuccessfully to recruit an additional counsellor. The position-holder advised that she was unable to provide an outreach service to surrounding communities due to the constraints of working in a part-time capacity. In further information provided to us in September 2012, we were advised by the Local Health District that the position is again vacant due to maternity leave. Staff within the relevant local Health Service are trained to provide a crisis counselling response, with ongoing sexual assault counselling services provided three days per fortnight by a counsellor who is based more than 450kms away. In addition to the stress placed on the relevant staff member due to the significant travel required, this limits significantly the capacity for NSW Health to provide a local service in this community, let alone being able to provide a service to surrounding communities.²⁴¹

In Chapter 20, we discussed the need for a whole-of-government approach to recruiting staff to high needs areas in NSW, and the current discrepancies in the incentives which are offered to staff by different agencies.

Throughout our audit it was repeatedly raised by Health staff that NSW Health has historically not compared well to agencies such as Police and Education in offering staff incentives to work outside of the major centres. While there are comprehensive incentive programs in place for doctors, the incentives for other health professionals are limited. Until a whole-of-government structure for incentives – such as the one recommended in Chapter 20 – is in place, it will be critical for NSW Health to continually review the locations and positions where there are high vacancy rates and poor staff retention; and put in place stronger incentives schemes for these areas.

10.2.1 Aboriginal staff

Breaking the Silence identified a chronic shortage across agencies of counsellors and support staff who were able to respond to sexual assault in Aboriginal communities, including a shortage of Aboriginal staff.²⁴² In response, Action 44 of the Interagency Plan refers to NSW Health '...provid[ing] additional Aboriginal specialist child sexual assault counsellors'.²⁴³ This problem was again referred to by the Wood Special Commission of Inquiry and *Keep Them Safe* subsequently directed NSW Health to:

238 The 2008 Garling report, for example, notes in relation to the NSW Public Hospital system: 'Given the demographic changes and the rising costs, it is the case that we have entered into a period of crisis'. Peter Garling SC, *Final Report of the Special Commission of Inquiry: Acute Care in NSW Public Hospitals, 2008 – Overview*, p.3.

239 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.23.

240 66.13 fulltime equivalent positions are located in rural and regional Local Health Districts, and 80.47 fulltime equivalent positions are located in the metropolitan Local Health Districts.

241 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

242 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney-General's Department NSW, 2006, pp.171, 214, 215, 240, 254, 255.

243 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.20.

*Strengthen the provision of culturally appropriate models of sexual assault counselling for Aboriginal children and families, including ensuring the cultural competence of the existing network of child sexual assault counsellors across the state.*²⁴⁴

NSW Health has established seven designated Aboriginal child sexual assault counselling positions across three Local Health Districts,²⁴⁵ with four in Hunter New England, one in Illawarra Shoalhaven, and two in Western Sydney.²⁴⁶ As at September 2012, this brought the total number of fulltime equivalent Aboriginal sexual assault counsellor positions across NSW Health to 8.5. Particularly in the Hunter New England Local Health District, it is apparent that these roles have facilitated an increase in the engagement of Aboriginal children with the SAS. The Hunter New England Local Health District has seen a significant increase in Aboriginal children receiving counselling from the SAS, from approximately 41 in 2007 to approximately 107 in 2011.²⁴⁷ In the Illawarra Shoalhaven Local Health District, there has been an increase from 17 in 2007 to 29 in 2011. Data was not available in the Western Sydney Local Health District.

We are concerned that such an important performance measure – tracking the impact of these new Aboriginal child sexual assault counselling positions on the rate of Aboriginal children receiving counselling in the relevant Local Health Districts – was not included in the performance framework for monitoring the Interagency Plan. The results for Hunter New England Local Health District are particularly encouraging and demonstrate the value of such positions, and why investing in retaining and attracting Aboriginal staff to rural and remote locations should be seen as a priority.

Action 49 of the Interagency Plan directed a number of agencies, including NSW Health, to ‘review and enhance strategies to support, mentor and recruit Aboriginal staff, and enhance workforce development where necessary’.²⁴⁸ NSW Health identified a number of difficulties in recruiting and retaining Aboriginal staff: in particular, issues of professional isolation, a lack of culturally appropriate supervision, and uncompetitive remuneration relative to other identified Aboriginal positions. As with the recruitment of generalist positions, the nature of the work and the skills required of applicants narrow the field of potential applicants for identified Aboriginal positions significantly.

Those Local Health Districts which have identified Aboriginal sexual assault counsellor positions (three of the regional and rural Districts and two metropolitan Districts) have implemented a number of strategies to recruit Aboriginal staff, including developing an Aboriginal staff network and providing cultural supervision. The Western NSW Local Health District has recently re-aligned an Aboriginal Health Worker position into a sexual assault service role for a period of 12 months. This staff member will be mentored by the Manager, Sexual Assault, and partnered with the Senior Sexual Assault Worker.

Given the challenges in recruiting Aboriginal staff, it is not surprising that there has been little actual change in the number of frontline Aboriginal workers available to support victims of sexual assault. As at September 2012, four of the additional NSW Health positions funded under the Interagency Plan (two in Western Sydney and two in Hunter New England) were vacant. Funding for one of these vacant positions is due to end in June 2013, and funding for one of the filled positions in Hunter New England is currently provided through a short-term enhancement. This means that there was a total of 4.5 fulltime equivalent Aboriginal sexual assault counsellors providing a service across the NSW Health network, with only 3.5 of these subject to recurrent funding.

In July 2011, NSW Health published *Good Health – Great Jobs, Aboriginal Workforce Strategic Framework 2011-2015 (Good Health – Great Jobs)*. Under *Good Health – Great Jobs*, NSW Health has a goal of increasing the representation of Aboriginal people in the health workforce from 1.8% to 2.6%, with individual targets for the Local Health Districts determined on the basis of Aboriginal demographics and population. One of the key priorities under the Framework is to:

Develop partnerships between the health and education sectors to deliver real change for Aboriginal people wanting to enter the health workforce and improve career pathways for existing Aboriginal staff.

In our consultations with NSW Health’s ECAV and other Aboriginal workers across the health and welfare sector, we have been told that Aboriginal people will often not apply for positions with NSW Health because of prohibitive qualification criteria. Sexual assault counselling is a highly specialised and complex area, and it is critical that staff who are providing these services are appropriately trained and qualified. However, in order to build a highly skilled Aboriginal workforce in this area, it is essential that where recruitment attempts are unsuccessful, Local Health Districts have the capacity (and funding) to implement flexible solutions, including mentoring Aboriginal staff into positions over a period of time.

244 *Keep Them Safe: A shared approach to child wellbeing*, NSW Government, 2009, p.39.

245 The Keep Them Safe 2011-12 Annual Report states that an eighth position has been funded for the Hunter New England Local Health District from 2011-2014. The response we received from the Hunter New England Local Health District on 2 October 2012 did not reflect that this position has been funded in the District.

246 Six of these were established as a direct result of the Interagency Plan, and the seventh was reallocated from Health’s existing resources.

247 Hunter New England Local Health District advise that due to changes in data processes over the life of the Interagency Plan, there are challenges in the reliability of this data.

248 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.21.

In this regard, ECAV has extensive experience in providing training and mentoring to Aboriginal staff, and in particular, it has a strong track record of providing specialist training for Aboriginal counsellors, in order to equip less skilled workers to fulfil this difficult role. There is potential for ECAV to play a greater role in working with Local Health Districts to fill Aboriginal sexual assault counsellor positions, and to meet its broader obligations under *Good Health – Great Jobs*. An enhanced role for ECAV of this kind would need to be accompanied by an increase in the funding and capacity of the Centre.

We also note that if the Ministerial Advisory Panel for the Interagency Plan is maintained as an advisory body, there is also potential for the Panel to provide ongoing expert advice on enhancing the reach and effectiveness of ECAV as part of developing an Aboriginal sexual assault counselling, mentoring and development plan. (In this regard, we note that a number of the current MAP members have significant experience working in this area.)

10.3 Service gaps

Our review of the counselling services available for victims of child sexual assault identified a number of significant gaps in the provision of these specialist services around the state. This includes inconsistent availability of outreach services, a lack of services available for adult survivors of child sexual assault, and limited specialist services for victims of intra-familial sexual assault. Given the funding and resource shortfalls in this area, it is not surprising that gaps such as this exist. In a recent inquiry into domestic violence, the NSW Legislative Council Standing Committee on Social Issues reported that:

*...we are troubled...that counselling services for victims in the public system are very scant and crisis focused, and that there are inequities of access to any counselling in areas of high need, in rural areas, and for Aboriginal and culturally and linguistically diverse populations...as a priority we consider that the documented inequities should be addressed.*²⁴⁹

10.3.1 Unreported or unsubstantiated matters

Our consultations raised significant concerns that due to competing priorities, (i.e. unless a matter has been formally reported, and has been substantiated by the JIRT, Community Services or police) counselling services are not widely available to children who are suspected of being sexually abused.

The SAS accepts self-referrals from adults and children aged over 16, as well as for children aged 14 or 15 who have no relevant child protection issues. For children under 14, the SAS will only provide a service where a referral is received from the JIRT or from police or Community Services. Therefore, it is less likely that cases where sexual abuse has not been substantiated will receive counselling, particularly if resourcing constraints mean that particular SASs are already having difficulty meeting demand for accepted JIRT matters.

While it is possible for victims to self-refer to most Child and Adolescent Sexual Assault Counselling (CASAC) services and to some other non-government services, these services are not widely available across NSW. Access to private practitioners who are experienced in sexual assault can also be limited, and where these practitioners are available, there is generally a Medicare gap payment required, which renders the services unaffordable for many families. The Victims Services Approved Counsellor Scheme receives a large proportion of self-referrals, and while it is not necessary for a formal investigation to have occurred, a victim is required to provide some form of substantiation that the abuse occurred in order to access counselling.

As a result, a large number of children suspected of being sexually assaulted (but who did not receive a JIRT response), will not be guaranteed an offer of counselling by the SAS. Where there are delays in the JIRT investigation process, this can also result in delays in matters being referred to the SAS.

Under current JIRT and NSW Health practice, the Victims Services Approved Counsellor Scheme and CASAC service in particular, are critical to filling this particular service gap, and the potential size of this client group must be factored into any further review by the relevant agencies of funding for these services.

Any future service enhancements across the state also need to take account of the fact that current sexual assault reporting data for Aboriginal children has increased by 11.6% over the life of the Interagency Plan (for non-Aboriginal children reporting has increased but not to the same extent and over a longer period).

10.3.2 Outreach

Each Local Health District has one or more SAS dedicated response sites to provide services across the district. However, a number of the Local Health Districts located in rural and regional NSW advised us that they do not consistently have the capacity to provide an outreach service to towns which are located furthest away from the site.

²⁴⁹ NSW Legislative Council Standing Committee on Social Issues, *Domestic violence trends and issues in NSW*, August 2012, p.153.

Of the seven non-metropolitan Local Health Districts (encompassing 45 of the 58 dedicated service response sites), four Districts (accounting for 35 sites) advised us that they are not currently able to meet the demand for outreach counselling services. Two Local Health Districts did not provide us with a response, and only one Local Health District indicated that it currently has capacity to meet demand for this type of service.

The primary barriers to providing outreach were the additional travel time required, as well as the high local demand for services. In addition, one Local Health District identified that it has difficulty in accessing appropriate, child friendly, rooms in outlying areas, which makes it difficult to promote and establish an outreach service, and also makes it difficult to operate a drop in service.

Case study 12

A 10 year old girl was sexually assaulted while staying at the home of a family friend. The matter received a comprehensive response from the JIRT, including attendance at the local SAS, and a forensic medical examination was conducted. The victim was offered counselling at the SAS; however, her mother was not supportive of her attending and she did not engage with the service.

Soon after the offence, the girl was placed in a Community Services placement in South West NSW. The victim's carer made several inquiries with her Community Services caseworker, in an attempt to arrange sexual assault counselling for the girl. A referral was initially made to the closest SAS, which was one hour away from the carer's home. However, the counsellor was already stretched and unable to provide an outreach service. A WAS officer attempted to arrange counselling through the Victims Services Approved Counselling Scheme but the only female counsellor in the area was on maternity leave.

Six months after the assault had occurred, an arrangement was eventually made with the counsellor at another SAS who was two hours' drive from the carer's home. The victim received some counselling and court preparation from this service but, due to the travel distance, and the fact that the carer had a number of other children (including one with a serious medical condition), the ability of the child to meet appointments was limited, and she disengaged with the service once the matter had been finalised in court.

The large geographical distances that need to be covered in Western NSW were identified as the primary barrier to providing effective outreach services, both for the SAS and for other service providers. Combined with limited transport options to enable the client to travel to the service, the result in many instances is that there is little or no access to counselling services for victims of sexual assault living in these parts of the state.

In some communities, this service gap has existed for many years, which means there is little knowledge of the SAS. As a result, developing the capacity of the SAS in these communities not only requires the resources for a counsellor to provide direct services to victims, but also the resources to build relationships so victims feel comfortable using the service. For the relevant Local Health Districts, any review of the capacity of the SAS needs to take all of these additional challenges into account in determining the nature of outreach services required.

10.3.3 Victims of intra-familial sexual assault

Research indicates that the dynamics of intra-familial assault are extremely complex, and that the responses required need to be carefully constructed.²⁵⁰ In particular, a specialised understanding of the dynamics between the victim and other non-offending family members can be essential to the effective outcome of therapeutic responses. There is also evidence which indicates that an appropriate response to victims and non-offending family members can be critical to ensuring that appropriate protective measures are put in place to prevent further abuse being perpetrated by the offender.²⁵¹

Despite the significant proportion of child sexual assaults which occur within an intra-familial context, the only service in NSW which has provided specialist support for children and families affected by intra-familial sexual assault is the Cedar Cottage program. While this was developed as a diversion program for offenders, the program also provided counselling and support to victims and their non-offending family members in order to protect children and prevent further assault. The government announced its intention to discontinue funding for the Cedar Cottage program in September 2012 due to the fact that the program 'does not reflect community expectations' that 'those who engage in child sex assault [will] receive a custodial sentence'.²⁵²

250 See for example, O'Connor, R. 1991. 'Child sexual abuse: Treatment, prevention and detection', Centre for Health Program Evaluation, Working Paper 16. www.buseco.monash.edu.au. Accessed 12 September 2012.

251 Miller R and Dwyer J, 1997. 'Reclaiming the Mother-daughter relationship after sexual abuse' *Australian and New Zealand Journal of Family Therapy*, vol 18 (4) pp.194-202. www.anzjft.com. Accessed 12 September 2012.

252 The Sydney Morning Herald, *Axe for sex offender treatment program*, 4 September 2012.

In light of the expertise which has been developed through Cedar Cottage since 1989, and the absence of any other specialist services in NSW, there would appear to be merit in transferring the resources currently allocated to the operation of Cedar Cottage to a new specialist service to provide long-term counselling, and support to the victims of intra-familial abuse and their non-offending family members.

10.3.4 Adult survivors of child sexual assault

Of the 49,299 reports of sexual abuse (adult and child) made over the life of the Interagency Plan, 3,787 or 8% involved an adult reporting sexual abuse that occurred when they were a child.²⁵³ The NSW Health *Sexual Assault Services Policy and Procedure Manual (Adult)*, provides a priority list of groups of clients who will be seen by an SAS, with 'adults who have been sexually assaulted as a child' listed as the lowest priority group.²⁵⁴ Given the capacity shortfalls of many SASs, most services report that they rarely work with this client group, despite significant evidence supporting the effectiveness of counselling.²⁵⁵

Most SASs refer adult survivors of child sexual assault to the Victims Services scheme, private practitioners, the Rape Crisis Centre, or to generalist NSW Health counsellors. Almost universally across the state, these services have a limited ability to meet demand. Almost all of the Local Health Districts, including those in metropolitan areas, advised us that these services are not readily available, due to factors including a lack of providers, long waiting lists, and a lack of expertise in providing services to adult survivors of child sexual assault.²⁵⁶

During our consultations with community members, a number of people highlighted the link between the available services for adult survivors and community attitudes to encouraging children to report sexual assault. In addition, a number of stakeholders spoke about women who have made the decision to come forward about the sexual assault that they experienced as a child in order to protect their own children from the same perpetrator. This highlights why the provision of services to this group is both important for the wellbeing and mental health of the adult clients and to protect children from perpetrators who continue to live in the same community, or may be part of the family or extended family of adult survivors.

See Chapter 7 for further discussion about the handling of historical sexual abuse allegations.

10.3.5 Services for adults in custody

In a 2002 survey of Aboriginal women in custody, 70% of inmates reported that they had been sexually assaulted as children, and 98% of them indicated they had a drug problem as a result of their past experiences of violence. Only a minority of women who had been abused (29%) had previously told someone about the abuse, and at least 68% of all survey participants said that they still needed support or counselling to deal with these issues.²⁵⁷

A similar survey of Aboriginal men in custody in 2011 shows that 18% had reported childhood sexual abuse. Reported rates among Aboriginal men aged 30 or older were higher at 26%.²⁵⁸ Whilst considerably lower than the rates reported by Aboriginal women, this nonetheless represents a significant number of men.

Breaking the Silence raised concerns about the absence of appropriate services for incarcerated adults who make disclosures of child sexual assault and the absence of an appropriate supportive response when disclosures are made.²⁵⁹

*...experiences of child sexual assault have been found to have a causal link to criminally offending behaviour. Programs that address these experiences may also help to address an underlying factor that contributes to offending behaviour and thus reduce the risk of re-offending.*²⁶⁰

Community members consulted by ACSAT overwhelmingly believed that for many Aboriginal inmates with histories of abuse, prison can be a safe environment away from community or family pressures where they can concentrate on dealing with their problems. Contrary to this, Corrective Services advised ACSAT that 'the prison environment is not an appropriate setting for offenders to address their experience of child sexual assault'.

253 See Chapter 8.

254 NSW Health, *Sexual Assault Services policy and procedure manual (Adult)*, May 1999, p.6.

255 ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence Mapping. Final Report to NSW Department of Health*, February 2011, p.69.

256 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

257 Lawrie R. Speak Out, *Speak Strong: researching the needs of Aboriginal women in custody*. Aboriginal Justice Advisory Council, 2002; pp.51-53.

258 Indig D., NSW Department of Attorney-General and Justice, *Experiences of Aboriginal men in custody: trauma, racism and the criminal justice system* (draft report), 2012, pp.26-28.

259 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.224.

260 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.229.

The Interagency Plan noted that 'child sexual assault experiences and the trauma caused by such experiences are underlying drivers of criminally offending behaviour',²⁶¹ and Action 53 directed Justice Health, Corrective Services, and Juvenile Justice to review their 'health and mental health screening processes to ensure that questions and protocols to address child sexual assault victimisation are adequate'.²⁶² Justice Health is responsible for screening offenders in order to capture any mental or physical health needs. In response to Action 53, in 2007 Justice Health conducted a review of its assessment processes and sexual assault management policy. We discuss Corrective Services and Juvenile Justice screening processes more fully in Chapter 15.

However, at this juncture it is relevant to note that Justice Health refers patients who have experienced sexual assault to the Local Health District SAS for management. As discussed in section 10.3.4 above, adult survivors of child sexual assault are the lowest priority group for the SAS, and as a result there is only a very limited capacity for inmates who have made a disclosure of child sexual assault to receive a service from the SAS. In this regard, *Breaking the Silence* recommended that Corrective Services 'develop and fund a model to provide child sexual assault counsellors/program coordinators in correctional facilities'.²⁶³

Action 73 directed (then) Area Health Services to review its counselling services, including principles and models for counselling Aboriginal people in 'correctional facilities'. The Health Counselling Review did not examine this issue although Victims Services has been proactive in trialling the provision of counselling services to inmates at Dillwynia Correctional Centre since October 2011, and at Wellington Correctional Centre since May 2012. Both counsellors are currently operating at capacity, with a wait-list for further referrals. The available information to date indicates that a significant proportion of the requests for counselling relate to sexual assault.²⁶⁴

In light of the findings in *Breaking the Silence*, and the obvious demand for this type of counselling in correctional facilities, there would appear to be value in continuing and expanding the Victims Services program to correctional centres across the state. Corrective Services has also flagged that there may be an increase in the use of this program by Aboriginal inmates if an Aboriginal counsellor were available. The trial program is due to conclude in May 2013, and an evaluation plan is under development. The Department of Attorney General and Justice advises that any consideration of expanding the program to other correctional centres will occur following the evaluation of the trial.

In addition to this program, it is also apparent that there remains significant scope for Corrective Services to improve its capacity to respond to disclosures of child sexual assault made by inmates. Corrective Services advises that training for staff is primarily focused on assessment and intervention for offending behaviour and, as such, 'staff training in sensitive and effective responses to disclosure of sexual assault victimisation as a child could be of assistance'.²⁶⁵ We agree that there would be value in Corrective Services staff being provided with training of this type.

10.4 Improving the coordination and integration of state-wide counselling services

As we have shown throughout this chapter, there are a range of providers who deliver counselling services to victims of child sexual assault in different parts of the state, with different referral pathways, eligibility criteria and service options. There are also three current different government agencies that either directly provide, fund or administer counselling services, including counselling provided by individuals in private practice through the Approved Counselling Scheme. This makes for a confusing system that vulnerable victims have to navigate. It is also complex and, at times, inefficient for frontline workers.

In areas where there are multiple child sexual assault counselling providers to choose from, our consultations revealed that victims are not always referred to a service which is the most suitable for their needs, or are frequently referred to a service which does not have the capacity to respond quickly. We were advised by counselling providers that if a service cannot be provided in these circumstances, a 'passive referral' will be made to another service in the area. This usually involves the child or their family being given the contact details of other services which may be able to assist them. Given that most services are operating beyond capacity, this can lead to victims having to make contact with several services before they are able to find support. For cases handled by the JIRT, it is one of

261 NSW Government, *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.20.

262 NSW Government, *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.21.

263 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.229.

264 As at June 2012, more than half of the claims made at Dillwynia and more than 40% of the claims made at Wellington, have listed sexual assault as the act of violence. It is noted that the available data is limited due to the confidential nature of the service, and this information is based on the act of violence listed on the application form for the Approved Counsellor Scheme. Source: Department of Attorney-General and Justice's Response to NSW Ombudsman Requirement for Information, 26 June 2012.

265 Corrective Services NSW response to NSW Ombudsman Requirement for Information, 30 November 2012.

the responsibilities of the JIRT Senior Health Clinician to make a counselling referral for the child. However, if a NSW Health sexual assault service is unable to assist, already stretched workers may simply not have time to identify another counselling provider or to follow up with victims who have not taken up a referral.²⁶⁶

Our consultations have also revealed that counselling providers are facing many of the same challenges, including meeting service demand with limited resources and recruiting and retaining Aboriginal staff. We identified that there was little knowledge sharing between local providers across the sexual assault counselling sector as to how they could work more collaboratively to meet service gaps and build a quality Aboriginal counselling workforce. There appear to be few opportunities for service providers to come together to discuss the type of service they are providing and the difficulties they face in providing it. In this regard, broader capacity challenges often make it hard for them to find the time to take part in cross-agency discussions.

As a first step, service providers at a local level need to have established mechanisms in place for communicating with each other about the types of clients they can assist, as well as their capacity at any one time. Ideally, this should also involve arrangements between services for 'facilitated referrals' which shifts the onus away from the victim and onto the service provider to secure an appropriate referral. As with the delivery of other human services to vulnerable clients, counselling services in high-need locations should be sufficiently 'joined-up' so that victims and workers are able to use a single referral process or inter-face to identify the most appropriate counselling provider.

As with any other liaison process, busy frontline workers need to see that there is a point in taking part in such an exercise. For this reason, we consider it important that at a central agency level, a commitment is shown to examining how the various components of the sexual assault counselling sector can be more closely integrated. At a local level, counselling service providers in high-need locations should be tasked with developing a local plan of action to streamline referral pathways and to identify opportunities to reduce service gaps.

In order to demonstrate this commitment, it is essential for Government to obtain a clear understanding of the overall capacity challenges facing the sexual assault counselling sector – including the ability of children to access services across the state – before it can make informed decisions on addressing the long-standing inability of the sector to meet demand. Currently, there are three reviews underway, namely:

- NSW Health's current review of the capacity of its Sexual Assault Service in response to the 2011 ARTD report.
- The independent review commissioned by the Attorney General's Division of the Victims Compensation Scheme (which as we noted earlier will include an examination of strategies to improve support for victims of violent crime).
- The consideration of future funding for transition services such as the child and adolescent sexual assault counselling services currently funded by the Department of Family and Community Services.

In our view, this presents a unique opportunity to bring together the findings of this work and develop a whole-of-government response to meeting the demands on this sector.

Recommendations

- 23. That NSW Health ensures its new database for capturing Sexual Assault Service data includes collection of the following:**
- a) the number of children who are referred to the service for counselling, disaggregated by age and Aboriginal status
 - b) the number of children who receive counselling from the service, disaggregated by age and Aboriginal status
 - c) the number of referrals rejected by the service, and the reason for the referral being rejected
 - d) the number of referrals made to other services, including the number of those referrals which were for adult survivors of child sexual abuse.
- 24. That NSW Health collect, as a priority, the necessary data to allow it to determine the current staffing of, and demand for, the Sexual Assault Service. Furthermore, following the collection and analysis of the data, NSW Health should:**

²⁶⁶ The recent appointment of Senior Health Clinicians to each of the JIRTs will no doubt make a substantial improvement to Health's ability to increase its counselling referrals for children, but we remain concerned about the capacity of these positions to meet demand in locations where the JIRT is dealing with a very high volume of cases. Funding has been established for 25 Senior Health Clinicians across NSW. These positions are intended to assist in the investigative process by providing the JIRT partners with facilitating medical examinations, providing information and support regarding referrals to support and counselling services, and advocating on behalf of children and their non-offending carers in regards to their current and ongoing health needs. As at September 2012, 21 of these positions were filled, with ongoing recruitment efforts to fill the remaining three positions in Tamworth, Inverell, and Bourke.

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- a) review the adequacy of the overall budget for this Service
 - b) consider quarantining funds for the Sexual Assault Service as part of the budget allocations to Local Health Districts
 - c) consider allocating additional funds to the Local Health Districts specifically for the purpose of providing the Sexual Assault Service with access to a pool of flexible funds for brokerage and other incidental expenses.
25. In light of the observations made in sections 10.3 and 10.4 of this chapter, NSW Health, the Department of Family and Community Services and the Department of Attorney General and Justice should jointly review the capacity of the child sexual assault counselling services and identify how they can be better integrated. As part of this process, consideration should be given to developing a single referral mechanism, particularly for services operating in locations where serious capacity problems exist.
 26. That NSW Health review its current incentive schemes for attracting and retaining staff to rural and remote locations for the purpose of identifying strategies for improving its staff vacancy rate in these parts of the state. Any such review should be undertaken collaboratively with the Public Service Commission – see also Recommendation 88.
 27. That NSW Health designate responsibility to the Education Centre Against Violence (ECAV) for developing, in consultation with the Ministerial Advisory Body on Aboriginal Child Sexual Assault and the Aboriginal Communities Matter Advisory Group established by ECAV, an Aboriginal recruitment and staff development plan with the specific aim of increasing the number of Aboriginal sexual assault counsellors across NSW. Any such review should be undertaken collaboratively with the Public Service Commission – see also Recommendation 88.
 28. That NSW Health consider utilising the funding previously allocated to the operation of Cedar Cottage to establish a specialist service to support the victims of intra-familial abuse and their non-offending family members.
 29. That the Department of Attorney General and Justice considers the observations made in this report as part of:
 - a) the current review of the Victims Compensation Scheme, and
 - b) the evaluation of counselling services in correctional centres through the Victims Services Approved Counsellor Scheme.

Chapter 11. Forensic medical examinations

*The timely provision of forensic medical examinations for children who experience sexual assault and/or serious physical abuse and neglect is essential for securing the well-being and safety of victims and bringing offenders to justice.*²⁶⁷

The limited availability of suitably qualified medical practitioners to undertake forensic examinations of child sexual assault victims has been repeatedly raised with us during our consultations in rural and remote NSW as a significant barrier to increasing the rate of reporting. Both community members and agency staff, particularly police,²⁶⁸ continue to express concern about the distances that victims living in remote areas have to travel to be medically examined. The many years that this issue has been on agency agendas – without evidence of significant progress – and the level of concern, led to our decision to devote considerable attention to it during our audit.

A number of inquiries and reviews have highlighted the need for prompt action to improve access to forensic medical examinations for children in rural and remote communities. These include the Aboriginal Child Sexual Assault Taskforce, the JIRT review and, more recently, the Wood Special Commission of Inquiry.²⁶⁹

The Interagency Plan recognises the importance of the issue by including two actions – Actions 25 and 30 – both aimed at reviewing and expanding forensic medical services for children:

Action 25: Expand sexual assault medical services for children through extending NSW Health Child Health Networks (three across NSW) to provide additional training for doctors, nurses and GPs and to establish a professional advice and response line including an on-call roster of doctors.

Action 30: Resolve workforce issues including, for example:...Review medical services including forensic medical services provided for physical abuse and neglect of children and the networking and training of medical practitioners.

In March 2007, KPMG was contracted by Health to conduct the review required by Action 30 of the Interagency Plan. By August 2007, it had provided Health with a two volume report.²⁷⁰ The report focuses on services to adult and child victims, including remote service delivery issues. In May 2012, Health advised us that, although the KPMG report provided 'valuable background information on the provision of medical and forensic services for victims of sexual assault', ultimately it 'was not adopted by the former Government'.²⁷¹

Keep Them Safe outlines the NSW Government's continued commitment to implementing the Interagency Plan as a high priority and recognises that improving the provision of forensic and medical sexual assault services is 'a critical area of reform for Aboriginal children and their families, particularly those in more remote locations in the State'.²⁷² At the time of *Keep Them Safe*'s release in March 2009, it was envisaged that within 12-18 months, Health would have 'substantially commenced' the specific action to 'Develop strategies to ensure that forensic medical sexual assault services are provided in a culturally appropriate way for Aboriginal children'.²⁷³

Issues of access to forensic medical examinations are compounded for children, especially children under 14 years of age, as the range of practitioners qualified to conduct these examinations is restricted. Health has acknowledged that the size of NSW, as well as the lack of services in some areas and limited service function in others, means that while the central and northern coastal regions are relatively well served by existing 24 hour services, the western, southern and inland northern regions are not.²⁷⁴

The period immediately after the sexual assault of a child is a time of crisis for the victim and their family. In this early period, good quality interventions by counsellors and other health practitioners can make the greatest positive difference to those affected. This period is also critical for Police and Community Services investigators who collect evidence to support a criminal prosecution and ensure the child's safety. The sometimes competing requirements of the justice, child protection and health systems must all be met to provide the best possible response to the victim and to promote the safety of other children who may also be at risk.

267 NSW Government, *Keep Them Safe: A shared approach to child wellbeing, 2009-2012*, March 2009, p.11.

268 In its submission to the Wood Special Commission of Inquiry, the NSW Police Force commented that: 'The system in relation to the delivery of forensic medical examinations currently in place is not working. NSW Health have recently completed a significant review of these services however there would need to be significant financial resources and time invested before the recommendations come to fruition. There needs to be immediate access to forensic, counselling and medical services in rural and remote areas'. *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Vol. 1, p.316, at 8.260.

269 *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Recommendations 8.4 and 10.4.

270 NSW Department of Health, KPMG, *Review of Forensic and medical services for victims of sexual assault and child abuse*, 2007.

271 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

272 NSW Government, *Keep Them Safe: A shared approach to child wellbeing, 2009-2012*, March 2009, p.33.

273 NSW Government, *Keep Them Safe: A shared approach to child wellbeing, 2009-2012*, March 2009, p.39. Note: This commitment was also reflected in the NSW Government's Implementation Plan (July 2009 – 2013) for meeting the commitments in the National Partnership on Closing the Gap in Indigenous Health.

274 NSW Health, *Access for Isolated and Remote Sexual Assault Victims (AIRS) to a forensic/medical examination – Description of the Model*. (Undated Paper attached to NSW Health correspondence to Department of Premier and Cabinet dated 7 February 2011), p.5.

The delays and difficulties associated with transporting child victims over long distances can compound their trauma, compromise the quality of physical evidence, and act as a significant disincentive to reporting assaults. Our audit has shown that the lack of clear, up-to-date guidelines to inform decisions about whether and when a forensic medical examination should be carried out and then arranging appropriate transport, further complicates the situation for practitioners on the ground.

According to communities, the number of Aboriginal children reported as victims of sexual assault represents only a small portion of the actual assaults. If we want to encourage children and their carers to come forward, it is necessary to have good quality services and supports in place to meet their needs. Our many years of working with Aboriginal communities have shown us that a single story of poor or insensitive service provision can have wide ramifications. The influence of word-of-mouth is especially powerful when built on a history of well-documented government failures and lack of action. Despite some incremental progress, negative stories persist about accessing forensic medical services. Positive examples of support, cultural sensitivity and effective investigation are therefore crucial.

Although we have focused on the experiences of children in this report, it is important to recognise that responses to adult sexual assault victims can strongly influence reporting behaviour – as an adult’s experience of reporting may well shape the action they take when a child discloses to them. If negative perceptions are not turned around, this – along with other factors – can lead to non-reporting, thus leaving children and adult victims in some Aboriginal communities at continued risk.

The continued lack of access to forensic medical services for some of the most vulnerable children in rural and remote NSW is a serious systems failure that can have an impact on any child who becomes a victim of sexual assault. However, it is likely to particularly affect Aboriginal children – given their over-representation in sexual assault statistics generally and in these locations in particular. While it is essential to include specific measures to ensure that services are appropriate for Aboriginal children, any improvements made in this area will bring benefits for all child victims of sexual abuse.

Our 2011 Addressing Aboriginal disadvantage report highlighted the lack of progress in successfully addressing this serious issue.²⁷⁵ In its final report to the Minister for Aboriginal Affairs in February 2012, the Ministerial Advisory Panel (MAP) continued to express concern about the limited availability of forensic and medical services for children in rural and remote NSW. MAP members said they continued to hear of ‘instances of long delays and lengthy drives to obtain these essential services’.²⁷⁶ The need for reform is long overdue for victims living in remote and regional NSW, some of whom have been raising concerns with government for more than seven years. There is now a significant body of compelling evidence about the nature of the challenges and their impact. It is time to be frank about what can realistically be done to improve this crucial component of the system for child victims.

In this chapter, we document the progress made by Health and partner agencies in improving access to forensic medical services for child victims during the life of the Interagency Plan and up to the time of reporting. Our audit has identified a number of areas where practice could be immediately improved – as well as a range of practical measures aimed at alleviating the burden on frontline workers. In this regard, we have been guided by the views of senior health practitioners and other frontline staff involved in providing an immediate response to reports of sexual assault, as well as by our review of existing policy and guidelines.

Although the numbers of children requiring a forensic examination in parts of the state where available services are limited is relatively small, this should not dissuade the NSW Government from prioritising action in this area. Instead, as a community, we should be guided by the gravity of these events and the nature of the long-term harm that flows from sexual assault – not only to the victim and their immediate family, but also to their community more generally.

The following case study highlights the additional trauma that children and their families can experience when lengthy travel is required for a forensic examination, compounded by the lack of clear protocols for decision making in these situations.²⁷⁷ Police brought the case to our attention to illustrate their longstanding concerns. It should be noted that NSW Health is of the view that, in relation to this case, Police failed to follow protocol.

275 NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently. A special report to Parliament under s31 of the Ombudsman Act 1974*, October 2011, p.23.

276 Ministerial Advisory Panel, *Report to the Minister on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, February, 2012, p.7.

277 The case study was developed from information provided by Police, NSW Health and the relevant Local Health District.

Case study 13

In the late afternoon on a weekday, a distressed mother living in a small town in regional NSW reported to police that her three year old daughter had been sexually assaulted by a family member. Police sought a forensic examination for the child. They also placed the alleged perpetrator in custody to secure the child's immediate safety.

According to the local police, after several attempts to contact the on-call JIRT officer and within an hour of the report having been received, a police officer notified the Child Protection Helpline. He was told that the request would be processed as a priority and he would be contacted by either a Community Services case worker or a JIRT investigator immediately. After receiving no response by midnight, police made a further notification to the Helpline. However, a response was not received from the JIRT Referral Unit²⁷⁸ until the afternoon following the assault.

In the meantime, the local sergeant contacted the closest hospital – but was told they had no appropriately trained medical practitioners available to conduct a forensic medical examination on a three year old child. The hospital told police they would need to take the child to another hospital 240km away. When police contacted that hospital, they were asked to provide one hour's notice of their arrival to allow the hospital to call the paediatrician and avoid an extended wait. At approximately 8pm, a local police officer started the 240km trip with the child and her father.

Police have said that at 9.30pm they notified the Accident and Emergency Supervising Nurse of their estimated arrival time and arranged for the on-call sexual assault counsellor to meet them. However, 20 minutes later they were informed by the counsellor that the paediatrician was now unwilling to treat the victim due to her very young age. As a result, the officer turned the vehicle around after having almost completed the journey.

During the return journey, the child was very distressed and vomited in the police vehicle. Because of the need to preserve any evidence, police advised the father that the child could not be bathed. This added to the family's distress.

The version of events given to us by the Local Health District (LHD) differs somewhat from the police account. According to the LHD, the on-call sexual assault counsellor did not believe there was any benefit in transporting the child at night without the necessary preparations – and disputes that she assisted police to facilitate the immediate transporting of the victim. The worker indicated she was under the impression that, although it was not ideal, a local police officer 'experienced in counselling' was staying with the family and, as a result, she concluded that the family's immediate support needs were being met. It was only after the journey had progressed some way that the on-call worker said she became aware that the local police had decided to travel to the hospital 'in any case'.

The following morning, with the assistance of the local sexual assault counsellor, police arranged for a paediatrician to commit to treating the child. After delivering her to the local health service, the child and her father were once again transported the 240km to the hospital – but this time by the local sexual assault counsellor. Police indicated that after the local counsellor became involved, a high level of support was provided by Health to the family and police.

Given the systemic issues raised by this case, we asked NSW Health for its views on the adequacy of the response provided to the child and her family. It described the processes that would normally be followed in such a case:

NSW Health's approach in a case of a child this age would be to consider if it was in the child's best interest to conduct a medical forensic late at night. This process can be traumatic for any child and in most cases a joint interagency decision is made to conduct the assessment in the morning after the child has slept. In the case described...the child would not have been seen before 9pm. NSW Health observes that independent decisions were made by police on the evening of the [date withheld] which meant that appropriate interagency pathways and decisions were not followed. NSW Health considers the crisis and ongoing response provided to the child and their family by NSW Health workers was appropriate.

The NSW Police Force acknowledged that the accounts provided by its officers appear to indicate a breakdown in communication between the Helpline, the JIRT and local police. The exact nature of the events surrounding this incident remains uncertain. What is clear, however, is the need for much better decision-making processes regarding who has the lead in deciding if, and when, a child victim should be transported to undergo a forensic examination – so that an already traumatic experience is not further exacerbated by a poor service response and every effort is made to secure valuable evidence.

²⁷⁸ The Joint Referral Unit is the entry point into the JIRT program in NSW. It comprises decision – makers from Community Services, Police and NSW Health.

11.1 The value of forensic evidence as an investigative tool

Forensic evidence can be collected from a range of sources including the victim's clothing and the scene of the assault. DNA evidence is a possible component of forensic evidence and is often not present in cases of child sexual assault. In fact, many types of sexual abuse leave no physical evidence because of the way the abuse is perpetrated.²⁷⁹ In addition, injuries may heal rapidly, leaving little or no trace after 48 hours, and delays in disclosing abuse are common.²⁸⁰ For example, police data for the Western Region of NSW from January 2007 to April 2010 shows that in 25% (104 of 409) of recorded sexual assault incidents involving a 'juvenile' victim, the delay between the time of the assault and the time of reporting meant that any forensic evidence would have been lost, rendering any forensic examination of no value.²⁸¹

Notwithstanding the factors that influence the viability of forensic evidence, there is no question that it is a highly valuable source of evidence for investigators. Forensic evidence may be used to corroborate the victim's account of the event or to tactically deal with the alleged perpetrator. At trial, forensic evidence is not strongly associated with prosecutorial success in adult sexual assault cases because these usually turn on the question of consent. Having said this, forensic evidence can still lend greater credibility to a victim simply because they have agreed to be examined and, more importantly, because it can help to validate the victim's evidence. There can also be a positive association between its existence and police laying charges against an alleged perpetrator. Police and defence lawyers, both in NSW and in other jurisdictions, have told us that the very existence of forensic evidence can play a part in encouraging perpetrators to plead guilty – quite apart from any probative value the evidence might have in court.

In relation to children, forensic evidence can have a different impact. The 2005 report by the Attorney General's Criminal Justice Sexual Assault Taskforce, *Responding to Sexual Assault: the way forward*²⁸² noted data²⁸³ suggesting that 'in the higher courts people charged with a child sex offence are more likely to plead guilty than people charged with adult sex offences.' The report further comments that:

*It is unclear why there is such a difference in these figures. One reason could be that because consent is not an issue in child sex offence cases, DNA or other evidence suggesting that intercourse occurred is more compelling.*²⁸⁴

11.2 How forensic examinations are conducted

Victims of sexual assault may 'self-refer' to a sexual assault service or they may be referred by police, emergency departments, local GPs or other government or non-government agencies. When allegations of child sexual assault are made to police, Community Services or to other mandatory reporters, a report must be made to the Child Protection Helpline. The usual process involves the Helpline notifying the JIRT Referral Unit or the on-call Police JIRT officer if the report is after hours. A sexual assault service counsellor, in consultation with on-call medical staff, then decides whether a child should be forensically examined.²⁸⁵

A medically qualified person²⁸⁶ can conduct the examination to document injuries, collect forensic specimens via a sexual assault investigation kit (SAIK), and provide an expert opinion to be used as part of the prosecution of an alleged perpetrator.²⁸⁷ The qualifications required for doctors and nurses to conduct forensic examinations of children vary according to the age, and psycho-social and physiological development, of the child or young person, the competencies of the health professional, and the policies of the LHD.²⁸⁸

279 The research literature suggests that forensic examinations of children will only produce evidence of relevance in a court in the small minority of cases. See for example: *Guidelines for the medico-legal care for Victims of Sexual Violence*, WHO, 2001, p.78 and/or *The evaluation for Sexual Abuse in children*, American Academy of Paediatrics Clinical Report, N Kellogg MD and the Committee on Child Abuse and Neglect, Paediatrics 116: 2005, p.509.

280 Dr Jean Edwards, *Medical Examinations of Sexual Assault Victims: Forensic Use and Relevance*, Judicial Commission of NSW website, 2003, www.judcom.nsw.gov.au. Accessed 19 November 2011.

281 NSW Police Force, *Sexual assault and aggravated sexual assault*, 2010, including information from the Police Ministry and Emergency Services, 7 September 2012. Note: complete data (including juvenile or adult status of victim) was not recorded for 205 recorded sexual assault incidents.

282 Attorney General's Department NSW, Criminal Justice Sexual Assault Taskforce, *Responding to Sexual Assault: the way forward*, 2005.

283 Figures from the NSW Bureau of Crime Statistics and Research (BOCSAR).

284 Attorney General's Department NSW, Criminal Justice Sexual Assault Taskforce, *Responding to Sexual Assault: the way forward*, 2005, p.13.

285 We discuss decision making processes regarding forensic medical examinations further in section 11.4.3.

286 Forensic medical examinations are specialist examinations that can only be conducted by a trained doctor or specialist nurse.

287 As well as swabs and slides, the SAIK includes the *Child Sexual Assault Medical Protocol*, which provides guidance to the medical practitioner about aspects of the examination, consent forms, anatomical diagrams used to indicate location of any injuries and forms to complete details of patient history and findings and conclusions. The Protocol is designed so that it forms the patient's medical record and can be subpoenaed in court.

288 NSW Health response to NSW Ombudsman Requirement for Information, 6 June 2011.

Children under 16 years of age may be examined by:

- paediatricians and paediatric registrars
- sexual assault forensic medical officers (GPs) with paediatric privileges
- senior staff specialists in paediatric health.

Children between 14 and 16 years of age or older may also be examined by:²⁸⁹

- registered medical practitioners with specialist sexual assault training
- sexual assault nurse examiners (SANEs).²⁹⁰

The *Child Sexual Assault Medical Protocol*²⁹¹ states that a forensic examination of a child is 'required' if the assault has occurred within the previous 72 hours. This protocol is out-of-date and currently under review, but we have been advised by Health that it still represents a key policy direction for Health employees on this issue.

11.3 What initiatives have been implemented by Health during the life of the Interagency Plan?

In relation to Action 25 of the Interagency Plan, Aboriginal Affairs commented in July 2007:

*It is unclear whether these activities will result in expanded child sexual assault services across the state. Only \$150,000 recurrent has been allocated for each of the three CHNs [child health networks]. This is not likely to increase services to anywhere near the extent indicated as necessary by ACSAT.*²⁹²

By October 2007, progress on Action 25 was put on hold, 'until consideration [could be] given to the report and recommendations of the Review of Forensic and Medical Services (the KPMG review) by the Health Minister.' In early 2009, Health started the Child Abuse and Sexual Assault (adult and child) Forensic and Medical (CASAFAM) Project in response to the KPMG review. It was a scheme to develop and enhance forensic medical services already in place for sexual assault victims and improve training and support for practitioners.

11.3.1 The CASAFAM Project

In early 2009, Health began implementing the CASAFAM Project – a model of sexual assault forensic and medical service provision by doctors and nurse examiners to address service gaps in rural and metropolitan areas.²⁹³ The project aimed to develop and implement 24 hour state-wide sexual assault and child protection forensic and medical services in NSW.

The three key aims were to have:

- appropriately qualified medical staff to conduct forensic services in rural and remote areas with access to clinical advice, support and networking
- professional development for doctors, nurses and other health workers providing comprehensive, holistic, multidisciplinary and culturally appropriate responses to adult victims of sexual assault and child victims of sexual assault or physical abuse and neglect
- clear interagency guidelines for transporting adult victims of sexual assault and child victims of sexual assault or physical abuse and neglect to forensic medical services, when required.²⁹⁴

Lack of official recognition that there is a problem in forensic service provision has not been an impediment to progress, nor, it would seem, has lack of available funding. Between 2009-10 and 2011-12, a total of over \$6 million in recurrent funding²⁹⁵ and more than \$1.2 million in one-off funding was allocated to CASAFAM largely to support the CASAFAM state-wide clinical network, provide training, and to establish a 24 hour telephone support and advice line for GPs doing forensic medical examinations.²⁹⁶

A tender process was undertaken to engage an organisation to develop the CASAFAM model, including preparing and delivering medical and nursing postgraduate training in NSW and providing the advice line. However, no tenders were submitted – due to the complexity of the issues. As a result no contracts were awarded. A request

289 Where the offender is not a caregiver or parent.

290 For more information about sexual assault nurse examiners, please see section 11.3.4.

291 Department of Health, *Child Sexual Assault Medical Protocol*, 2002. Note: The 2005 *Sexual Assault Services Policy and Procedures Manual (Adult)* contains similar advice at p.62.

292 Aboriginal Affairs NSW response to NSW Ombudsman Requirement for Information, 14 March 2011.

293 Aboriginal Affairs NSW response to NSW Ombudsman Requirement for Information, 14 March 2011.

294 NSW Health response to NSW Ombudsman Requirement for Information, 6 June 2011.

295 NSW Health response to NSW Ombudsman Requirement for Information, 25 May 2012.

296 NSW Health response to NSW Ombudsman Requirement for Information, 7 November 2012.

for information was subsequently issued on 5 May 2011 focusing on the professional development and education component of the tender. The information provided by the sector, in response to the request for information, identified the range of skills and competencies required for the delivery of comprehensive forensic and medical services. As a result, no contracts were awarded and implementation of the CASAFAM Project stalled.

Ultimately, the project has not progressed much beyond defining its objectives. Health has acknowledged that it failed to fully establish the CASAFAM Project clinical network and training service.²⁹⁷ While some projects – including the incentive payment and the trial AIRS project in Western NSW (discussed below) – have been conducted under the umbrella of CASAFAM, the central objectives of the project remain unmet and Health has not endorsed any final CASAFAM model. However, in the long term, implementing the CASAFAM Project is seen as a solution to providing accessible forensic medical services to adults and children.

There will no doubt be benefits in establishing CASAFAM as an overarching framework for training, professional support and service provision for all forensic services in NSW. We understand that the CASAFAM Project will be further developed and expanded in line with the strategic plan of NSW Kids and Families.²⁹⁸ However, the timeframes for completing the CASAFAM Project are lengthy, and aspects of the future of the project appear to be uncertain.²⁹⁹ Therefore, the model needs to be complemented by a range of practical measures that we discuss in section 11.4.

11.3.2 The AIRS Model – Access for Isolated and Remote Sexual Assault victims to a forensic medical examination

As part of the CASAFAM Project, work was undertaken to identify the location and type³⁰⁰ of forensic services across the state to ascertain where gaps existed for both adults and children. This exercise provided valuable information about the distances that adult and child sexual assault victims may need to travel to receive a forensic examination. In November 2009, the service audit and mapping process was completed for rural NSW and led to the development of the AIRS Model.

The AIRS Model aimed to:

- enhance counselling services and forensic services for adults³⁰¹ in six specified locations in the north, west and south of the state – Tamworth, Moree, Dubbo, Griffith, Bega and Albury
- arrange flights for victims or health workers where travel over a 400km return trip was required to receive a forensic examination
- provide assessment services in locations where there are issues of accessibility and remoteness.

This original AIRS Model was to operate state-wide and included enhancements to forensic services for adults in six sites across five Local Health Districts.³⁰² The six enhanced services aimed to provide adults in most areas of the state with access to a 24 hour sexual assault response – including forensic/medical examinations within a 400km return trip by road. In its paper on the AIRS Model, Health acknowledged that more than a 400km return trip would continue to be required for children living in a substantial part of the state.³⁰³ This was because:

*At this stage, it is not possible to bring specified Level 3 paediatric services up to Level 4, as it is not possible to increase the number of paediatricians or their degree of specialisation.*³⁰⁴

If more than a 400km return trip was required, the original AIRS Model included a capacity to fly victims (and a support person) to a service – or for an examiner and counsellor to be flown to the victim. Because many of the more remote locations do not have planes locally available, in some areas it made more sense for examiners to fly from larger regional centres to victims in more remote locations; the aim was to avoid the need to fly a plane to the local airstrip to collect the victim and make an additional flight back to base after the victim was returned. An additional complication is that many airstrips in smaller remote communities do not operate at night.

In areas with a Sexual Assault Service (SAS), part of the role of the SAS counsellor is to assess – usually in consultation with on-call medical staff – whether a forensic examination is needed and, if necessary, organise transport to a facility where an examination can be done. However, in communities without an SAS this basic

297 NSW Health response to NSW Ombudsman Requirement for Information, 25 May 2012.

298 *Keep Them Safe 2011-12 Annual Report*, p.19.

299 NSW Health has advised that in February 2012, 'the CASAFAM Project was expanded and brought within a broader portfolio called, 'Medical and Forensic' with responsibility for its implementation lying with the Violence Prevention and Response Team located in the then Maternity, Children and Young People's Health Branch'. We understand that this will now be subsumed within the responsibilities of NSW Kids and Families.

300 For example, whether a service was for adults or for children and whether it operated on a 24 hour basis.

301 Adolescents aged over 14 years may receive forensic services from facilities catering for adults.

302 Western, Far West, Hunter New England, Southern and Murrumbidgee Local Health Districts.

303 NSW Health, *Access for Isolated and Remote Sexual Assault Victims (AIRS) to a forensic/medical examination – Description of the model*, (Undated Paper attached to NSW Health correspondence to Department of Premier and Cabinet dated 7 February 2011.), p. 8.

304 NSW Health, *Access for Isolated and Remote Sexual Assault Victims (AIRS) to a forensic/medical examination – Description of the Model*, (Undated Paper attached to NSW Health correspondence to Department of Premier and Cabinet dated 7 February 2011), p. 8.

crisis service is not provided. The final part of the AIRS Model proposed a triage or assessment service in these communities to provide information and support to adult and child sexual assault victims in crisis. Trained assessment service workers are able to assess whether a forensic examination is required, and thus reduce the number of victims unnecessarily transported long distances for a medical and forensic examination.³⁰⁵ Where forensic examinations are required, assessment service workers can arrange transport.

At this stage the original state-wide AIRS Model has not been fully implemented. However, as we discuss later, a pilot program is currently being conducted in Western LHD.

Case study 14 – The Walgett Triage and Assessment Service

The first assessment service was established in Walgett and arose out of a meeting we organised in June 2010 with the Deputy Director General of NSW Health, the Police Commissioner, and the former CEOs of Community Services and Aboriginal Affairs. We called this meeting to address the significant concerns raised with us by Police and Aboriginal Affairs about the need for forensic services in Western NSW. Our consultations about the situation in Walgett identified that there were no local medical practitioners able and willing to provide a forensic service to children under 14 years of age and also highlighted the fact that often forensic examinations of child sexual assault victims are not required due to delays in reporting or the nature of the abuse.

The Walgett Assessment Service was established on 17 November 2010 and operates out of an appropriately equipped room at Walgett Hospital. The assessment service provides victims of sexual assault with initial information and support, and contacts the closest 24 hour sexual assault service to determine whether a forensic medical examination is required. The assessment service consists of an availability list of trained workers – including staff with backgrounds in social welfare, social work, psychology, Aboriginal health and nursing. They are on call to help sexual assault victims as needed. Assessment workers are paid a fee if they are called to duty.

The Walgett Assessment Service counsellors can also provide transport for a forensic examination if necessary. For children under 14 years of age, this still means a four hour drive to Dubbo Base Hospital. Bourke hospital, approximately two and a half hours' drive from Walgett, has a limited forensic medical service for victims over the age of 14 years who are seen by a trained GP.³⁰⁶

At the time of Health's response to our requirement for information in May 2012, there had been no presentations to the Walgett Assessment Service. According to Western LHD, information about the service has been provided at a number of community meetings to ensure that the lack of use of the service is not due to a lack of awareness of its existence. It is understood that some victims of sexual assault from the Walgett community have presented directly to the Dubbo SAS since the assessment service became operational. Concerns about breaches of privacy in a small town like Walgett have been cited as possible reasons for the lack of use of the service.

The Walgett Assessment Service has now been incorporated into the Western LHD AIRS pilot program.

Establishing assessment services to provide a local crisis response to the immediate needs of adult and child victims of sexual assault in remote areas where extensive travel is required to access a SAS shows promise. However, there is still much work to be done in encouraging local communities to make use of these services. It will be important for Health and agency partners to analyse child (and adult) sexual assault data for the newly established assessment service locations to assess trends in usage.

11.3.2.1 Trialling the AIRS Model in Western LHD

In February 2011, a draft of the AIRS Model was prepared for the Forensic Interagency Meeting (FIM).³⁰⁷ The model was costed at \$2,118,526 for the 2011-2012 financial year and accounting for 3.21% indexation was costed at \$2,403,925 for the 2015-2016 financial year.³⁰⁸ In August 2011, the FIM agreed that the proposal should be put to Treasury for feedback. According to the Department of Premier and Cabinet, Treasury had no problems with the

305 NSW Health response to NSW Ombudsman Requirement for Information, 25 May 2012.

306 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

307 The FIM is chaired by the Department of Premier and Cabinet.

308 In mid 2009, Health established and convened the Forensic Interagency Meeting (FIM) to ensure an improved interagency response to forensic issues. In February 2011, the Department of Premier and Cabinet took over as chair of the meeting, which now includes representatives from Health, Community Services, Police and other justice agencies. Improving access to forensic examinations for sexual assault victims (both adults and children) in rural and remote areas has been a 'recurring theme on the FIM agenda since the group commenced'. The FIM was established largely in response to concerns raised by Police about the long distances police officers were having to transport victims and the impact this could have on a victim's decision to undergo an examination. (Information provided by Department of Premier and Cabinet in response to NSW Ombudsman Requirement for Information, 12 November 2012.)

model but would not support the allocation of additional funding because Health already had funds allocated for such purposes. It was at this point that Health decided to fund the two year trial of the model in Western LHD, to assess its viability and effectiveness. This was supported by the FIM.³⁰⁹ The trial started in mid 2012.

The trial has involved upgrading forensic services for adults at the sexual assault service at Dubbo hospital and includes the previously upgraded service at Bourke hospital. At Dubbo, an on-call roster has been organised to ensure 24 hour access to forensic medical services for adult sexual assault victims aged over 14 years. A 24 hour forensic paediatric service for children already exists in Dubbo. Bourke hospital was upgraded in 2009 and currently has a 24 hour availability list of six counsellors as well as one trained GP who provides forensic examinations to children over 14 years of age. Upgrades in these locations have reduced the amount of time adult victims must travel by road to access a forensic/medical examination in Western LHD. However, there have been no such enhancements to services for young children, and the distances children must travel by road have not been reduced.

As part of the AIRS Model Pilot Program new assessment services have also been established at hospitals in Coonamble, Lightning Ridge, Nyngan, Cobar and Mudgee.³¹⁰ We have been advised by Health that these services were planned to start operating in June 2012. The services will provide an immediate and crisis response to child and adult victims of sexual assault, assess whether a forensic medical examination is required for adult and child victims, and if so, make travel arrangements for children and adults to access forensic services when necessary. By determining whether a forensic medical examination is required or not, the assessment services ensure that child and adult victims do not unnecessarily travel to Bourke or Dubbo hospital.

The AIRS Model Pilot Program includes transport for a forensic examination arranged in line with the three AIRS goals – technically this includes providing flights for adults and children where necessary if more than a 400km return journey would be involved. However, as we discuss later in section 11.4, funding for the Pilot Program does not cover costs for flights – and these additional costs are unlikely to be met from existing LHD capacity. This means that the benefits of a central component of the Pilot Program – flights – will not be realised. Because road travel times for children requiring a forensic medical examination have not been reduced by additional service enhancements, this means that most children in the trial area will continue to travel in excess of 400km (return) by road.

Police have also raised a concern about the coverage of the AIRS Model Pilot Program. There are various policies and guidelines relating to the transportation of adult sexual assault victims for a forensic/medical examination. Most of these documents include a statement asserting that if a victim first presents to a NSW Health facility, Health is responsible for transportation – and if the person presents to police, they are responsible. In commenting on the AIRS Model Pilot Program, the NSW Police Force stated that:

The [draft AIRS Model] remains mute on the existing policy where the victim presents to the police and the travel is in excess of 400km. Clarification is required that NSW Health will afford the same air service to the victim, irrespective of which agency the victim reports to (such as the police) and NSW Health will cover the costs incurred. This service should also be provided to all child victims where the examination will incur over a 400km round trip.

The trial of the AIRS Model Pilot Program in Western NSW LHD has improved 24 hour access to forensic medical services for adult sexual assault victims in that area. This is a welcome improvement. However, the fact that the trial has been confined to Western NSW LHD means that services in the Hunter New England, Southern and Murrumbidgee LHDs have not been upgraded as originally proposed and the assessment service intended for Wilcannia has not been established. Services for children also need to be upgraded; although, as we discuss elsewhere in this report, this is a more complex problem. The issues of funding for flights and equal access to flights for all victims, regardless of which agency they present to, also need to be resolved.

11.3.3 Payment Determination 24

The most significant factor impeding availability of forensic examinations is the shortage of suitably qualified health practitioners who are able to conduct these examinations for children in rural and remote NSW. Access to paediatricians is difficult because they are rarely locally available, tending to be attached to larger hospitals which may be a considerable distance from the victim. In areas where there are suitably qualified GPs (who usually only examine children 14 years and older), they may be unavailable during day time hours because of competing demands from their private practice. Many GPs provide forensic and medical services out of hours. An advantage of the AIRS Model Pilot Program is that arrangements can be made so that the arrival of the victim at either Bourke or Dubbo Hospital can be timed with the arrival of the GP, or forensic medical examiner. For many GPs, however, conducting forensic medical examinations presents significant challenges.

309 Department of Premier and Cabinet response to NSW Ombudsman Requirement for Information, 12 November 2012.

310 A proposed assessment centre at Wilcannia (costing \$18,628) was not established because it did not fit within the trial area boundaries. An assessment centre was also established in Walgett in late 2010.

For GPs in rural and remote areas, performing a forensic medical examination can cause considerable disruption to their practice. It may involve cancelling and re-scheduling patients in order to conduct an often lengthy examination. In some areas, voluntary rosters of GPs are organised to provide a service on a 24 hour basis; they are remunerated if they are called out to do an examination.³¹¹ If the matter goes to court, the GP may also have to take extended leave from their practice to give evidence.

As the Wood Special Commission of Inquiry noted:

A major issue for rural-based medical practitioners is the challenge presented in giving evidence in court. This requires them to disrupt their practice and travel to the location of the court with limited financial compensation. An alternative and more efficient method would be the use of audio visual links for rural medical practitioners in giving evidence in child sexual assault matters, (thus limiting) the time they are absent from their practices and eliminating many logistical issues.³¹²

For many medical practitioners, the prospect of appearing in court to give evidence is daunting. The infrequency of forensic examinations and the scarcity of clinical support contribute to practitioner doubts about becoming involved in legal proceedings, and can lead to hesitation or unwillingness to take on the role of forensic examiner.

In November 2008, a new remuneration system for conducting forensic examinations was implemented by NSW Health as part of the CASAFAM Project. Known as Payment Determination 24, a new fee of \$1,538 was introduced and was payable to any registered medical practitioner who conducted a physical examination of a sexual assault victim on behalf of the Greater Southern, Greater Western, Hunter New England or North Coast Area Health Services (AHS)³¹³ otherwise than as an employee of the applicable AHS.

The new fee was established to encourage a greater number of medical practitioners, particularly GPs, to provide forensic medical examinations of children in rural LHDs. When LHDs claim the payment determination from the NSW Ministry of Health, they provide reports with useful data about each examination, including doctor type (e.g. Visiting Medical Officer, GP), age, gender, Aboriginal status of victim, location of the examination, and whether a Sexual Assault Investigation Kit was used. We received advice from Health that it does not systematically aggregate or analyse this data, which means that baseline data is not readily available to determine any impact of the new fee. Analysis of this data could provide valuable information about the use of the payment determination over time. It may also provide insights into which categories of sexual assault victim (including age group and which LHDs) are being assisted by the introduction of the fee.

We received mixed feedback from the designated LHDs about the payment determination, highlighting the complexity of the issues relating to the provision of forensic medical examinations, including the following comments:

There has been limited feedback from GPs about the benefit of the payment. Generally, GPs think it is good that there is some recognition of this work, however it has not necessarily appeared to act as an incentive to GPs. In many instances GPs have indicated that the possibility of a court appearance is a major deterrent as well as the time it takes to perform the medical.³¹⁴

It is difficult to determine whether it has increased access. At one site where there has been no GP to provide forensic medicals, when GPs have been contacted about undertaking training and being part of the response, the SA Payment Determination has not increased their interest in doing this.³¹⁵

There has been no increase in the actual number of participating doctors since the introduction of the new call-out fee; however there is a demonstrable increased commitment to, and confidence in, the role by existing participating doctors. This is demonstrated, for example, through attendance at relevant conferences...preparation of expert certificates, and a willingness to travel further to other sites to deliver the Service.³¹⁶

No improvement, it is still very difficult to attract and retain Medical Practitioners in rural areas. We have not had any interest from existing doctors in private practice that are willing to be trained in child forensic medicals.³¹⁷

The increase in participation by GPs has been significant and feedback has included that [it is a] vital incentive to enable the service to continue working in this difficult area, particularly after hours...new GPs have joined the service and are quoted that the payment assists with the recognition of the difficult nature of the service and the often late night call outs...The payment has encouraged more GPs to be trained and provide a service to children 14-16 years.³¹⁸

311 See also discussion at section 11.4.2.

312 *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Vol. 1, p.316, at 8.260.

313 As they were then known prior to the restructure which created Local Health Districts.

314 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

315 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

316 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

317 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

318 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

Most of the comments we received from LHDs related to GPs. Only two of the LHDs discussed the impact of the payment determination in relation to paediatricians. We were especially interested in this because it is mostly paediatricians who perform forensic examinations on children younger than 14.

The Far West LHD noted that the fee was not applicable for them because providing forensic examinations of children was a contractual requirement for all paediatricians employed by Broken Hill Health Service – so they are not eligible for the fee.³¹⁹ However, Hunter New England LHD indicated that some paediatricians are on the Visiting Medical Officer (VMO) paediatric roster and are therefore entitled to the payment. The responses suggest that the payment determination is accessed in limited circumstances by paediatricians and we would expect its impact to be greatest in encouraging practitioners to perform examinations on adults and children over 14 years.³²⁰

The decision by Health to make increased funds available to remunerate practitioners who do forensic examinations in remote areas has been largely welcomed by LHDs and appears to have led to an improvement in service provision in a number of districts. However, more evidence is needed to properly assess the impact of the new fee. With some adjustments, it appears that the existing Payment Determination reports provided by LHDs to the Ministry of Health could assist in this process. Greater consultation with those practitioners whose behaviour the new fee seeks to influence may also provide valuable insights. It will be important to assess the success of this measure in a more rigorous manner than has been attempted to date. This will allow informed judgements to be made about its efficacy in different districts and potential improvements to the scheme.

Clearly, more needs to be done to increase to the number of medical practitioners qualified to conduct forensic examinations of children, particularly in those LHDs which have indicated that the new fee has resulted in little or no improvement to access. In section 11.4, we discuss improvements to contractual arrangements that may increase access to suitable medical practitioners.

11.3.4 Increasing the number of trained Sexual Assault Nurse Examiners

Sexual Assault Nurse Examiners (SANEs) are nurses employed by Health who are qualified to undertake forensic examinations of adult victims of sexual assault – that is, a person 16 years or over who has experienced sexual assault and attends a NSW Health Sexual Assault Service. SANEs may also examine adolescents 14 years or older, if they present to an adult sexual assault service and the adolescent was not assaulted by a caregiver or relative.³²¹

The SANE program is one of a number of strategies adopted by Health to address the shortage of medical practitioners able to conduct forensic examinations for victims of sexual assault. The program started in NSW in 2005, with 27 enrolled nurses. Although the program pre-dates CASAFAM, it has now been absorbed within the CASAFAM Project. To become qualified, SANEs must attend training provided by the Victorian Institute of Forensic Medicine and undertake supervised practice by medical officers.³²² Approximately half of the nurses who started the program in 2005 did not graduate within the course timeframe for a range of reasons – including having limited opportunities to observe or perform forensic examinations, lack of clinical support, inadequate payment and conditions, and limited feedback on performance.

In July 2010, Health put in place an alternative graduation pathway to encourage the remaining SANEs who did not graduate to do so. Funding was offered by Health through (then) Area Health Services to cover the costs of additional training and backfilling for the nurse positions while they attended training. An additional contribution from the Area Health Service was required to cover other costs such as travel and accommodation. Only one AHS, Hunter New England, took advantage of the alternative graduation pathway, with one SANE participating. Hunter New England currently employs the largest number of SANEs.

Only a small number of SANEs are presently employed by LHDs and the majority (10 of 15 LHDs) indicated to us that they did not employ any SANEs.³²³ Two LHDs (Illawarra Shoalhaven and Western) employed one SANE each and Western Sydney and Nepean Blue Mountains LHDs share one part-time SANE position. Hunter New England employs four SANEs. We asked Health to tell us how many examinations on adolescents aged 14 to 16 years had been conducted by SANEs in each LHD during the period 2009 to 2011. Of the five LHDs employing SANEs, a total of 22 examinations were performed over the three years. However, a number of LHDs noted that their data capture on this issue is unreliable.³²⁴

319 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

320 Further clarification from the Ministry of Health was sought on this issue. The Ministry confirmed that VMO paediatricians are able to claim the payment to perform examinations in addition to their usual practice and 'sessional' VMOs could claim the payment if the examination was not performed during the ordinary hours that they are contracted to perform. NSW Ministry of Health response to NSW Ombudsman Requirement for Information, 6 September 2012.

321 NSW Health, *Clinical Practices – Adult Sexual Assault Forensic Examinations Conducted by Nurse Examiners*, 3 August 2005, p.3.

322 NSW Health, *Clinical Practices – Adult Sexual Assault Forensic Examinations Conducted by Nurse Examiners*, 3 August 2005, p.2.

323 Western Sydney and Nepean Blue Mountains LHDs provided a joint response which stated one SANE was employed.

324 One LHD was unable to provide any data on the number of forensic examinations conducted on 14 to 16 year olds.

The difficulties in rolling out the SANE program for adults have led Health to conclude that it is not currently viable to extend it to cover forensic examinations of children younger than 14. Health has also pointed to additional issues that would need to be resolved before implementing such a scheme. These include the greater complexity of conducting forensic examinations on children compared to adults, difficulties associated with small case loads impacting on skill acquisition and retention, and the lack of day-to-day experience conducting intimate examinations of children to provide a reference point to identify 'abnormal' presentations that possibly signify abuse.

Our consultations with practitioners both in NSW and in other Australian jurisdictions have confirmed that the level of expertise required for forensic examinations of children is significant. Experts in this field have noted their preference for paediatricians or other suitably qualified doctors to conduct examinations of children under 14 years of age. It appears that Health has no current plans to increase the number of SANEs providing forensic services to 14-16 year olds. However, our analysis of sexual assault data shows that a significant proportion of children who have been sexually assaulted were over 14 years of age. While additional SANEs will not address the service gaps for younger children, there is still merit in improving access for older children and adults through expanding the number of filled SANE positions. Barriers to successful completion of SANE training have already been identified and do not appear to be insurmountable (e.g. lack of clinical supervision and limited opportunities to perform examinations). These barriers should be reviewed to determine whether investment in a new improved SANE program would be worthwhile. At a minimum, inquiries should be made with the Hunter New England LHD about the role and value of its SANEs to determine potential benefits of increasing SANE numbers in other LHDs.

Advances in, and the wider availability of, telemedicine³²⁵ – enabling more frequent and timely clinical support and advice – may also allow forensic examinations to be done by a wider array of practitioners. Issues involved with the use and storage of forensic imagery will need to be resolved in order to allow these technological advances to be used effectively. The associated issues are complex and we are keen to monitor how well Health and its partner agencies deal with these issues.

11.4 What else can be done to improve access to forensic medical examinations?

Each year, many more women than children will require access to a forensic examination after a sexual assault. However, the relatively small numbers of children requiring forensic medical examinations should not be used as a justification for not providing appropriate services. And yet, much of the activity described in the previous section has had very limited impact on forensic service provision for children under 14 years of age.

We accept that improving forensic medical services for adult victims of sexual assault may indirectly benefit children by increasing the trust of women in government support services and in investigative responses (thus making them more likely to encourage children to come forward to seek the same type of help). However, although a number of initiatives to assist children have been implemented, the current focus on adults,³²⁶ when so much time has already passed without an adequate response for children, is unacceptable.

In this section we discuss how some of the main barriers to providing accessible forensic examinations for children could be overcome.

11.4.1 The need for better quality data

The lack of quality data collected and reported complicates Health's and other agencies' attempts to improve service provision. For example, there is a lack of data about:

- the number of forensic examinations conducted on children each year (including whether they are Aboriginal)
- how far child victims have to travel to undergo a forensic examination (and related location specific information)
- the period of time between the alleged incident and the forensic examination.

In 2007, when KPMG released its report, it noted that the data collected by Sexual Assault Services was 'questionable' in terms of 'quality and completeness' and that data provision had declined from 2004-05 to 2005-

³²⁵ Telemedicine is the diagnosis and/or treatment of patients in remote areas using medical information and/or imagery transmitted over long distances using information and communication technologies.

³²⁶ The FIM has one working group – the Sexual Assault Working Group – and its current task is to oversee the work of this group. However, since June 2012, nothing has been referred to the FIM by the working group and the working group 'has yet to produce any material requiring the FIM's endorsement'. As a result, the FIM has not met for six months and at the time of writing, had no immediate plans to reconvene. The sexual assault working group continues to meet regularly and its current focus is reviewing the adult (over 16 years) sexual assault guidelines and protocols. The working group's members include representatives from the Department of Premier and Cabinet, Health, Police, the Office of the Director of Public Prosecutions and the Department of Attorney General and Justice. Source: Information provided by Department of Premier and Cabinet in response to NSW Ombudsman Requirement for Information, 12 November 2012.

06. Items frequently not completed included those relating to the conduct of forensic and medical examinations.³²⁷ KPMG cautiously reported that for 2004-05 the sexual assault data collection³²⁸ recorded that 229 children presented to SASs as a result of a recent sexual assault and had a forensic or medical examination. This was approximately 25% of the total number of forensic examinations conducted.³²⁹

In February 2011, ARTD Consultants released its *Review of NSW Health Counselling Services*.³³⁰ It included a survey of SASs and found that 76% of services surveyed believed that their data system did not give them the information that they needed.³³¹ It found data collection to be inconsistent, 'burdensome and inadequate',³³² with a variety of systems in use. ARTD noted that:

*Many services do not consistently comply with data collection requirements, but those that do provide data to the NSW Health Department report that they never receive any information back from the Department that enables them to track their own performance or compare it with that of other services.*³³³

A number of LHDs we spoke with expressed similar concerns about the reliability of SAS databases. According to these LHDs, data added to the central database can't be accessed locally by SASs. This results in a lack of interest in recording data regularly and accurately, since it is of no practical use to the service. There is also no feedback provided to SASs about data trends.

Our own inquiries, a number of independent reviews and Health's own analyses leave no doubt that the collection and analysis of relevant child sexual assault data needs immediate attention. This includes information about data reporting for forensic examinations.

The NSW Ministry for Health has advised us that it is currently working with SASs to 'refine and develop' key performance indicators (KPIs) on which to base data collection for the work and outcomes of sexual assault services.³³⁴ It will be important for Health to also liaise with its partner agencies – Police and Community Services – to ensure that data on Health's performance in the JIRT is also captured by SASs. In addition, given the significant concerns expressed by police over many years about forensic examinations and the impact decisions have on their operational role, they should also be consulted about any useful data indicators that SASs are well-placed to capture.

11.4.2 Strategies for increasing the number of suitably qualified health practitioners

Although GPs play an important role in conducting forensic medical examinations, for children younger than 14, the responsibility for conducting forensic examinations lies mainly with paediatricians. The shortage of paediatricians available and willing to conduct these examinations in rural and remote areas is one of the main reasons for the lack of access for younger children to forensic services.³³⁵ Without locally available paediatricians or 'equivalent'³³⁶ practitioners, children need to travel for an examination – which brings transportation difficulties into the equation.

The KPMG report commissioned by NSW Health provides a succinct summary of the implications of the shortage of trained health practitioners:

*The limited availability of doctors means that victims of sexual assault frequently have to either be transported to an alternative location or wait significant periods of time in order to access a forensic service. Delays of up to 2-3 days have been reported. Many Sexual Assault Services around NSW indicate this results in increased trauma for victims, and many victims will opt out of a forensic examination because of the difficulties in access.*³³⁷

As noted previously in section 11.3.2, NSW Health has mapped the location of facilities where forensic medical examinations of children are available in NSW.³³⁸ The map shows vast expanses where a one-way trip of more than 200km is required to access 24 hour forensic services for children. Towns such as Lightning Ridge, Bourke, Walgett, Cobar, Coonamble, Griffith, Narrandera and Deniliquin fall outside the 200km boundary. Many other towns fall just

327 NSW Department of Health, KPMG, *Review of forensic and medical services for victims of sexual assault and child abuse., Report 2 – Background and Supporting Information*, August 2007, p.74.

328 The Sexual Assault Service Data Application was intended to be the main mechanism for collecting data relating to sexual assault service clients and sexual assault service responses. However, many SASs now use alternate data applications and no single application records information across all SASs.

329 The KPMG report warned that the figures (for both adults and children) were likely to be an underestimate.

330 ARTD Consultants, *Review of NSW Health Counselling Services – Final Report to NSW Department of Health*, February 2011.

331 ARTD Consultants, *Review of NSW Health Counselling Services – Final Report to NSW Department of Health*, February 2011., p.117.

332 ARTD Consultants, *Review of NSW Health Counselling Services – Final Report to NSW Department of Health*, February 2011, p.ix.

333 *Review of NSW Health Counselling Service – Final Report to NSW Department of Health*, ARTD Consultants, February 2011, p.ix.

334 NSW Health response to NSW Ombudsman Requirement for Information, 6 September 2012.

335 NSW Department of Health, KPMG, *Review of forensic and medical services for victims of sexual assault and child abuse, Report 1 – A New Approach*, 2007 p.28.

336 See section 11.2 for the types of practitioners that can conduct forensic examinations.

337 NSW Department of Health, KPMG, *Review of forensic and medical services for victims of sexual assault and child abuse, Report 2 – Background and Supporting Information*, 2007, p.91.

338 Forensic/medical examinations for child sexual assault victims map provided by NSW Health.

inside the 200 km limit – such as Nyngan (approximately 165 km), Wilcannia (approximately 196 km) and Bega (while 224km away by road, Bega was included as aerial mapping was used).

We were unable to obtain reliable figures from Health showing the number of health practitioners able to conduct forensic examinations of children in NSW and where they are located. LHDs do keep this information, but different practices in relation to the type of practitioner that individual LHDs use to perform forensic examinations on children militate against producing even regional figures for comparative purposes. There is also some variation in policies at each LHD in terms of which practitioners can examine children of particular ages. For example, at one LHD we were informed that trained GPs could examine children over 12 years old – whereas at most LHDs the cut-off age for practitioners in this category was applied to children over 14 years of age. One LHD has an agreement with a Canberra hospital that allows examinations of children to be performed there, and at least one other LHD reported that interstate services were sometimes used. In other cases, the information provided was unclear. It is important to note however, that LHDs are also responding to the local and geographical needs and conditions of the populations that they serve.

Despite the lack of data, there is general agreement that the number of trained practitioners able to conduct forensic examinations of adults and children – but particularly of younger children – is inadequate.

As well as asking Health for information about the number and location of health practitioners able to conduct forensic medical examinations, we also asked whether any positions had been newly created since the Interagency Plan. Of those LHDs that provided a response,³³⁹ only two rural and regional LHDs reported having additional people since the start of the Interagency Plan who could conduct forensic examinations on children.³⁴⁰ One metropolitan LHD indicated that the role of an existing position had been extended to providing forensic services, and another advised that ‘up-skilling’ of community paediatricians had extended access to forensic examinations.

Two districts facing the most serious difficulties – Western NSW LHD and Far Western LHD – reported no change. Western Sydney and Nepean Blue Mountains LHDs provided a combined response which noted that there was ‘only one doctor who can provide paediatric forensic medicals for children under 14 years of age. If this doctor is unavailable, acute cases are referred to the Children’s Hospital at Westmead.’ This could involve a journey of over two hours one way.

Clearly, the lack of suitably qualified practitioners is only one part of the problem. As we discussed in section 11.3.3, Payment Determination 24 was introduced in an attempt to provide an incentive for practitioners to provide forensic examinations for children.

Even when practitioners are willing, some senior sexual assault workers and police have suggested that ‘managing paediatricians’ can be challenging. One worker related a case where a child’s 16 year old brother was the alleged perpetrator. The sexual assault worker consulted the paediatrician, who decided he would see the child in the morning – as he assessed that the evidence would be ‘viable within 72 hours’. However, the police disagreed with this delay, were ‘furious’ and blamed the sexual assault worker. In this worker’s view, even when paediatricians are on the list, it is near impossible to direct them because an SAS ‘can’t just override their clinical judgements about individual cases’. One LHD indicated that they have attempted to ameliorate concerns in this area by bringing practitioners together with police so that they have a better understanding of criminal investigative imperatives.

In the short term, it appears that there will not be a significant increase in the number of trained practitioners in regional and remote NSW able to conduct forensic medical examinations of children. Better financial incentives have led to some improvements, but they are unlikely to provide the additional practitioners required. Similarly, while improvements in, and better access to, training and development will also assist, these are strategies that are only likely to bear fruit over time, and are unlikely to benefit younger children any time soon. Instead, it may be more effective for Health to focus on formalising arrangements to fly in paediatricians at short notice from better-staffed urban centres – rather than focusing efforts on attracting more local practitioners to this important work. Consideration needs to be given not only to providing practitioners with appropriate financial compensation, but to also formalise agreements with practitioners around matters such as travelling to victims when needed. (In section 11.4.4 we discuss ways to provide more flexible transport options for child victims).

11.4.3 Jointly developing a clear policy position for frontline responders

We asked Health about the policies and procedures that guide its staff in responding to child sexual assault. We were primarily referred to:

- NSW Health Child Sexual Assault Procedures Manual (1997)
- NSW Health Sexual Assault Services’ Policy and Procedures Manual (Adult) (1999)

³³⁹ Two LHDs did not provide any response to this question.

³⁴⁰ Murrumbidgee LHD reported, ‘This information is unknown’. Southern LHD said it was unable to answer. Mid North Coast LHD and Northern LHD did not provide an answer.

- NSW Health Clinical Practices – Adult Sexual Assault Forensic Examinations Conducted by Nurse Examiners (2005).

These policies are currently being reviewed. The goal of the review is to develop a revised Adult and Child Sexual Assault Policy and Procedures Manual which is driven by the needs of victims.³⁴¹ While this is an important initiative, it is critical that this policy and practice review is both comprehensive and expeditious. In this regard, it is worth noting that in mid 2012 – some 15 years since the *Child Sexual Assault Procedures Manual* was first published – the Ministry of Health had begun to develop an issues log based on preliminary consultations with SASs, and Child Protection Clinical Services had also commenced establishing a reference group.³⁴² Health was unable to provide us with an expected release date for the revised manual.

Health also referred us to the Joint Investigation Response Team Policy and Procedures (2001), which has been reviewed but not yet updated, and to the JIRT Local Planning and Response Procedures (2010), which focus on the processes undertaken at local planning and response meetings. In addition, Health noted that a further 17 policies may have relevance to the issue of child sexual assault and that local policies and procedures may also apply.

At present, there is no policy that makes clear the agency or position within Health empowered to make the final decision about whether a child needs to have a forensic examination (and if so, when). Nor as we discuss below, is there any policy directive relating to the transporting of child sexual assault victims for forensic examinations.

11.4.3.1 *The need for better decision-making processes*

If a report of child sexual assault is made and the alleged assault occurred in the previous 72 hours, a forensic examination may be necessary. If one is required, decisions may need to be made quickly to ensure evidence is not lost. The current policy/practice framework directs decisions to be made in partnership between the three agencies: NSW Health, the NSW Police Force and Community Services. There are a number of formal processes to ensure joint decision making, review of cases and escalation processes if required. *The Joint Investigation Response Team Policy and Procedures (2001)* makes it clear the consultation with Health by interagency partners is crucial when determining if a child or young person needs a forensic and/or medical examination, and examinations can only be provided by medical services associated Sexual Assault Services. However, in our view, the current policy/practice framework needs to ensure that evidence is not lost, and clearly identifies which agency is responsible for key decision making.

As case study 13 and the case study below³⁴³ show, a lack of clear guidelines and clear lines of authority can lead to evidence being lost and difficulties in intra and interagency communications.

Case study 15

At about 3am, a 13 year old girl presented to a remote hospital. A hospital counsellor noted that the child was severely intoxicated, had been physically assaulted and possibly sexually assaulted. The counsellor telephoned another counsellor at the nearest regional hospital with capability to organise a paediatrician to undertake a forensic medical examination, if required.

The counsellor at the regional hospital decided that a forensic medical examination was inappropriate given that the child was intoxicated and therefore unable to provide proper consent. The counsellor at the regional hospital suggested that the remote hospital examine her physical injuries while the girl was 'sobering up'. By this stage, JIRT had not advised whether it would need to interview the child.

At 4.35am, a registered nurse called the counsellor at the regional hospital to advise her that transport had been arranged to convey the girl to the regional hospital for a forensic medical examination. The nurse confirmed that the girl had told her she had been physically assaulted by a stranger, resulting in a 'blackout'. The girl said that when she woke up, her clothes were torn and her jeans had been pulled down to her knees. The counsellor at the regional hospital formed the view that more evidence was needed before reaching a firm decision on whether there had been a sexual assault and decided not to transport her for a forensic examination. At this stage, JIRT had also indicated that it would not become involved. At approximately 5am, the counsellor from the remote hospital contacted the Area Manager of the SAS – who advised that the child had to be informed about the nature of the proposed procedure. The plan was to revisit the issue in the morning when the child had slept off the effects of the alcohol.

341 According to the Ministry of Health, the new manual will also be consistent with the *2006 Interagency Guidelines for responding to Adult Victims of Sexual Assault* which are also currently under review.

342 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

343 The case study was prepared based on information provided by the LHD in response to a NSW Ombudsman Requirement for Information. We required information from all LHDs that held records relating to the 60 Aboriginal children we selected for our case review. These 60 children were among 248 children from 12 target communities we focused on during our audit who were the subject of sexual abuse reports during 2007-2011.

At 8.30am the next day, the girl discussed her case with the remote hospital counsellor and maintained that she was unsure of what had happened to her. Despite this, the girl still wanted to proceed with a forensic medical examination. This advice was relayed to the regional hospital counsellor, who determined that a forensic medical examination was 'contra-indicated', particularly given the weak indicators of sexual assault and no disclosure. As a result, the regional hospital counsellor undertook to obtain further advice from a paediatrician.

At 10.00am, the paediatrician stated that a forensic medical examination would not be provided unless the child made a disclosure in the next few days. This advice was relayed to the remote hospital counsellor.

At 10.30am, the regional hospital counsellor received a call from the remote hospital counsellor stating that the local GP was insisting that the child be sent to the regional hospital for a forensic medical examination and that Community Services were supportive of this proposal. In reply, the regional hospital counsellor maintained that a medical examination was unnecessary, and agreed to phone the Area Manager, Sexual Assault for advice. The Area Manager, Sexual Assault, agreed that a forensic examination was not warranted given weak indicators of sexual assault and the absence of a disclosure. Despite this, the Area Manager, Sexual Assault, undertook to contact the local JIRT for advice.

At 11.10am, the local JIRT advised that Health staff should 'advocate for the child's safety' with Community Services and that a forensic medical examination was unnecessary. It is unclear if this information was passed on to staff at the remote hospital.

At 4.25pm, the regional counsellor called the remote hospital counsellor, who advised her that the child had showered, was settled and would spend the night in hospital. Police had come to the remote hospital requesting the child's clothes, but she declined to provide them.

We have located at least seven different policies which touch on this issue of decision making; many of the policies are out of date or under review. The discussion below emphasises some of the main areas requiring clarification.

According to Health's most recent advice:

*...the decision of whether and when a child or young person should receive a forensic medical is made jointly by JIRT interagency partners which include NSW Police, Family and Community Services and NSW Health. How a child or young person should be transported, when family members/carers are not in a position to transport a child or young person to a medical forensic facility, also forms part of the joint decision making between JIRT interagency partners.*³⁴⁴

However, a number of other documents indicate that the decision about whether a forensic examination is required is made by Health, possibly in consultation with Community Services.³⁴⁵ Referrals for urgent forensic examination may also be made directly from the Child Protection Helpline.³⁴⁶ Similar procedures exist in the *JIRT Manual* (2001),³⁴⁷ but the 2006 *JIRT Review* stated that, 'child sexual assault forensic medicals are primarily performed at the request of JIRT'.³⁴⁸ Police have emphasised their view that Health statements inferring that counsellors are responsible for coordinating the forensic and medical response should be clarified by including the statement that: '...the decision for the forensic response on child sexual/physical assault matters is coordinated in keeping with joint response procedures developed under the JIRT model'.³⁴⁹

Decision making may be further complicated if the report is made after hours. Once the decision has been made that an examination is required urgently, it will usually be the responsibility of the sexual assault counsellor to make arrangements to find an appropriate and available practitioner and to organise transport, if necessary. However, as our case studies illustrate, this is not always the case.

Advice to health practitioners about the timing of the forensic examination and discretion around its conduct is also referred to in a number of procedures. NSW Health's Child Sexual Assault Medical Protocol emphasises the examination being conducted within 72 hours of the assault occurring. However, another policy suggests that forensic evidence may be available for seven days.³⁵⁰ In our view, the timing of the forensic examination and discretion around its conduct requires further clarification. In recognition that forensic medicine, its knowledge base and technology, can rapidly change, NSW Health is reviewing processes in terms of how new information about

344 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

345 For example, the NSW Health Services *Frontline Procedures for the Protection of Children and Young People* (December 2000), p.63.

346 NSW Health Services *Frontline Procedures for the Protection of Children and Young People* (December 2000).

347 *JIRT Manual* p.19.

348 *JIRT Review* p.44.

349 Information provided by NSW Police Force. Response to AIRS document, distributed out-of-session to forensic interagency meeting in March 2011.

350 NSW Health *Child Sexual Assault Procedure Manual*, NSW Health, March 1997, p.68. This manual has not been revised since its release, and according to NSW Health is 'outdated'.

evidence collection requirements and testing from the NSW Health Forensic Analytical Science Service, can be efficiently and effectively distributed to forensic medical examiners.

The NSW Health *Sexual Assault Services Policy and Procedures Manual (Adult)* states that immediate action is required to secure an examination within two hours of the victim's presentation to an SAS.³⁵¹ It is important to note that this policy relates to the presentation of the victim at the SAS in terms of providing forensic medical services if required, not two hours from the time of the initial report or contact i.e. telephone call from the victim, non-offending family member, JIRT, Police or Community Services.

In some cases, police have expressed frustration when, in their view, the need to obtain and secure forensic evidence is not met by health practitioners. Ultimately, the medical practitioner's assessment about what is in the best interests of the individual patient's health will take precedence. Health clinicians responsible for coordinating forensic examinations of children are unable to require a medical practitioner to perform an examination within certain timeframes or indeed at all, even if police have put forward a compelling case for doing so. This can leave Health clinicians³⁵² in an unenviable position of attempting to facilitate the provision of forensic examinations in circumstances where they have limited influence and no real authority over individual medical practitioners. They must also manage the fallout in circumstances where the health response is perceived to have a negative impact on the criminal investigation.

Against this background, it is important that work be done to clarify best practice decision making. Any policy work on this issue must also ensure that participation in decision-making by the victim (and their family) is actively promoted. It is also important that a single set of interagency guidelines is developed that deals with this critical issue. In due course, these guidelines should form part of the revised JIRT Manual and will need to clearly set out not only best practice in relation to the decision-making, but also in connection to:

- timing (in relation to the most recent scientific advice in terms of evidence collection and testing)
- transportation, and
- agency and worker responsibilities for forensic examinations.

11.4.3.2 Policies for providing transport for sexual assault victims

Difficulties in finding appropriate transport at short notice also impede access to forensic examinations. Organising long distance transport can be stressful, complex and time consuming. While transport is being negotiated, victims must wait.

According to Health, the preferred transport option is that the victim's family or other support people provide their own transport. However, for Aboriginal families in particular, this may not be practical. Nationally, over one quarter of Aboriginal adults cannot access a vehicle when needed³⁵³ and, according to the Australian Bureau of Statistics, in remote areas this figure increases to nearly one third.³⁵⁴

As part of our audit, we asked Health about the available options in rural and remote NSW for transporting child victims of sexual assault to facilities where a forensic examination can be conducted. Health advised that hospital-owned vehicles were the most common form of transport used, as well as transport provided by Police and FACS and, on occasion, the Royal Flying Doctor Service.

Using police officers and police vehicles for lengthy journeys can reduce police capacity to respond to other serious incidents, and there is also the potential risk of contamination of evidence if a victim travels in a police car.³⁵⁵ Having said this, issues of contamination may still be present when a victim is transported by family or other support people in certain circumstances.

While Health is responsible for arranging transport for child victims of sexual assault, when necessary, in 2007 KPMG reported that 'there is no clear mechanism in place for NSW Health to fulfil the requirement to transport victims to an alternate location to access a forensic response'.³⁵⁶ The Police submission to the Wood Special Commission of Inquiry also noted that:

*Confusion currently exists regarding who has the responsibility for transport to and from forensic medical examinations.*³⁵⁷

351 NSW Health, *Sexual Assault Services Policy and Procedure Manual (Adult)*, NSW Health, July 2005, p.61.

352 These positions play a role in coordinating the conduct of forensic examinations.

353 Australian Institute of Family Studies *The relationship between transport and disadvantage in Australia*, K. Rosier & M. McDonald, CAFCA Fact Sheet, August 2011, p.8 (ABS, 2010).

354 Australian Institute of Family Studies, *The relationship between transport and disadvantage in Australia*, K. Rosier & M. McDonald, CAFCA Fact Sheet, August 2011, p.7 (ABS, 2010).

355 NSW Police Force Submission to the *Wood Special Commission of Inquiry into Child Protection Services in NSW*, Vol 1.

356 KPMG, NSW Department of Health, *Review of forensic and medical services for victims of sexual assault and child abuse, Report 2 – Background and Supporting Information*, KPMG, August 2009, p.94.

357 The Hon J Wood, *Special Commission of Inquiry into Child Protection Services in NSW*, November 2008, Vol 1, at 8.260.

In February 2011, Health reported that there was no policy for transporting children requiring a forensic and medical service. In May 2012, Health further advised us that JIRT agency partners make decisions about whether and when a child should receive a forensic medical and how they should be transported when family members/carers are not in the position to transport them.³⁵⁸ It also indicated that the Forensic Interagency Meeting (FIM) was examining the issue of transporting children.³⁵⁹ However, more recent advice provided by the Department of Premier and Cabinet in November 2012 confirmed that this issue is not currently on the FIM agenda.

11.4.4 Allowing greater flexibility in transporting victims

For children who have been sexually assaulted in rural and remote NSW, the distress and discomfort of potentially lengthy travel for forensic examination may include being advised not to wash or change their clothes before the examination.

The Far West LHD is spread over almost 200,000 square kilometres.³⁶⁰ Within the entire LHD, there is one paediatrician, at Broken Hill Health Service, who is able to provide forensic medical examinations to children under 14. Both the Broken Hill Health Service and Mallee Sexual Assault Unit provide a 24/7 Sexual Assault Service, which includes medical and forensic examinations. Facilities in Mildura and Swan Hill in Victoria are also used. Within this LHD, distances by road and travel times can be very long. For example, driving from Tibooburra in the north to the health facilities in Broken Hill would take about four hours one way.³⁶¹

Murrumbidgee LHD indicated that when a 'forensic doctor' is not available, a child may need to be transported to another site ranging from 125km to 550km away. The LHD commented that, 'This is excessive given that the clients can be in shock, suffering from acute trauma responses'.³⁶²

The Western LHD covers 246,676 square kilometres of the central west of NSW. Seven of the 23 Local Government Areas within the district are classified as remote or very remote. Aboriginal people living in the district represent 8.2% of its total population. Paediatricians are attached to the Base Hospitals at Bathurst, Orange and Dubbo,³⁶³ with lengthy road travel required from towns on the periphery of the district to these hospitals. For example, Goodooga to Dubbo by road involves a journey of more than 400km and takes about four and a half hours.

According to Western LHD, there are continual problems accessing transport for victims of sexual assault who require forensic examinations, including children:

*The paucity of available staffing/services to respond to unscheduled transport needs, often at night, may impact on the victim where family members are often not able to travel together.*³⁶⁴

As we discussed earlier, after hours situations can be particularly difficult.

Our audit identified a number of recent cases in Western NSW where lack of transport options had an impact on forensic examinations for children. In one case, a child was unable to be transported because none of the agencies involved were able to locate sufficient car seats for the child and her two siblings to make the 'seven hour one way trip'. In another incident, a 14 year old girl and her mother were unable to get transport for a one hour journey to receive an examination. On the following day when transport was available, the young girl refused all services.³⁶⁵

LHDs and police have presented a clear case for improved arrangements – including flight options – to transport children who require forensic examinations. The range of difficulties encountered in arranging transport will vary depending on the LHD, the resources available at the time the victim presents to a service, and the particular situation of the victim and their family. No single transport solution will be appropriate in all circumstances. It is of concern that so many years after the problem of accessing forensic medical examinations for children was first raised, there has been very little progress towards a practical solution.

Upgrading services for adult victims makes sense. However, this should not rule out the simultaneous implementation of simple practical solutions for vulnerable young victims of sexual abuse. The most workable solution for now appears to be for LHDs to have a number of clearly defined transport options available, and to assess each situation as it arises. After reviewing the various options which have been canvassed in a number of reviews into this issue (and following extensive consultation with LHDs), we have formed the view that there needs to be a centrally administered pool of funds that LHDs, subject to certain criteria, can access in order to reimburse costs associated with guaranteeing a basic level of victim support in those circumstances where there is a need for a

358 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

359 NSW Health, *Access for Isolated and Remote Sexual Assault Victims (AIRS) to a forensic/medical examination – Description of the model*, (Undated Paper attached to NSW Health correspondence to Department of Premier and Cabinet dated 7 February 2011), p.5.

360 *NSW Health Annual Report 2010-2011*, Vol 2, p.76.

361 www.whereis.com/nsw. Accessed 29 August 2012.

362 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

363 *NSW Health Annual Report 2010-2011*, Vol 2, p.121.

364 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

365 NSW Health response to NSW Ombudsman Requirement for Information, 24 May 2012.

forensic examination and flight travel is the best option. Current data inadequacies, combined with the inherent lack of predictability about when and where flights will be required, means that allocation of funds to individual LHDs to cover this kind of cost is unlikely to be the best option.

We understand that a precedent for this type of approach is the state-wide neo-natal eyesight and hearing program.³⁶⁶ Although the most recent Health restructure is likely to lead to the Health Ministry having a more limited role in relation to service delivery issues, there is still scope for such a fund to be administered centrally by it or by the newly established NSW Kids and Families.³⁶⁷ Alternatively, an LHD could be given lead responsibility for administering a purpose-specific fund across the state.

While the AIRS Model Pilot Program in Western LHD is for child and adult sexual assault victims, transport options have not been specifically funded as part of the trial. While the new assessment centres may prove useful in reducing unnecessary travel, without specific funding the AIRS Model Pilot Program, currently does not have the resources available to allow necessary flexibility for the LHD to use flight transport. We understand that, at present, a child sexual assault victim will only be transported by air to a centre such as Dubbo if they have obvious signs of injury and/or are considered a high-risk case. In such cases, the usual Health air transport protocol would apply. For a range of reasons, some of these victims may choose to travel by road. These children, along with those who don't meet the criteria for an urgent patient flight, would benefit from a paediatrician being flown to them.

It would appear worthwhile for Health to consider using the unspent CASAFAM funding for 2012-13 and 2013-14 that we discussed earlier, to establish a transport funding pool for designated LHDs. The total (adults and children) annual flight component for the original AIRS Model (covering several LHDs which service more remote parts of the state) was estimated at \$253,058. Costs for flying children only are likely to be lower and could be feasibly accommodated by the unallocated CASAFAM funds. A state-wide implementation of the flight component of the AIRS Model for children would be a real improvement. A mapping exercise would be required in terms of establishing flight paths and availability of flights, including daily flights to and from rural and remote regions.

The number of children requiring flights for themselves or for a paediatrician is likely to be small, but when such a crisis does arise a high quality forensic service needs to be provided in a manner that results in the least trauma possible for the victim and their family.

Recommendations

30. That NSW Health ensures that its new database for capturing Sexual Assault Service data includes collection of the following:
 - a) the number of forensic examinations conducted on all children, disaggregated by Aboriginal status
 - b) the number of forensic examinations conducted on children under 14, disaggregated by Aboriginal status
 - c) the number and type of health practitioners who conduct forensic examinations on children, i.e. a SANE, trained GP or paediatrician
 - d) whether travel was required for the examination of a child and, if so, the distance covered, and the agency providing the transport
 - e) the time from the making of the child sexual assault report to the time of the forensic examination
 - f) requests for a forensic examination of a child that were declined due to a health practitioner deciding that an examination was unnecessary/inappropriate (and the reasons for each decision).
31. That prior to the implementation of the new Sexual Assault Service database and not later than 1 July 2013, NSW Health and all LHDs ensure that the data listed in Recommendation 30(a) to (f) above is:
 - a) collected consistently by all NSW Health Sexual Assault Services using available technology
 - b) centrally collated and analysed by the Ministry of Health (or by a nominated entity).
32. That the Ministry for Health consult with the JIRT partner agencies and other relevant stakeholders, such as the Office of the Director of Public Prosecutions (ODPP), about other useful data that could be collected about forensic medical examinations of children.
33. That the Ministry for Health provide LHDs and the JIRT State-wide Management Group with regular feedback about local child sexual assault service data trends and comparative state-wide data.

³⁶⁶ This program involves the Health Ministry administering a pool of funds accessible by LHDs for children identified as needing tertiary services in hospitals located within metropolitan Sydney.

³⁶⁷ NSW Kids and Families was established on 1 July 2012 under the *Health Services Act 1997* to give effect to the intent of the recommendations of the Garling Inquiry, www.health.nsw.gov.au. Accessed 28 November 2012.

34. That all LHDs regularly provide to Sexual Assault Services within their district relevant local and comparative state-wide data trends.
35. Following consultation with the JIRT partner agencies, NSW Health:
 - a) develops a policy that provides for equal access to transport options regardless of which agency has first contact with the victim about the reported sexual assault
 - b) develops policy and procedures that outline the decision-making regime relating to whether, and if so when, a child should undergo a forensic medical examination; the policy/procedures should also outline matters such as the type of interagency consultation required as part of making such a decision; consultation with the child and their family; the timeframe within which such a decision must be made; and the communication of the decision to other JIRT partner agencies
 - c) implements the policy and procedure outlined in Recommendation 35(a) and (b) by mid 2013
 - d) includes the relevant policy and procedure outlined in Recommendation 35(a) and (b) within the updated JIRT Manual.
36. That, following consultation with Sexual Assault Services within their district, each LHD develop a practical guide setting out local options for transportation of children for forensic medical examinations (including contact positions/people and phone numbers similar to the guides used in hospital emergency departments).
37. That, for a 12 month trial period, the Ministry of Health:
 - a) as part of the full AIRS pilot in Western LHD, commits to funding all flights required for the purpose of providing forensic medical examinations³⁶⁸
 - b) provides funding for flight travel to all LHDs where road travel in excess of a 400km round trip is required for a forensic medical examination of a child
 - c) in order to facilitate Recommendations 37(a) and (b) above:
 - i. establishes a central funding pool with sufficient funds to reimburse LHDs for costs associated with air transport (including reimbursement for flying a health practitioner to a child victim, where required)
 - ii. conduct a mapping exercise in terms of flight paths and availability of flights within rural and remote regions.
38. That, following consultation with relevant health professional associations and LHDs, the Ministry of Health develops standard contractual arrangements relating to paediatricians and other health practitioners conducting forensic medical examinations on children. Among other things, these contracts should outline the obligations on health professionals to perform, in a timely manner, forensic medical examinations on a call-out basis (including obligations to fly to child victims, when necessary).
39. That, following consultation with the NSW Police Force and LHDs, the Ministry of Health develops criteria (and related procedures) relating to the making of call-out requests (including those involving flight travel).
40. That, following consultation with LHDs, NSW Health develops a consistent data collection process for recording information about the usage of Payment Determination 24 for the purpose of assessing its effectiveness in different districts and to identify potential improvements that can be made to the scheme (particularly in relation to improving service provision for children).
41. That, in order to strengthen the SANE forensic medical examination training program, the Ministry of Health should seek to identify the successful strategies used by the Hunter New England LHD to train and retain SANEs.

³⁶⁸ As the pilot currently involves adults and children, flights should be provided for both groups in Western LHD.

Chapter 12. Improving the criminal justice system process for victims

In addition to the issues discussed earlier in relation to the police investigative process, there are a range of other challenges with the criminal justice system's response to sexual assault that are common for all sexual assault victims, regardless of their age or Aboriginality. While there is a need for the criminal justice system to be responsive to the particular needs of Aboriginal people and children, our audit has revealed that there are improvements required across the system to ensure that all victims of sexual assault are encouraged to report, and are well-supported once they have done so.

Currently, only a very small proportion of sexual assaults are formally reported, and of those, only a minority result in criminal charges, and even less in a conviction.³⁶⁹ In some cases, this is an inevitable consequence of the circumstances in which sexual assault occurs. The vast majority of sexual abuse incidents occur in private residences,³⁷⁰ and the vast majority of offenders are related or otherwise known to the victim.³⁷¹ As a result, there can be a range of barriers to victims reporting sexual assault, and once reported it can be difficult for police to gather sufficient evidence to support an allegation.

In addition to these difficulties, the prosecution process can be extremely traumatic for victims, whose evidence invariably forms the basis of the prosecution case. The Aboriginal Child Sexual Assault Taskforce (ACSAT) identified that victims will often decide to go to court; however, will later drop out of the criminal justice system as a result of the length of time and difficulties they encounter with the court process.³⁷² ACSAT also noted that those it consulted indicated they would prefer not to pursue court action in order to avoid putting their own children through the court process.³⁷³

Our own consultations highlighted that community members typically had negative perceptions of the ability of the criminal justice system to address child sexual assault, and that often these perceptions were the result of their own experiences of the system as adults or as child victims. Community members told us that the trauma for victims caused by delays in the investigation and court process, having to give evidence, the low conviction rates, and the seemingly short sentences awarded to perpetrators, are all significant barriers to reporting child sexual assault.

Our consultations with victim advocates and support services in the Kimberley region of Western Australia in 2010 revealed similar concerns. Many of the Aboriginal women we spoke to said that the most significant barrier in encouraging young girls to come forward about abuse were the stories that had been circulating about the lack of support services that were provided to victims and their families in the previous two years (when a large number of prosecutions were commenced), not only during the court process but also when offenders returned to their communities.

The Interagency Plan recognised that improvements were needed to address the disincentives victims face in coming forward and the 'high drop-out rate' of Aboriginal victims and witnesses from the criminal justice process – citing the length and complexity of trial procedures and inadequate witness assistance and support throughout the trial process, as key reasons for this.³⁷⁴ The Plan included 'law enforcement and safe communities' as a strategic direction, with strategic outcomes which included that Aboriginal communities are encouraged to report crime and abuse, and that 'victims and witnesses maintain their involvement in the criminal justice process, from initial report to prosecution'.³⁷⁵

The Plan includes seven Actions which are specifically relevant to the progress of cases from the charge to hearing/verdict stage, all of which were the lead responsibility of the (then) Attorney General's Department. These Actions are:

- Action 13, to roll-out cultural competency training for all Witness Assistance Service officers and prosecutors
- Action 14, to expand the provision of cultural awareness advice and training to judicial officers
- Action 15, to employ additional Aboriginal Witness Assistance Service officers to improve support for Aboriginal child sexual assault victims during the prosecution process

369 See for example, Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response: Final Report*, 2010; Criminal Justice Sexual Offences Taskforce (NSW Attorney General's Department), *Responding to Sexual Assault: The Way Forward*, 2005.

370 As indicated earlier in Chapter 8, approximately 66.5% of all adult and child sexual abuse between 2007 and 20011 reportedly occurred in the home.

371 Australian Bureau of Statistics, *4510.0: Recorded Crime – Victims*, Australia, 2011.

372 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.209.

373 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.209.

374 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

375 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

- Action 16, to ensure the state-wide rollout of remote witness facilities occurred first in priority locations, and aim to reduce the total length of the court process to less than one year
- Action 7, for the Attorney General to reapply for a guideline judgement from the Criminal Court of Appeal prescribing a sentencing range for child sexual assault cases
- Action 8, for the Attorney General to monitor the implementation of the Standard Minimum non-parole period that applies on conviction of certain sexual offences, and
- Action 43, to develop joint culturally appropriate court preparation materials and information packages, in partnership with Joint Investigation Response Teams (JIRTs), the Office of the Director of Public Prosecutions, Corrective Services, and the Education Centre Against Violence.

Since the commencement of the Interagency Plan, some significant reforms have been implemented, both in response to these Actions and in addition to them. There is a genuine commitment on the part of the Attorney General's Division, the Office of the Director of Public Prosecutions (ODPP) and the Judicial Commission, to better engage with Aboriginal communities. This is apparent from the numerous training sessions, workshops and conferences which have been organised and well attended by these organisations over the life of the Interagency Plan. In addition, remote witness facilities are now available in 82 locations around the state; additional court processes have been implemented to better prioritise child sexual assault matters; and the available resources to help and support victims of crime have been reviewed and updated. With the exception of Action 15, all of the above Actions have been implemented by the Attorney General's Division.

In addition to monitoring the implementation of these Actions, our audit also sought to explore what impact these reforms have had on the relevant strategic outcomes in the Interagency Plan, specifically whether they have reduced the barriers to Aboriginal people reporting crime and abuse in their communities, or increased the proportion of victims and witnesses maintaining their involvement in the criminal justice process.³⁷⁶

Despite the importance of attrition³⁷⁷ measures in assessing progress in this area, this type of data was not sought or analysed by partner agencies in assessing the impact of the Interagency Plan.

The importance of conviction rates was recognised under the program performance framework developed to measure the implementation of the Interagency Plan. The framework included conviction rates for cases of child sexual assault involving Aboriginal victims and Aboriginal suspects as a performance measure. However, these figures were only reported in late 2011 towards the end of the Interagency Plan.³⁷⁸

As a result, we consulted with the Director of the Bureau of Crime Statistics and Research (BOCSAR) and his researchers, and sought extensive data from BOCSAR on the progress of matters through the criminal justice system, from report through to outcome. We requested this data for both sexual assault and other types of sexual abuse, in recognition that a substantial number of reports of child sexual abuse involve other sex offences, including indecent assault (where a person's body is touched in a sexual manner without their consent).

The ODPP is responsible for prosecuting all child sex offences in NSW courts. There is also a specialist Witness Assistance Service (WAS) within the ODPP, which provides a range of supports for victims and witnesses during the prosecution period. Child sexual assault and sexual assault cases account for approximately one quarter of ODPP solicitors' caseloads, and for more than half of the referrals to the WAS. Given their critical role in the prosecution of sexual assault cases, on multiple occasions we met with senior ODPP and WAS staff, who provided us with valuable advice. We also had the benefit of consulting with the three Assistant Directors-General for the Department of Attorney General and Justice.

In addition, we conducted a detailed review of 27 cases³⁷⁹ prosecuted by the ODPP involving 45 Aboriginal children and 30 defendants. We reviewed all of the information held by the ODPP relating to these cases, including the WAS files.

The findings from our case reviews, the responses received to our information requirements, and our consultations with senior agency representatives, have informed the findings and recommendations made in this chapter.

Whilst we identified that there have been a number of positive outcomes as a result of the Interagency Plan, we also identified areas where victims continue to face challenges when criminal action is taken against a sex offender. Given the small proportion of cases which proceed to court, it is critical that there is sufficient investment in creating

³⁷⁶ NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

³⁷⁷ Of the sexual abuse reports which are made to police, a large number do not result in charge, prosecution, or conviction. This lapse of cases from the criminal justice system is referred to as attrition.

³⁷⁸ The Social Policy Research Centre reviewed the Interagency Plan's Performance Framework and finalised its report in November 2011 (just prior to report referred to below). This report indicated that the conviction rate in cases of child sexual assault involving Aboriginal victims and Aboriginal suspects had not yet been reported on. An undated performance framework report provided to us by Aboriginal Affairs relating to the 'November 2011 reporting cycle' included these rates. (Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, Final Report, November 2011, p.19; and Aboriginal Affairs, *Tier 1 and 2 data for the Program Performance Framework, November 2011 reporting cycle*, undated, pp.28-30).

³⁷⁹ A 'case' may involve more than one child complainant and/or defendant.

an optimal system to give those cases the greatest chance of success. We believe that further enhancements need to be made to the suite of measures that are already in place to improve the experience of the prosecution process for victims. These include increasing the supports available for vulnerable victims and witnesses, availability of audiovisual links in District Courts, allowing additional provisions for vulnerable witnesses, and improving case management processes within courts to minimise delays and encourage earlier guilty pleas.

In many Aboriginal communities there remains a substantial mistrust of the capacity of the criminal justice system to deal with sexual abuse. The recommendations outlined in this chapter are aimed at breaking the cycle of reluctance to report in those communities where this mistrust remains high.

12.1 Conviction rates and attrition

There are a range of reasons why sexual assaults are not reported to police, or if reported, do not proceed to charges or to a conviction. Attrition measures and conviction rates provide an important benchmark for measuring the performance of the criminal justice system.

12.1.1 Available data on attrition and conviction rates

BOCSAR publishes statistical reports each year using data from the NSW criminal courts, which details court data against a range of offence categories, including a category for 'sexual assault and other sexual offences', with a sub-category of 'sexual offences against children'.³⁸⁰ These annual court reports contain information on the number of persons charged and the number of charges; the number of persons found guilty; and the type and average duration of penalty received (disaggregated by Aboriginal status); and the age of persons found guilty (disaggregated by gender).

BOCSAR also publishes more in-depth research on selected criminal justice issues. With respect to sexual assault, BOCSAR has released a number of such reports, including a report on the attrition of sexual offences from the criminal justice system in 2006. Recently, BOCSAR published two papers on sexual assault matters, which focused on the sentencing trends for adult offenders who were convicted of sexual assault against adult victims³⁸¹ and adults who were convicted of sex offences against children in 2009 and 2010.³⁸²

We asked BOCSAR to provide us with detailed information relating to the attrition and conviction rates for sexual assault matters, including:

- the number of finalised charges in court by charge type
- the number of Aboriginal and non-Aboriginal defendants having finalised matters in court by plea, and
- the number of Aboriginal and non-Aboriginal defendants having finalised matters in court by outcome.³⁸³

Between 2007 and 2011, there were 6,851 defendants in the NSW Children's, Local, District and Supreme Courts who had at least one sex offence in their matter, and 908 (13.3%) of these defendants were Aboriginal.³⁸⁴ Of the 6,851 defendants, 4,237 (62%) were of at least one offence.³⁸⁵ This included matters where a conviction was secured by a range of different means; for example, matters where the defendant was found guilty after a trial and matters where the defendant entered a plea of guilty without going to trial.³⁸⁶

Of these 6,851 defendants, 3,351 (or 49% of all people charged with a sex offence) had at least one matter involving a sex offence against a child under the age of consent (16 or 18 depending on the offence), of which 345 (10%) involved an Aboriginal defendant. Of the 3,351 defendants with a finalised child sex offence, 2,130 (64%) were convicted of at least one offence (of any type).

In relation to defendants with charges for sex offences against children, Aboriginal defendants were less likely than non-Aboriginal defendants to be convicted (57% compared to 64%). However, the conviction rate for Aboriginal defendants was higher than non-Aboriginal defendants for other matters involving sex offences other than against a child (67% compared to 60%).

380 See for example, BOCSAR's *NSW Criminal Courts Statistics 2011*.

381 NSW BOCSAR, Issue paper no. 72, Revised January 2012, *Sentencing snapshot: Sexual assault, 2009-2010*, Clare Ringland.

382 NSW BOCSAR, Issue paper no. 68, Revised January 2012, *Sentencing snapshot: Child sexual assault, 2009-2010*, Jessie Holmes.

383 The reference for all BOCSAR data we sought and used in this chapter is HcLcCc12/10537Dg.

384 This represents a count of defendants in finalised court appearances each year. If a person had more than one finalised court appearance in a year, they would be counted more than once.

385 The data provided by BOCSAR does not indicate whether the conviction was for a sex offence, or for another offence related to the same incident.

386 The full range of matters included in this category were matters described in the BOCSAR data as follows: 'Proceeded to defended hearing/trial: Guilty of at least one charge'; 'Proceeded to defended hearing/trial: Other; Proven outcome not further described'; 'Sentenced after guilty plea/Proceeded to sentence only'; and 'Convicted ex parte'.

The data also shows that 1,281 of the 6,851 defendants (19%) had all charges dismissed without a hearing or trial. The proportion of defendants with this outcome was higher for defendants charged with sex offences against children (21%) than for defendants only charged with sex offences other than against a child (17%).

Aboriginal defendants were also more likely than non-Aboriginal defendants to have all charges dismissed without a hearing or trial in relation to offences against children (26% compared to 20%); and were less likely than non-Aboriginal defendants to have all charges dismissed without a hearing or trial in relation to other matters involving sex offences other than against a child (12% compared to 17%).

The number of defendants who had charges dismissed or withdrawn with no hearing provides an indicator of those matters which dropped out of the system during the prosecution stage. There has been a significant reduction in the attrition of matters prior to hearing, both for offences against children and for other offences.

The data shows that in 2006, prior to the Interagency Plan being implemented, 26% of sex offence matters against children under the age of consent were dismissed or withdrawn with no hearing. In 2009, there was a fall in the number of matters finalised in this manner (from 26.9% in 2008 to 18.6% in 2009), and by 2011, the rate had decreased to 14%. The data which BOCSAR was able to provide to us does not allow definitive conclusions to be drawn about the reasons for this decrease; however, it is likely that the reforms discussed in this chapter were contributing factors.

12.1.2 Our case review data

We identified cases for our review by asking police to provide us with data about Aboriginal children who had been the subject of a reported incident of child sexual abuse in our 12 target communities³⁸⁷ during the five year period of the Interagency Plan (2007-2011). This process identified 248 Aboriginal children. We then interrogated the NSW Police Force COPS database³⁸⁸ to identify whether charges had been laid, and the outcomes of those charges. Whilst we did look at the Aboriginal status of the defendant in these matters, we did not seek to draw comparisons between Aboriginal and non-Aboriginal defendants, since the focus of our review was on the experience of Aboriginal victims.³⁸⁹

Of the 248 Aboriginal children who had been the subject of a reported incident of child sexual abuse, 38 cases resulted in a person being charged with at least one child sex offence. In one of these cases, the defendant was still awaiting trial at the time of our review and, as such, we reviewed 37 finalised cases involving a defendant charged with at least one child sex offence. Of these 37 finalised cases,³⁹⁰ 11 were withdrawn prior to hearing or trial (30%). A conviction occurred in 23 of the remaining cases (62%). However, one third of these convictions were not in relation to sex offences but were related to the same event.³⁹¹

When reviewing these 37 cases, we collected qualitative data relating to the reasons for attrition during the prosecution stage. The main reasons that we identified were:

- victims considered to be incapable of giving the required evidence in court
- victims not wanting to participate in the court process
- plea negotiations being reached which resulted in defendants entering a plea deal to other offences relating to the same incident but which were not sex offences
- insufficient investigation by police, or notable errors or omissions in police investigations.

In cases where victims decided not to proceed, our case reviews and consultations highlighted a number of factors which impacted on victims' decisions. These included pressure from community or family members; parents' concerns about the impact of continuing on their child's wellbeing; fear or embarrassment; and not having an appropriately supportive living environment or other external supports available.

387 The 12 target communities for the purposes of our audit were the nine focus communities identified by Aboriginal Affairs through its Focus Communities program, as well as three additional communities we selected to ensure our observations took geographic differences into account and positive initiatives being driven by communities in relation to child sexual assault.

388 The NSW Police Force Computerised Operational Policing System (COPS) is the central database and core operating system used by the NSW Police Force.

389 We initially sought data from BOCSAR disaggregated by the Aboriginal status of the complainant rather than the defendant, so that we could similarly assess the experience of Aboriginal victims. However, BOCSAR draws this data from the court system, which does not keep records relating to the complainant in matters; as a result, this data was only able to be disaggregated by the Aboriginal status of the defendant.

390 We selected 27 of these 37 cases to review in closer detail.

391 The charges for which convictions were obtained included common assault; stalk and intimidate; recklessly wound; maliciously wound with intent to inflict grievous bodily harm; various firearms offences; and aggravated break, enter, and commit serious indictable offence.

12.1.3 Aligning criminal justice data

There are a number of limitations with the different systems used by justice agencies to record data about child sexual assault. These limitations make it difficult for BOCSAR to extract the data necessary to provide a more complete picture of the progression of matters through the criminal justice system.

The JIRT database records important information about how and why individual matters are 'completed' (including those that do not progress to charge)³⁹² and COPS records crime data about *all* child sexual assault incidents. However COPS does not record the same 'reason for completion data' as the JIRT database. Although there is scope for the JIRT to systematically capture additional completion measures, and for data entry to be far more rigorous, the existing measures have the potential to be very useful for assessing the reasons for attrition. However, the JIRT database itself is not a good vehicle for recording referral outcomes because it sits outside of COPS – the central repository for criminal incident and prosecution outcome data. In addition, the JIRT database does not capture any data relating to those child sexual assault cases handled by Police Local Area Commands.

Local Area Commands play an important role in investigating child sexual assault matters. However, they do not collect the same type of 'completion' data on COPS which is captured by the JIRT database. Therefore, valuable data relating to the reasons for attrition for all child sexual assault matters, particularly during the report and investigation stage, is not being consistently captured and analysed by the NSW Police Force, nor is it readily available for BOCSAR to utilise for public reporting purposes. This is despite the fact that most attrition will occur during the 'report to investigation' stage – that is, the period of time after a report has been made to police, and during the investigation stage, but prior to a suspect being charged.

Even if this information were properly recorded on the COPS system, it would still not be possible for BOCSAR to report accurately on the progression of all Aboriginal child victim reports through the entire criminal justice system, nor would it be possible to report 'victim-focused' data about attrition at various stages (including a breakdown for Aboriginal child victims), due to a number of other technical reasons outside of BOCSAR's control.

The COPS system is able to retrieve a range of very useful victim data. However, whilst information is recorded on COPS about court outcomes, our own interrogation of the COPS system in reviewing individual cases identified that this information is not always accurate, and in matters which involve multiple victims, it is not always possible to determine which victim the charges and subsequent court outcomes relate to.

It is possible to match the Aboriginality of the victim back to the originating police record for Local and Children's court matters. However, for matters that go before the District Court (where most criminal matters are heard and tried) this was not possible until February 2008. Even since then, it is not possible to link the charges commenced in the District Court by the ODPP rather than the police.³⁹³

For this reason, when reporting on the outcome of matters where charges have been laid, BOCSAR utilises data from the courts (stored on the JusticeLink System). This data is collected against defendant, and, as such, it does not always link directly to the incident or victim data recorded by police on COPS.

As we highlighted earlier, asking for data from police through the prism of child victims, rather than defendants, allowed us to track the progression of reported sexual abuse through the child protection and criminal justice systems, enabling us to collect a range of qualitative data about attrition.

The data which BOCSAR is currently able to collect provides a valuable benchmark for overall conviction and attrition rates in sexual assault and child sexual assault matters. However, it only reports on the Aboriginality of the offender, and only reports where the offender lives, rather than where the victim lives.

For attrition and conviction data to be meaningful, and to properly inform policy and service responses, there needs to be a process for collecting qualitative data about the reasons for attrition or delays in child sexual assault cases throughout the prosecution process. This data needs to be victim-focused, and should include breakdowns against relevant contextual factors and characteristics, including whether cases were handled by JIRTs or local police; the age and Aboriginality of victims. The data also needs to be well recorded and meaningful. The level of detail in relation to public reporting is a separate question to the type of data agencies require to adequately assess their own performance.

392 Reasons for completion might include: victim unwilling to give statement; no complaint from child; parents desired no action; and victim unwilling to go to court.

393 Aboriginal Affairs, *Tier 1 and 2 data for the Program Performance Framework, Interagency Plan to Tackle Child Sexual Assault, November 2011 reporting cycle*, November 2011, p.29 – 30.

As our review of raw police data on qualitative measures revealed, if information was routinely and accurately recorded³⁹⁴ on the NSW Police Force COPS database, detailing the reasons for investigation outcomes, as well as relevant characteristics of the incident, this data could be reported to agencies directly and in a more limited way publicly.³⁹⁵

It is concerning that despite the priority accorded to 'victims and witnesses maintaining their involvement in the criminal justice process, from initial report to prosecution'³⁹⁶ by the Interagency Plan, there has been little progress over the last six years in establishing a seamless process for capturing the data required to report on this issue in relation to Aboriginal child sexual assault victims and child victims generally.

Even with improvements to the current data collection processes, it is apparent from our case reviews that it will be difficult for the level of qualitative data which we extracted through this process to be collected on a database. For example, whilst the COPS system could be enhanced to facilitate the accurate reporting on the proportion of attrition which is the result of a child deciding they do not want to go to court, an interrogation of individual case files such as the review we completed, allows for an assessment as to the reasons why a child might make that decision.

In matters where charges are laid, collecting accurate qualitative data on the reasons for attrition from the charge to hearing/trial stage would require the professional judgement of the relevant ODPP solicitor. We understand that the ODPP currently provides information to police on prosecutions where a conviction is not reached generally. A similar tool could be developed to allow this sort of information to be provided to police for all child sexual assault matters, and subsequently captured on the COPS system. For this reason, there would also be merit in Police and the ODPP conducting periodic audits of a sample of child sexual assault cases which progress through the system. In Queensland, for example, a joint Working Party of the police and the Director of Public Prosecutions was created to examine individual sex offence cases which did not result in a conviction, and draw conclusions on why this outcome occurred. These reviews would facilitate the identification of the reasons for attrition in cases which proceed to charge, and identify areas where the investigation and prosecution of cases could be improved.

The support systems in place for child victims, which we discuss in the remainder of this chapter, are therefore directly relevant to reducing attrition from the criminal justice system.

12.2 The role of the Witness Assistance Service in supporting victims

The ODPP's Witness Assistance Service (WAS) provides a specialist service to victims of crime and vulnerable witnesses in certain prosecution cases. The services provided vary depending on the individual needs of the client, the involvement of other services, and the progress of the matter through the criminal justice system. Typical support provided to victims may include explaining the court process; attending conferences between the solicitor and the victim; providing court familiarisation; providing court support; liaising with the victim throughout the prosecution period; assisting the victim to complete a victim impact statement; and providing referrals to other services.

The *Breaking the Silence* report identified that:

...participants who had received help from a WAS officer during a court process said they had felt very supported. They felt that having someone sit with them through the process and explain what was happening, as well as making sure all the relevant people were involved, meant that that they did not feel as confused or 'lost'.³⁹⁷

The service provides support to victims of serious and violent crime, as well as to victims and witnesses in a number of special priority groups. These groups include sexual assault and domestic violence victims and witnesses, children and young people, and Aboriginal people. Child sexual assault and sexual assault cases make up over half of the WAS workload.³⁹⁸ Of the 622 child sexual assault referrals received by the WAS in 2010-11, 41 (6.5%) were identified as Aboriginal. However, over the previous four years, 10.2% of all child sexual assault referrals to the service were Aboriginal.

Since 2003, the WAS has maintained three identified Aboriginal positions. As at June 2012, two of the Aboriginal WAS officer positions were filled, with the third temporarily being covered by a generalist officer whilst the Aboriginal officer was on maternity leave. Each Aboriginal officer covers approximately one third of the state. The 30 generalist WAS officers also assist Aboriginal victims and witnesses where appropriate or where the Aboriginal officers are not available to assist.

³⁹⁴ Data relating to prosecutions handled by the ODPP could be recorded by that agency via the use of a standard case mark-off sheet.

³⁹⁵ There is an operational need for agencies to see detailed data in order to detect trends in practice and improve responses at a local level. When data is disaggregated to this level the number of cases can be small; and, as a result, reporting publicly at this level means it is not always possible to maintain the confidentiality of individual matters.

³⁹⁶ NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

³⁹⁷ Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.197.

³⁹⁸ In the 2010-11 financial year, 27% of new matters registered with the WAS were child sexual assault matters. An additional 12% were historical child sexual assault matters, and 17% were adult sexual assault matters.

Breaking the Silence recommended that an additional 12 Aboriginal WAS officers be employed, to provide one Aboriginal WAS officer in each ODPP office, and two senior Aboriginal WAS officers.³⁹⁹ The Interagency Plan subsequently required the Attorney General's Division to:

*Employ additional Aboriginal WAS officers to provide support during child sexual assault prosecutions, and refer ODPP matters on child sexual assault in Aboriginal communities to an Aboriginal WAS officer for assistance and support.*⁴⁰⁰

The ODPP provided costings to the Attorney General's Division on a number of occasions over the life of the Interagency Plan for the purposes of obtaining additional funding for Aboriginal WAS officer positions. To date, no funding has been provided to the ODPP to implement the enhancements envisaged by the Interagency Plan and, as a result, the service has not employed any additional Aboriginal staff. The WAS did receive a funding injection in February 2010 which enabled an increase in the number of generalist officers; however, since this followed a gradual drop in funding over the preceding years, it brought the total full-time equivalent staff to a number which is still lower than it was prior to the Interagency Plan.⁴⁰¹

The WAS has advised us that whilst there is not sufficient demand for the 12 officers recommended by ACSAT, it believes that there is a clear need for an increase in the number of Aboriginal officers, and there is also a need to introduce an Aboriginal Senior WAS officer position to provide culturally appropriate support and supervision to the work of the Aboriginal staff. The WAS files we reviewed and information provided to us by the ODPP, showed that the WAS is ideally positioned to prepare victims and witnesses for court, and support them through this part of the criminal justice process; fulfil a critical case management role in facilitating counselling and other support services; and ensure that the required ongoing support networks are in place for a victim once a case has exited from the criminal justice system.

It is also apparent, however, that there are significant constraints on the capacity of the WAS to consistently provide a high level of service. While not all victims require comprehensive support, for some victims, as can be seen in the following case study, this level of involvement may be critical in supporting them to give evidence, and as a result may be essential to obtaining a conviction.

Case study 16

A matter was referred to the ODPP after an offender was charged with multiple counts of indecent assault against a 15 year old girl. Six weeks after charges were laid, the matter was registered with the WAS. An introductory letter was sent that day, which was received by the girl's mother.

The first direct contact with both the girl and her mother occurred via telephone a further month later, after the solicitor requested that attempts be made to arrange a conference.

Throughout the prosecution period, the girl had a number of significant issues, including being hospitalised as the result of a self-harm attempt, leaving home for multiple periods of time, and having problems with the Police and her school. The WAS officer maintained regular contact (and very regular attempts at contact) throughout this time, and acted as an intermediary for the solicitor. A range of counselling and mental health services engaged to varying degrees with the girl, and the WAS officer encouraged the girl and her mother to continue to engage with these services. She also made direct contact with the girl's counsellor to attempt to improve her engagement with the service.

The WAS officer attended the first conference with the girl's mother (which the girl failed to attend) and provided support to the mother. The WAS officer attended a second conference with the girl and her mother, and provided court preparation and court familiarisation for the girl. She was present at the hearing on the day that the girl gave evidence. The WAS officer was unable to attend court on the day that the girl's mother gave evidence; however, she discussed this and made sure that she had alternative support available.

As a result of the girl's testimony, as well as the evidence of a number of other witnesses, the offender was convicted of all charges. The WAS officer contacted the girl's mother to discuss the verdict, and later the sentence. She offered support and information in relation to a Victim Impact Statement and prior to closing the file she attempted to follow up to check on the girl's wellbeing a month after the sentence.

Almost 12 hours of direct (face to face or telephone) support was provided to the girl, her mother, and other child witnesses. Given the complex circumstances of the victim, it is highly likely that the matter would not have proceeded to conviction without the involvement of the WAS.

399 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.198.

400 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.12.

401 Office of the Director of Public Prosecutions response to Ombudsman Requirement to Provide Information, 20 June 2012.

12.2.1 Increasing the capacity of the service

In July 2012, the Ministerial Advisory Panel for the Interagency Plan raised concerns with the Attorney General's Division about the progress of Action 15, citing concerns that access to Aboriginal WAS officers has been problematic in some areas. The response from the Attorney General's Division notes that:

*While ATSI WAS resources may be stretched overall, the service appears to be working effectively in respect to ATSI child sexual assault matters, with no matters unallocated.*⁴⁰²

While both the Interagency Plan and *Breaking the Silence* focused on increasing the number of Aboriginal WAS officers, the capacity of the WAS to provide a service to Aboriginal people should not be viewed in isolation from the capacity of the service as a whole. Where Aboriginal officers are unable to assist victims and witnesses, these cases will be referred to a generalist officer, and similarly where they have the capacity to do so, Aboriginal officers can provide support to other priority cases.

The ODPP provided us with caseload information for each of the WAS officers as at 1 June 2012. This information indicates that across the service, more than half of the WAS officers were carrying caseloads which exceeded the maximum agreed workload. In addition, there were a substantial number of cases which were unallocated, meaning that demand for the service was at more than 120% of the service's overall capacity.

The information provided to us by the ODPP indicates that the Aboriginal WAS officers were not operating above their caseload capacity, and there were no unallocated cases which were identified as being Aboriginal. Through both our case reviews and our consultations with the WAS, however, it is evident that it is difficult to measure the workload of the Aboriginal WAS officers based on caseload numbers alone.

The three Aboriginal WAS officers cover extremely large geographical areas and, as a result, spend a significant amount of time travelling. In addition, the type of support required by Aboriginal victims, and the manner in which this support is provided, is typically far more resource intensive. Support is often provided to extended family and community members, and there is often a range of complex needs which need to be addressed. It can also be more difficult and time consuming to make telephone contact, and it can be more difficult to provide information and build rapport without engaging in face to face contact.

Of the 27 cases we reviewed, there were 15 cases (56%) where a WAS officer had direct contact with the complainant(s) or their family on at least one occasion. Of these 15 cases, there were three where the first contact occurred within four weeks of the matter being allocated to an officer. The average time taken from the matter being allocated, to an officer making contact with the complainant, was just under five months, with the longest time lapse being over a year.

Whilst the service is intended to operate in a proactive manner by identifying and responding to the needs of the client early in the prosecution period, more often than not, initial contact is reactive to the needs of the ODPP solicitor, and contact occurs when assistance is requested for a conference, or when the court date is approaching. Overwhelmingly, our case review showed that the first direct contact with the complainant was prompted by a request from the solicitor to arrange a conference or make contact for another purpose. There were only four cases that we reviewed where the WAS officer was proactive in making contact in order to assess the support needs of the complainant. In addition, generalist officers are not in a position to assist in cases involving Aboriginal clients due to the high caseloads which these officers are carrying. In 2012, the WAS formalised a *Best Practice Referral and Case Management Protocol*. The protocol includes as a standard that 'contact should be made within four weeks of the matter being allocated to the officer'. Given that there has been no enhancement to the number of Aboriginal WAS officers since our case review, and that generalist officers are already carrying higher than maximum caseloads, the service does not have the capacity to consistently meet this standard for Aboriginal clients.

In our consultations with the WAS, it has acknowledged the overall capacity challenges for the service, and is keen to improve the standard of service delivery provided to victims and witnesses. The service has implemented a number of different strategies and service models in an effort to work efficiently and effectively with the resources available to it.

Despite these efforts, it is evident that the service is under substantial pressure to meet demand, as well as fulfil a range of training, consultation, and other commitments. In our consultations with Aboriginal communities around NSW, we received almost unanimous support for the provision of the services which the WAS delivers. We have also received significant positive feedback about the way in which the Aboriginal WAS officers provide these services.

⁴⁰² Correspondence from the Department of Attorney General and Justice to Aboriginal Affairs, dated 26 July 2012.

Without both an enhancement to the service of some kind, and an increase in the security of the ongoing funding for the service,⁴⁰³ it will become increasingly difficult for the WAS to provide comprehensive support to vulnerable witnesses and victims, which will in turn have a significant adverse impact on the prosecution process.

The Attorney General's Division, in responding to the concerns raised by the Ministerial Advisory Panel about the implementation of Action 15, notes that:

Ideally, more resources would be provided to improve state-wide coverage; however, this is unlikely to occur under current budgetary conditions which include a 1.5 per cent labour cost reduction target... Budgetary constraints and the balancing of current priorities mean that DAGJ is unlikely to increase resources for ATSI WAS officers.⁴⁰⁴

We acknowledge that under the current budgetary circumstances, the Attorney General's Division is not in a position to facilitate an increase in the funding to the WAS. We nonetheless believe that the current staffing capacity of the WAS is insufficient to meet the demand for the service. It is clear that if the service is to continue to provide support to those vulnerable witnesses and victims within the priority groups, there will need to be an increase in the funding available to the Attorney General's Division, specifically for the purpose of supporting an increase in the staffing capacity of the WAS both in terms of its Aboriginal officers, and its staffing levels more generally.

12.3 The role of Victims Services in supporting victims

Victims Services, housed within the Attorney General's Division, also provides a range of supports to victims of crime. The functions of Victims Services include managing the Victims Compensation Scheme and the Approved Counsellor Scheme; providing support and referral services, including a Victims Access Line; monitoring compliance with the Charter of Victims Rights; and providing secretariat support to the Victims Advisory Board, which consults with relevant stakeholders on issues and policies concerning victims of crime, and provides appropriate advice to the Attorney General.

12.3.1 The Charter of Victims Rights

The Charter of Victims Rights (the Charter), legislated in the *Victims Rights Act 1996*, details the rights of victims of crime in NSW. There are 18 rights detailed in the Charter, including that:

- a victim will be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity
- a victim will be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to them
- a victim will have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs
- a victim will, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation
- a victim will be informed in a timely manner of the prosecution of the accused, including the charges laid against the accused or the reasons for not laying charges; and any decision of the prosecution to modify or not to proceed with charges laid against the accused, and
- a victim will be consulted before a decision to modify or not proceed with charges is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim.⁴⁰⁵

In 2010, a number of valuable amendments to the Charter came into effect. Its application now extends not only to government agencies, but also to non-government service providers. The wording of the Charter was strengthened, and an additional right was added – that victims have the right to make complaints if their rights under the Charter have not been met.

Victims Services is responsible for monitoring compliance with the Charter, including managing complaints against the Charter. Following the amendments in 2010, Victims Services also has the capacity to report annually to Parliament on compliance with the Charter. Information provided to us by Victims Services indicates that there were 46 complaints against the Charter in 2011–18 of these were upheld. The majority of complaints (76%) were against

⁴⁰³ There have been significant fluctuations in the funded staffing level of the service over the past 10 years, including a period in 2008 when all WAS officers received voluntary redundancy letters which indicated that the WAS would be cut to 16 positions (this was subsequently retracted). There has also been uncertainty in the way in which funding is administered to the service, with the Department of Attorney General and Justice temporarily administering the funding between March 2009 and December 2011. In its response to our Requirement to Provide Information, dated 20 June 2012, the ODPP indicated that the 'regular uncertainty regarding funding for the service has a major impact on service delivery and staffing stability'.

⁴⁰⁴ Correspondence from the Department of Attorney General and Justice to Aboriginal Affairs, dated 26 July 2012.

⁴⁰⁵ *Victims Rights Act 1996* (NSW), Section 6.

police (and just under half were upheld). Approximately one quarter of the complaints received related to victims of sexual assault offences (and a third of these were upheld). Victims typically complained about breaches of their right to be treated with courtesy, compassion and respect; their right to information about the investigation of a crime; and their right to information about the prosecution of the accused.⁴⁰⁶

12.3.2 Support and referral services

Victims Services operates a 24 hour Victims Access Line, which provides information to victims, as well as crisis counselling, an after-hours emergency support service, and referrals to other services. There is an Aboriginal contact line available during business hours. Victims Services advises that it receives approximately 65,000 phone calls per year, with most calls the result of people being unsure of how to navigate the criminal justice system, or not receiving the appropriate information and support from other sources available to them.

Victims Services is also responsible for providing comprehensive online and print resources to inform victims about the criminal justice system, and had lead responsibility for Action 43 in the Interagency Plan:

*JIRT, Victims Services, ODPP, DCS and Education Centre Against Violence develop joint culturally appropriate court preparation materials and information packages.*⁴⁰⁷

In 2007, Victims Services launched *Courtwise*, which was an interactive web-based system to provide victims with information about going to court. In 2009, the *Courtwise* website was discontinued, and replaced with the *Justice Journey* website,⁴⁰⁸ which incorporates much of the content from *Courtwise* into a single comprehensive source of information on the criminal justice system. In addition to the website, there are a range of *Justice Journey* print materials, which are distributed through the courts. There is also a DVD and guide for workers, which was released in October 2012.

In 2009 Victims Services also launched the *Help for Victims of Sexual Assault* website. The site includes information on the help and support available, how to make a report to police, and the investigation and criminal justice process.

Victims Services retain an Aboriginal Project Officer who is dedicated to the goals outlined in the *Aboriginal Access Plan 2013 – 2014*; a two-year plan to expand and enhance methods of service delivery for Aboriginal victims of crime. The plan incorporates regular monitoring of Aboriginal victims statistics, including statistics relating to domestic violence, assault, and sexual assault.

Victims Services also operates in an advisory role for the various court support services which are available for victims in NSW. In addition to the WAS (and the therapeutic services discussed in the previous chapter), there are a range of non-government organisations⁴⁰⁹ which provide court support services, funded by a number of different agencies including the Attorney General's Division, NSW Health, the Department of Family and Community Services, and Legal Aid.

In our consultations with Victims Services in 2011, it identified that the current service delivery system for court support services results in inconsistent provision of services across NSW, both in relation to the availability of services in different parts of the state, and in relation to the availability of specialist services for different types of crime or different groups of victims.

In February 2012, the Attorney General announced an independent review of all court support services for victims of crime in NSW. This review, currently being conducted by PricewaterhouseCoopers, is intended to map the current services which are available, evaluate the current system to identify gaps and duplications, and provide recommendations on the provision of court support services.⁴¹⁰

As we have discussed elsewhere in this report, whilst there are benefits in having multiple service providers who are able to tailor services to specific groups, it inevitably results in the type of inefficiencies and service gaps identified. In our view, achieving equitable distribution and consistent standards across the available services will require a more centralised or coordinated approach to managing and monitoring these services. Given its role in monitoring the Charter of Victims Rights we believe that, if funded to do so, Victims Services is appropriately positioned to fulfil this role.

406 NSW Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 26 June 2012.

407 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.18.

408 NSW Department of Attorney General and Justice, *Justice Journey: A guide for victims of crime in NSW*, www.lawlink.nsw.gov.au. Accessed 12 November 2012.

409 Organisations providing court support include the Salvation Army, Mission Australia, the Red Cross, Victims and Witnesses of Crime Court Support, Aboriginal Client Service Specialists, the Intellectual Disability Rights Service, and the Victims of Crime Assistance League. Source: PricewaterhouseCoopers, *Issues Paper: Delivering a consistent approach to the provision of court support services for victims of crime*, October 2012, p.10.

410 PricewaterhouseCoopers, *Issues Paper: Delivering a consistent approach to the provision of court support services for victims of crime*, October 2012, p.1.

12.4 Improving communication processes

There can often be quite lengthy periods between the date when charges are laid, and the date where a final outcome is reached. Our consultations revealed the frustration experienced by victims if they are not regularly updated with information about the investigation or prosecution process. The Australian and NSW Law Reform Commissions' 2010 report on family violence concluded that:

...the most positive experiences of the criminal justice system for victims arise when they are 'treated respectfully... listened to, believed and taken seriously' as well as being provided with 'timely and accurate information'. In addition it is said that 'ensuring the complainant is well informed and well supported can improve not only their wellbeing and experience as a witness but their capacity to testify confidently'.⁴¹¹

Maintaining communication during this period is essential not only for providing reassurance to the victim, it is also critical for police and the ODPP to be aware of any changes in the circumstances of the victim and other witnesses which may impact on their capacity to give evidence.

12.4.1 Communication with victims

Where the WAS is involved with a victim, it often acts as an intermediary for providing information to the victim in place of the ODPP solicitor or the police officer in charge. Nonetheless, both of these individuals have a critical role to play in supporting a victim through the criminal justice system, by ensuring that they are provided with all of the available information about the progress of the matter, including information which is relevant to the safety of the victim or the wider community.

During the course of our audit, we encountered many examples of police officers maintaining regular and appropriate communication with victims, and in doing so, forming strong and supportive relationships with the victim, their family and other community members. However, it is also apparent that because of resource constraints, particularly within the JIRT, it is often difficult for investigating police to provide the level of communication which victims may need.

Given the trauma associated with the prosecution process for child victims of sexual abuse, we believe that the JIRT manual, which is currently being revised by Health, should give specific advice about the communication standards expected between police and the victim, and should also specifically refer to the obligations of the JIRT agencies under the Charter of Victims Rights.

The ODPP has formalised its obligations under the Charter as part of its Prosecution Guidelines. Guideline 7 details that the opinions of the victim and the police officer in charge should be sought if the ODPP is considering whether to discontinue a prosecution. Guideline 19 details the general communication standards between the ODPP and a victim, including that:

Victims...should appropriately and at an early stage of proceedings have explained to them the prosecution process and their role in it. ODPP Lawyers are required to make contact with the victim and provide ongoing information about the progress of the case...

Victims of crime (whether they have requested it or not) should be informed in a timely manner of charges laid or reasons for not laying charges; any decision to change, modify or not proceed with charges laid and any decision to accept a plea to a less serious charge; the date and place of hearing of any charge laid; and the outcome of proceedings, including appeal proceedings, and sentence imposed.

Where the offence involves sexual violence...the victim should be consulted before any decision under the second dot point above is made, unless the victim has indicated that he or she does not wish to be consulted or his or her whereabouts cannot be ascertained after reasonable inquiry...

Guideline 20 states, in reference to charge negotiations, that:

The views of the police officer-in-charge and the victim must be sought at the outset of formal discussions, and in any event before any formal position is communicated to the defence, and must be recorded on file.⁴¹²

From our case review it is apparent that the contact between the ODPP solicitor and the victim varies significantly, depending on the circumstances of the case, as well as the practices of individual solicitors. In many instances, the correspondence records on file were incomplete, and it was not possible to determine how much contact occurred between the solicitor and the victim. In just over half of the cases that we reviewed (14 cases, 52%), there appeared to be complete records of the contact between the solicitor and the victim or the victim's family. This included both copies of any written correspondence, as well as file notes of any telephone conversations, conferences, or other forms of contact (such as text message). In approximately one third of the cases that we reviewed, it was apparent

411 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response: Final Report*, 2010 p.1205.

412 Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales, www.odpp.nsw.gov.au. Accessed 13 September 2012.

that full details of correspondence were not recorded on file; and in the remaining three cases, it was unclear whether the records kept were an accurate representation of the contact between the solicitor and the complainant. In some instances, there was no evidence of critical communication having occurred with the victim; for example, in one third of the cases we reviewed where there were charge negotiations between the ODPP and the defence, the complainants' views about these negotiations were not recorded on file.⁴¹³

Whilst we fully acknowledge the existing resource constraints, and the impact of administrative work on a small agency such as the ODPP, in light of the ODPP's clear obligations under the Charter of Victims Rights and the ODPP Prosecution Guidelines, there is a need for a greater consistency in the recording of contact with complainants.

There is also a need for the ODPP to specifically utilise this information to assess the performance of individual solicitors, and to inform and track ongoing improvements in victim communication practices. The ODPP currently conducts annual case reviews of a small number of files for each solicitor, and advise that their auditing processes are currently under review. We believe that there would be value in periodically reviewing a number of child sexual assault cases across each of the ODPP offices, with a view to assessing the quality of the communication with the victim, as well as the quality of the relevant records.

12.4.2 Interagency communication

In addition to improving communication directly with victims of child sexual assault, our audit identified the need for improvements in the communication processes between police and other JIRT agencies with the WAS and the ODPP.

12.4.2.1 Automating referral processes for child sexual offence cases

The ODPP is responsible for prosecuting all sex offences where the complainant is a child, irrespective of the seriousness of the offence. For offences which are strictly indictable,⁴¹⁴ these cases are automatically referred from the police to the ODPP electronically. However, there are a number of child sex offences for which this automated process does not occur.⁴¹⁵ In most instances, these cases are manually referred to the ODPP but our case reviews revealed that these cases occasionally fall through the cracks. For example, one such case that we reviewed was prosecuted by the ODPP only after a solicitor happened to be present in court when it was being mentioned by a Police Prosecutor – the solicitor then asked for the case to be referred to the ODPP. In another case, the prosecution was initially carried out by a Police Prosecutor, with the ODPP only receiving the case when an appeal against the severity of the sentence was lodged by the offender.

The ODPP advise that this issue has been on the agenda of the Police - ODPP Prosecution Liaison Standing Committee since 2007. Most recently, the NSW Police Prosecutions Command has worked to provide education to Police Prosecutors in order to reinforce the process of manually referring child sex offences to the ODPP; however, the potential for this process to be overlooked remains. We believe there would be merit in the NSW Police Force implementing a computer enhancement to automate the process of referring *all* child sex offence cases to the ODPP for prosecution.

12.4.2.2 Streamlining the process for providing victim contact details to the WAS

Once a case has been referred to the ODPP for prosecution, the police officer in charge plays an important role in providing the victim's contact details to the ODPP solicitor and the WAS. In this regard, the ODPP advised us that:

*'Making contact with police can at times be challenging in terms of their availability and considerable time may [lapse] before the victims contact details and other relevant information is obtained. This can impact on how long it takes for a WAS Officer or solicitor to make initial contact with the victim.'*⁴¹⁶

Breaking the Silence also highlighted concerns about the delay in contact details being provided to the ODPP and the WAS. In response, the NSW Police Force developed the 'P963 form' to assist police in providing the victim's contact details, as well as other useful information such as Aboriginality, or any known disabilities. Following the introduction of this form, awareness raising activities were undertaken by police to encourage its use, and the form was incorporated into the *Police Victim Support Policy*. Despite this, the ODPP has reported that it continues to receive only a small number of completed P963 forms.

The ODPP further advises that:

413 We reviewed 27 matters, which were prosecuted by the ODPP during the life of the Interagency Plan. Since these matters related to incidents of child sexual abuse which had occurred in our 12 target communities, our review was limited to matters which were prosecuted by four of the ODPP offices, with the majority prosecuted by the Dubbo office.

414 A strictly indictable offence as provided in the *Criminal Procedure Act 1986*, is an offence which must be dealt with on arraignment in a District or Supreme Court.

415 These include certain charges against s.61M(1), s.61M(2), s.61N(1), s.61O(1), and s.61O(2) of the *Crimes Act 1900*.

416 NSW Office of the Director of Public Prosecutions response to NSW Ombudsman Requirement for Information, 20 June 2012.

Ideally it would be most effective if Police automatically completed this form for all victims... and sent [it] via email to the ODPP as soon as the alleged offender has been charged.

The ODPP has recently established a 'Victim email box' address for each region to assist this process. To date there has been little use of the victim email boxes. There are systems in place; however, there is a need for a clear protocol and the process needs to be promoted widely both within NSWPF and ODPP.⁴¹⁷

In our consultations with the Child Witness Service in Western Australia in 2010, it advised us that it had established a direct portal between the Child Witness Service and the police for the purposes of referring victim contact details at the time of charge. We believe that there is merit in the Police and the ODPP investigating the viability of an automated system for referring victim information immediately upon referral of cases to the ODPP. In the interim, a clear joint protocol and education strategy for staff from both agencies would assist in improving practice in this area.

12.4.2.3 Providing contextual information about victims to improve victim support

The circumstances of a victim; for example, their child protection or relevant health history, and their current family and living arrangements, are of particular relevance both to the type of support which a victim may require from the WAS, and also the likelihood that they will engage with the prosecution process. In our consultations with the WAS, it raised concerns that the expertise within the JIRT, particularly the expertise of Community Services in understanding these aspects of a child's circumstances, are not being utilised to provide relevant advice to the ODPP and the WAS on how best to engage with a child victim.

The intent of the JIRT is to provide a coordinated investigative and therapeutic response to child victims. Whilst the ODPP has long established relationships and communication processes with the police, from our case reviews it is apparent that there is very little, if any, communication which occurs in the early stages of the prosecution process between the ODPP or the WAS and Community Services. We acknowledge the existing resource constraints of the Community Services arm of JIRT. However, it is critical that any information held by the JIRT agencies which is relevant to the ODPP and the WAS successfully engaging with a victim, is passed on to the ODPP as soon as possible. The process of identifying and referring this information could be included as part of the existing JIRT Local Planning Response process.

12.5 Provisions for giving evidence

There are currently a number of legislative provisions in place in NSW for children and vulnerable witnesses who are required to give evidence in court. A pre-recorded interview with police can be used as a child's evidence; evidence can be given by closed circuit television (CCTV); a support person may be present while evidence is being given; and in the case of sexual offences, a child cannot be directly cross-examined by the defendant.

As well as the direct benefits to victims in not having to face the perpetrator, our consultations with defence lawyers have highlighted the impact that the availability of alternative facilities for giving evidence have on the likelihood of a defendant entering an earlier guilty plea. We were told that it is not uncommon for a defendant to hold off entering a guilty plea based on the likelihood that the victim would be too afraid to give evidence in person at their hearing or trial.

It is widely acknowledged, however, that despite these provisions being available, the court process can still be extremely traumatic and stressful for children, particularly the process of cross-examination.⁴¹⁸ Our audit has identified existing facilities which need to be supported or expanded, as well as a number of additional facilities which could further improve the court process for victims.

12.5.1 Remote witness facilities

Following a pilot program in the Sydney West District Court registry, the Attorney General's Division commenced a state-wide rollout of remote witness facilities in 2005. The facilities provide vulnerable witnesses with the means to give evidence from a secure location away from the courtroom. By the end of the 2005-06 financial year, permanent remote witness facilities were available in 39 locations. A further 43 facilities have since become operational, bringing the total number of locations with available facilities to 82. The Attorney General's Division advises that the capital spend on this project concluded in 2010-11, and that an additional allocation of funds for maintenance in 2011-12 has been used to achieve minor upgrades to the existing equipment in 45 facilities; and significant upgrades in five facilities.

The facilities differ across NSW, particularly the extent to which they are housed in a location which is 'remote' from the courtroom. In the Downing Centre in Sydney, for example, the remote witness facilities are located in an

⁴¹⁷ NSW Office of the Director of Public Prosecutions response to NSW Ombudsman Requirement for Information, 20 June 2012.

⁴¹⁸ See for example, Australian Institute of Criminology, 'Child complainants and the court process in Australia', in *Trends and issues in crime and criminal justice*, No.380, July 2009, www.aic.gov.au. Accessed 6 November 2012.

adjacent building. In many other locations it is not possible to replicate this situation due to cost and the availability of appropriate premises. While the facilities were characterised prior to the Interagency Plan by frequent technical faults, the significant investment by the Attorney General's Division in recent years has led to technological improvements which have decreased the frequency with which these faults occur.

Feedback provided to us by both the ODPP and the Attorney General's Division indicates that these facilities have significantly improved the process of giving evidence for vulnerable witnesses. Our case reviews similarly identified those children who were required to give evidence in court derived a great deal of comfort from being able to use these facilities. There were a small number of cases we reviewed where technical faults resulted in a child's evidence being disrupted or rescheduled. The distress for children who had been ready to give evidence but who then had to wait until the next day, was apparent from these cases.

From the information we received from the Attorney General's Division, it appears that there are currently no funds committed for the ongoing maintenance and upgrade requirements of these facilities. Given their demonstrated value, we believe that there should be dedicated funding available for the maintenance and upgrade of these facilities, with the capacity for any unspent funds to be rolled over to the next financial year.

12.5.2 Audio visual links

While the rollout of remote witness facilities has proven to be successful in improving the experience of going to court for vulnerable witnesses, there are still only a limited number of District Courts in NSW which have audio visual links available. Audio visual links have been utilised extensively in the Local Courts for some time, particularly to facilitate bail hearings and communication with defendants who are in custody without requiring the unnecessary transportation of prisoners to and from court.⁴¹⁹ These links also enable evidence to be given from a location other than the town where the matter is being heard.

Currently there are audio visual links available in 13 District Courts,⁴²⁰ accounting for less than half of the venues where the District Court regularly holds sittings. In our consultations with the ODPP, it highlighted that while it is possible to utilise the facilities in the Local Court for District Court cases, this is not always practical due to the heavy listing requirements of the Local Court. In addition, the Local Courts are often not equipped for jury trials. As a result, audio visual links are often not available for use in those more serious cases which are listed in the District Court.

While it is not frequent, there are a number of circumstances which may require victims to travel substantial distances to give evidence in court. This can be highly traumatic for victims and their families, and there are also significant costs for the ODPP in transporting victims and providing them with appropriate accommodation. As discussed earlier in this chapter, as well as the individual impact of this trauma on a victim, it also has the potential to influence the decisions made by defendants as to whether or not they enter a guilty plea, since the increased trauma in turn decreases the likelihood that a victim will follow through with a decision to give evidence. The following case studies highlight the benefits of audio visual facilities and the difficulties that can arise when the facility is not utilised.

Case study 17

A 14 year old girl was living interstate with her mother. She travelled to visit her father in NSW, and was sexually assaulted at a party. She subsequently returned to live with her mother. As the principal witness to the assault, the victim was required to give evidence in court. Her school counsellor contacted the ODPP solicitor on her behalf to discuss whether it was possible for the victim to give evidence from her home state. The girl was concerned that she would face reprisals from the offender's family if she returned to the town where the assault had occurred, and she was also distressed about significant ongoing tension between her parents. The ODPP was able to arrange for the victim to give evidence via audio visual link from a court near her home. The ODPP also liaised with the relevant Witness Assistance Service to facilitate court preparation and support. The offender ultimately entered a plea of guilty, and the victim was not required to give evidence.

⁴¹⁹ NSW Department of Attorney General and Justice, *2010-11 Annual Report*, p.39.

⁴²⁰ NSW Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 26 June 2012.

Case study 18

By contrast, in another matter we reviewed, a 15 year old girl was the victim of a serious domestic violence incident involving her 22 year old boyfriend. The boyfriend was charged for the domestic violence incident, and was also charged with having sexual intercourse with a person aged between 14 and 16. The victim, who was in out-of-home care, was placed in a hostel for high risk children, located more than 800km from the location of the trial. In accordance with the hostel's policy, a request was made for two support people from the hostel to travel with the victim, since both had been heavily involved in her care. The ODPP approached Community Services to provide additional funding for the second carer, and after protracted negotiations, they were eventually able to secure the required funding. In addition, a friend of the victim who was also required as a witness was unable to fly, and as a result, the ODPP was required to make complex travel arrangements which involved the victim and another child witness travelling a long distance by road to attend the trial.

In addition to providing an alternative option for victims who may not live in the area where an offence has occurred, these facilities also provide expert witnesses with the capacity to give evidence without having to travel. The 2007 NSW Health report into forensic and medical services for victims of sexual assault and child abuse noted that the limited flexibility within the legal system in relation to medical practitioners providing evidence in court, is a disincentive to medical practitioners participating on a forensic roster.⁴²¹ The use of audio visual links for expert witnesses such as health practitioners offers a practical solution. The ODPP has submitted that it may 'encourage more experts to be involved in cases involving rural and remote prosecutions',⁴²²

The Attorney General's Division advises us that a new business case is being prepared to 'address the future demands for video conferencing functionality and other courtroom based technology across [the Department]'.⁴²³ We acknowledge that there would be significant financial outlays required to implement this technology. However, investments of this kind in the criminal justice system not only benefit victims, but also have the potential to result in significant cost savings through reducing travel and accommodation for witnesses, and by reducing the length of the court process, facilitating more effective and efficient operation of the courts.

12.5.3 Pre-recording evidence

In most child sexual assault cases, a child's recorded JIRT interview will be played in court as their evidence-in-chief if the matter proceeds to hearing or trial. In other Australian jurisdictions, there is also the facility to pre-record a child's entire evidence, including any cross-examination and re-examination at a pre-trial hearing. While this process would not be preferable in all cases, it is evident that there are certain circumstances which may warrant allowing the pre-recording of a child's evidence in this way to occur; for example, if a child is particularly young, has mental health concerns, an unstable home environment, or study commitments. Since legislative reform would be required for this to occur in NSW, we discuss this issue further in chapter 14.

12.5.4 The use of intermediaries

In a number of international jurisdictions, as well as in Western Australia, an appropriately skilled 'intermediary' can be accessed to assist a vulnerable witness in giving evidence. In England and Wales, for example, a register of professionals including speech and language therapists, psychologists, and mental health professionals, exists to provide individuals who can assist both in relation to police interviews and the court process by helping a vulnerable witness to understand the questions that are being posed to them.

The use of intermediaries not only has the capacity to make the investigation and court process less stressful for vulnerable witnesses, it also has the potential to improve the justice outcomes through enabling witnesses to give evidence who may not otherwise have been considered capable of doing so. The use of intermediaries is discussed further in the next chapter.

12.6 Case management and court processes

Breaking the Silence acknowledged that:

*It is well known and widely accepted that the court process is long and traumatic for children and young people. In NSW, a number of measures have been put in place to reduce the length of trials...for child sexual assault matters.*⁴²⁴

⁴²¹ NSW Health, *Review of forensic and medical services for victims of sexual assault and child abuse*, KPMG, August 2007.

⁴²² NSW Office of the Director of Public Prosecutions response to NSW Ombudsman Requirement for Information, 20 June 2012.

⁴²³ NSW Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 26 June 2012.

⁴²⁴ Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.210.

ACSAT recommended that the (then) Attorney General's Department should:

*...continue to improve case management and pre-trial conferencing techniques... and reduce the total length of the court process to less than one year.*⁴²⁵

The Interagency Plan accordingly included Action 16 which required the (then) Attorney General's Department to:

*Ensure that the state-wide rollout of technologies used in the Child Sexual Assault Specialist Jurisdiction Pilot occurs first in priority locations, and aim to reduce total length of court process to less than one year.*⁴²⁶

While the use of technology such as remote witness facilities have had a significant positive impact on the experience of giving evidence for children, the rollout of these facilities does not necessarily guarantee improvements in the overall timeliness of court processes. As discussed below, there is a large range of variables which contribute to the time it takes for a matter to progress through the court, and many of these may be outside of the control of the court process itself.

In 2007, a District Court Practice Note for criminal cases established a separate list for sexual assault cases to ensure that such cases are given priority and are dealt with in a timely manner.⁴²⁷ The Practice Note details that:

- priority on sexual assault case lists should be given to cases involving a child complainant over those involving an adult complainant
- cases should be listed for trial within four months of the date of committal, and not more than six months
- every effort should be made to identify when a complainant will be required to give evidence and where possible arrange the giving of evidence accordingly, and
- notice of an intent to vacate a trial date or enter a plea of guilty should be provided at the earliest possible opportunity.

In 2008, the Criminal Case Conferencing (CCC) scheme was trialled in the Downing Centre and Central Sydney Local Court registries for all cases which were to be heard in the Sydney District Court registry. The scheme was a case management process which required the defence and prosecution to hold a conference prior to the committal hearing. It was intended to encourage plea negotiation at an earlier stage in the process and, as a result, decrease the number of late guilty pleas.⁴²⁸

In 2010, the scheme was reviewed by BOCSAR, and it was concluded that 'there is little evidence that the CCC scheme achieved its stated objectives'.⁴²⁹ The BOCSAR review did note that 'despite being compulsory, conferences were not always held in cases where they should have been' and, as a result, it was possible that the scheme was not implemented effectively enough to achieve the outcomes being measured.⁴³⁰ The scheme has subsequently ended, although the ODPP still informally encourages the use of pre-trial conferences.

In our consultations with the ODPP, it advised us that while the scheme was not generally effective in encouraging early pleas in adult sexual assault cases, it was effective in child sexual assault cases. It identified that the facility to use pre-recorded evidence-in-chief in cases of child sexual assault removes some of the uncertainty on the part of a defendant as to whether a victim will give evidence, and ascribed the better outcomes in cases involving a child complainant to this fact. In the context of the additional facilities for giving evidence discussed in section 12.5 of this chapter, we would envisage that this process might be even more effective.

Our consultations highlighted that there are differing views on the effectiveness of the remaining processes for improving the management of sexual assault cases. The Attorney General's Division advised us that it considers the relevant District Court Practice Notes which guide the listing and management of sexual assault cases, as well as the management of lists more generally, to be effective in ensuring that cases are dealt with as quickly as possible.⁴³¹

The ODPP, however, raised concerns that while it was anticipated that the introduction of the relevant Practice Notes would alleviate delays in the commencement of trials and finalisation of sentence proceedings, this has not occurred. In its response to our requirement to provide information, the ODPP stated that:

...the reality is that pre-trial hearings are not taking place despite ODPP requests and the commencement of trials are delayed while legal issues are argued and editing of the child's electronically recorded statement takes place. Children are still being required to attend court on the first day of the hearing and being asked to wait as the Crown

425 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, p.210.

426 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.12.

427 District Court Criminal Practice Note 6, www.districtcourt.lawlink.nsw.gov.au. Accessed 31 October 2012.

428 NSW Bureau of Crime Statistics and Research, 'The impact of Criminal Case Conferencing on early guilty pleas in the NSW District Criminal Court' in *Crime and Justice Statistics Bureau Brief*, No. 44, June 2010, p.2.

429 NSW Bureau of Crime Statistics and Research, 'The impact of Criminal Case Conferencing on early guilty pleas in the NSW District Criminal Court' in *Crime and Justice Statistics Bureau Brief*, No. 44, June 2010, p.7.

430 NSW Bureau of Crime Statistics and Research, 'The impact of Criminal Case Conferencing on early guilty pleas in the NSW District Criminal Court' in *Crime and Justice Statistics Bureau Brief*, No. 44, June 2010, p.8.

431 NSW Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 26 June 2012.

*is uncertain when the child will be required to give evidence. There is also no guarantee that the hearing will not be put over to another date. Where there is a conviction, there is no guarantee that sentencing will take place sooner rather than later, making it difficult for the child and families to have closure in relation to the hearing process.*⁴³²

Of the 27 ODPP cases we reviewed, the average time taken from charge to sentence or other outcome was approximately 11 months, with 38% taking longer than 12 months. There were only eight cases which were heard or sentenced in the District Court. Six of these cases resulted in a guilty plea being entered by the defence. In four of the six cases where a guilty plea was entered, it was entered late in the process – either on the day of the trial or in the days immediately preceding the trial.

Across all 27 cases, a guilty plea was entered in 13 cases (48%). In eight of these 13 cases (62%) the plea was entered late in the process. Whilst the sample is not large, the cases we reviewed nonetheless indicate that more often than not, where a guilty plea is entered, this occurs at a late stage.

From cases that we reviewed it is evident that the delays in obtaining a guilty plea, or otherwise reaching an outcome, were the result of a range of complex, and often multiple, factors. For example:

- in six cases there were delays in police completing the brief of evidence
- in five cases there were delays whilst waiting for the defence to obtain a psychiatric evaluation or other required tests
- in three cases there were delays which were specifically the result of the availability or scheduling of the court
- in three cases there were delays due to Legal Aid or the Aboriginal Legal Service
- in two cases there were delays in forensic material being analysed by the Division of Analytical Laboratories, and
- in two cases the victim made additional disclosures which resulted in further investigation and charges being laid.

While many of the delays were the result of causes external to the court, agencies operating within the criminal justice system are still largely reactive to court deadlines, which are generally influential in rectifying delays and ensuring greater priority is given to the early consideration of particular issues. The court system is the key driver for the pace at which progress through the system occurs. For this reason, we believe it is incumbent upon the courts to adopt processes which provide an optimal service to particularly vulnerable victims, on the assumption that agencies who participate regularly in the court process will adapt accordingly. In order to facilitate this, there would appear to be merit in a broad review being undertaken of the current case management processes for sexual offence cases heard in both the District and Local Courts.

12.7 Sentencing

The sentencing of convicted sex offenders, and sentencing processes more broadly, has been the subject of a significant amount of debate and legislative reform in NSW. In 2009, the Sentencing Council finalised a comprehensive review of the penalties for sexual assault offences,⁴³³ and in 2011 published a report on Standard Non-parole Periods,⁴³⁴ and the NSW Law Reform Commission is in the process of undertaking a large scale review of the *Crimes (Sentencing Procedure) Act 1999* (NSW). In August 2012, the NSW Premier made clear his commitment to ensuring that appropriate penalties are received by convicted sex offenders, stating that:

Acts of sexual violence against children, acts of sexual assault against children ought to be taken more seriously...

*I share the community's concern that what we have at times is a system that values crimes against property more than crimes against people, particularly young people. We should do everything possible to ensure young people are able to fulfil their potential and if, in the meantime, people are interfering with them in any way, then we will be taking appropriate action.*⁴³⁵

What clearly stood out from our consultations with Aboriginal communities was the strongly held perception that sentences for convicted sex offenders are inadequate. These perceptions are shared by many other community members in NSW, who according to research conducted by the Sentencing Council and BOCSAR, generally believe that sentences handed down to offenders by the courts are too lenient.⁴³⁶ What also stood out was the limited understanding by many people that we spoke to about processes around charge negotiations (also known as plea negotiations) and the impact this can have on sentencing outcomes.

432 NSW Office of the Director of Public Prosecutions response to NSW Ombudsman Requirement for Information, 20 June 2012.

433 NSW Sentencing Council, 2008 and 2009, *Penalties relating to sexual assault offences in NSW, volumes 1-3*.

434 NSW Sentencing Council, 2011, *Standard Non-parole Periods: A background report by the NSW Sentencing Council*.

435 The Australian, 27 August 2012, *More jail for paedophiles: NSW Premier*.

436 NSW Sentencing Council, May 2009, *Public Confidence in the NSW Criminal Justice System*, p.3.

Data published by BOCSAR on the penalties imposed on offenders who were convicted of child sexual assault offences during 2009 and 2010 indicates that 63% of convicted offenders received a penalty of imprisonment. The report showed that 19% received a suspended sentence, 14% received a bond, and 3% received a bond without conviction, or had no conviction recorded.⁴³⁷

The scope of offences which are categorised as child sex offences are extremely broad, and as a result, data on the sentencing for these offences as a category can be misleading. As would be expected, the imprisonment rates were much higher for offenders convicted of aggravated sexual assault offences against children (75%), and were lower for offenders convicted of indecent assault offences against children (52%).

Of particular relevance to a discussion of the appropriateness (and perceived appropriateness) of penalties for sexual offences is the role that charge negotiations and guilty pleas play in achieving a conviction in such cases. As we discussed earlier, securing a conviction in sexual assault cases is extremely difficult. In a majority of cases where a defendant is convicted in a matter involving a sex offence, the conviction will be secured as a result of a guilty plea by the defendant.

Between 2007 and 2011, there were 4,237 sex offence matters finalised which resulted in a conviction for at least one offence. Of the 4,237 matters which resulted in a conviction, 2,130 (50%) involved a child victim. Of these, 1,673 or 79% were achieved by way of a plea. This was higher than the rate for other matters involving sex offences not against a child, where only 70% of convictions were achieved by way of a plea.

Invariably, a defendant entering a plea of guilty will involve a process of charge negotiations. While we do not have state-wide data on the proportion of guilty pleas entered which were the result of charge negotiations, our case studies indicate that this is the case in a majority of cases. In the 27 cases we reviewed which were prosecuted by the ODPP a conviction was reached in 15 cases (56%). Of these, 13 (87%) were the result of a guilty plea. There were only three of these cases where the defendants pled guilty to all of the charges against them. In the remaining 10 cases, a plea was entered to a lesser charge. In addition, in three cases, a plea was entered to another offence which was not a sex offence; for example, in one case the defendant entered a plea to a charge of common assault in exchange for the sexual offence charges being withdrawn.

Charge negotiations are frequently utilised as a tool by prosecutors to secure a conviction against an offender without having to require a victim to give evidence at a trial. While the sentence received may ultimately be reduced, this is often considered to be a better outcome for the victim than having to go through the traumatic process of a trial or hearing. It also provides a mechanism to achieve a conviction in cases where the likelihood of a conviction at a hearing or trial may not be high. Depending on the nature of the charges, a conviction may result in the offender being placed on the Child Protection Register, enabling police to have greater powers to monitor the offender's behaviour once released from prison.

A consequence of these charge negotiations is that communities perceive sentences to be inadequate and perceive that offenders are getting off too lightly. Irrespective of any future reforms to the sentencing process, there is a clear need to ensure that the communication and education for victims and their families about the sentencing process and the variables which impact on individual sentences is strengthened. The observations made in this chapter are particularly relevant to ensuring that the victim and their family are appropriately engaged throughout any charge negotiation processes, and fully appreciate the consequences of accepting a plea to a lesser charge.

Recommendations

42. That the Department of Attorney General and Justice, the ODPP and the NSW Police Force identify the data required to adequately report on attrition of child sexual abuse cases and, in doing so, have regard to the observations made in Chapter 12.
43. In relation to recommendation above, the Department of Attorney General and Justice and the NSW Police Force should develop the capacity for jointly collecting child sexual abuse attrition data, and implement associated reporting mechanisms to ensure such data is routinely analysed by justice and human service agencies to improve service responses.
44. In relation to recommendation above, that the Department of Attorney General and Justice, NSW Police Force and other JIRT partner agencies (Community Services and Health) determine the nature of annual public reporting on the attrition of child sexual abuse matters (including a breakdown for Aboriginal child victims) that should be carried out and give consideration as to which agency should be specifically funded to perform such a role.
45. That the JIRT partner agencies and the ODPP conduct periodic audits of a sample of child sexual abuse cases in order to identify and report on the reasons for attrition.

⁴³⁷ NSW Bureau of Crime Statistics and Research, 2011, *Sentencing snapshot: Child sexual assault, 2009-2010*.

46. That the NSW Government gives consideration to increasing the funding for an expansion of the Witness Assistance Service, including but not limited to, the creation of additional Aboriginal WAS officers.
47. That the Department of Attorney General and Justice considers the observations made in this report as part of the current review it has commissioned of the:
 - a) provision of court support services to victims, and
 - b) Victims Compensation Scheme.
48. That the JIRT partner agencies include specific reference to their obligations under the *Charter of Victims Rights* in the revised JIRT Manual; and that the Manual detail the expected standards for communicating with victims in child sexual abuse cases.
49. That the ODPP review and promote processes for improving its communication with victims and witnesses, including:
 - a) ensuring that more consistent records of contact with complainants and witnesses are recorded on case files, and
 - b) conducting a periodic review of a sample of child abuse cases to assess the quality of the communication with complainants, and the records kept of this communication.
50. That the NSW Police Force implement a computer enhancement to automate the process for referring all child sex offence cases to the ODPP for prosecution and referring relevant victim contact details.
51. In relation to recommendation above, the NSW Police Force and the ODPP should immediately develop an interim joint protocol for the efficient referral of victim contact details, and provide the necessary education to staff in both agencies to ensure that it is consistently adhered to.
52. That as part of the JIRT Local Planning Response procedures, JIRT agencies include specific consideration of information that should be provided to the ODPP as soon as charges are laid, to assist the ODPP and WAS to engage with victims.
53. That the NSW Government consider allocating funds to the Department of Attorney General and Justice for the dedicated maintenance and upgrade of remote witness facilities, with the capacity for such funds to be rolled over in any financial years where they are not required.
54. That the Department of Attorney General and Justice includes the observations made in this report on the use of audio visual links in District Courts in the relevant business case to be provided to Treasury on expanding the availability of this facility.
55. That the Department of Attorney General and Justice conduct a broad review of the current case management processes for sexual offence cases heard in both the District and Local Courts in order to determine the extent to which improvements can be made to these processes.

Chapter 13. Restorative justice

Breaking the Silence described restorative justice as an ‘umbrella concept’ that, in the context of criminal matters, can be defined as ‘a method of responding to crime that includes key parties to the dispute (that is, victim and offender) with the aim of repairing harm’.⁴³⁸ Restorative justice models are designed to encourage offenders to admit guilt and to take responsibility for their wrong conduct. Although there are a diverse range of restorative justice models currently operating in NSW and elsewhere, critical to all of them is the participation by victims (or their families) in the process.

Restorative justice processes can involve diversion of offenders from formal court proceedings at any stage of the criminal justice process (arrest, pre-sentencing, sentencing and on release from prison).⁴³⁹ During the Aboriginal Child Sexual Assault Taskforce’s (ACSAT) consultations, Aboriginal people said that ‘healing’ or the ‘collaborative unburdening of pain for the victim, offender and community’ should also be a core component of restorative justice.

Given the focus on restorative justice in the context of addressing child sexual assault by ACSAT and in the Interagency Plan, we examined the available research and sought the views of the community on this issue during our audit. In this chapter, we profile the Community Holistic Circle Healing process of Hollow Water, Canada – the focus of Action 86 of the Interagency Plan – and outline the current debate about restorative justice options in NSW.

Our consultations revealed broad support from Aboriginal people and practitioners in the sexual assault field for therapeutic and culturally driven models to form part of the criminal justice response to offending by Aboriginal people. However, mixed views were expressed about the nature of the options that should be made available for sex offenders – including at what stages restorative justice options are appropriate. For example, many women’s groups and adult survivors of child sexual abuse that we spoke to were concerned that current sentencing outcomes were not ‘tough enough’ on adult offenders. Although they were generally supportive of restorative justice concepts being made available to adult offenders at some point during their time in custody, there was not strong support for models that provided an alternative to custodial sentences. For this reason, we explored how current work being done by Corrective Services’ Restorative Justice Unit could be strengthened to ensure that culturally appropriate post-sentencing restorative justice options are made available for Aboriginal victims and offenders.

In relation to young people, however, we found a considerable degree of support for restorative justice options being made available for young Aboriginal people as an alternative to custodial sentences, including young people who have engaged in less serious forms of sexual harm, particularly those within a younger cohort. Given the significant proportion of sex offences committed by young people and the general support for adopting therapeutic approaches for this group, we examined the merits of trialling such an approach in NSW.

13.1 The Community Holistic Circle Healing process of Hollow Water, Canada

In developing the ACSAT terms of reference in 2004, the then Attorney General specifically requested that ACSAT ‘comment on the possible adaptation of alternative sentencing and restorative justice processes as an adjunct to the criminal justice system’. In *Breaking the Silence*, ACSAT highlighted the perceived limitations of the criminal justice system in responding to Aboriginal child sexual assault, including the ‘high rates of recidivism, lack of effectiveness of sex offender programs and the negative experiences of victims in the legal process’.⁴⁴⁰ They put forward the Community Holistic Circle Healing process developed in Hollow Water, Canada as a potential restorative justice model for addressing child sexual assault that could be adapted to suit Aboriginal communities in NSW.⁴⁴¹

Case study 19 - The Hollow Water Model

The Objibwa people of Hollow Water developed the Community Holistic Circle Healing (CHCH) process in 1988 in response to concerns about the extent of sexual assault and violence in their community fuelled by alcohol and drugs. It was estimated that over 75% of the community, both men and women, had been sexually abused and that approximately 35% of the population were victimisers. Victims were reluctant to

438 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General’s Department NSW, 2006, p.280.

439 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General’s Department NSW, 2006, pp.280-281.

440 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General’s Department NSW, 2006, p.277.

441 The outline of the Hollow Waters model below was based on a briefing paper prepared for the Attorney General as part of the Aboriginal Child Sexual Assault Alternative Justice project. Department of Attorney General and Justice, *Briefing Paper: Aboriginal Child Sexual Assault Alternative Justice Project*, 2007 and Mandy Young, *Aboriginal healing circle models, Addressing child sexual assault. An examination of community based healing circles used to address child sexual assault within Aboriginal communities in Canada*, 2007.

report abuse to police because it was often committed by family members. Men who were convicted of sexual assault would often return home even more violent and their offending would escalate.

The community believed that the use of incarceration as a deterrent was ineffective in breaking the cycle of violence within their community. This was because victimisation had become so much a part of who they were as a people, and as a community, that the threat of jail did not deter offending behaviour. In fact, they believed that what incarceration and the criminal justice process did do was keep people from coming forward and taking responsibility for the trauma they had caused. Recognising the limitations of the justice system, community members called their first meeting in 1984 to discuss the violence and dysfunction in their community.

Agencies and legislators also acknowledged that mainstream criminal justice system responses were having little impact on offending behaviour, and decided to work in partnership with the Hollow Water community to devise a community-driven model. The program is a partnership between the local Aboriginal community, Child and Family Services, the local school, the Royal Canadian Mounted Police, Manitoba Justice, Corrections (Probation & Parole), Manitoba Judiciary and the Manitoba Prosecution Service.

In April 1988, the Manitoba Government initiated the Public Inquiry into the Administration of Justice and Aboriginal People – commonly known as the Aboriginal Justice Inquiry. The Inquiry was established in response to serious questions about the conduct of justice agencies in relation to the deaths of two Aboriginal people. It was asked to consider whether – and the extent to which – Aboriginal people were treated differently by the justice system, and whether there were alternative methods that could be more effective for Aboriginal people involved with the law.⁴⁴² Given the Inquiry's focus on alternative models, the leaders from the Hollow Water community approached the government and were able to secure funding for their proposal.

The CHCH process sets in motion a 'community-wide' response to a disclosure of sexual abuse. Firstly, a team is established to support the child and their immediate family – such as providing the victim and their family with practical supports and referrals to counselling or other services. Another team is established to work with the offender. This team accompanies police when they initially put the allegations to the offender. If the offender is charged, they can elect to go through the criminal justice system or, if they admit guilt, they can enter a guilty plea at court and go through the CHCH process – if they are deemed suitable. The offender is then released into the program on strict bail conditions and is monitored by the CHCH and probation services.

The CHCH process for an offender involves four circles. The first circle focuses on the offender discussing their crime with the team and participating in individual and group therapy on a weekly basis. In the second circle, the offender works with their immediate family by admitting to the abuse and listening to the impact that it has had on their own family. In the third circle, the offender tells the whole community what they have done and listens to the impact their behaviour has had on the victim/s, the victim's family and the broader community. In the fourth circle, the offender is sentenced and is again required to tell the court and the community the nature of the offence. The community then has the opportunity to recommend an appropriate sentence. The offender is required to continue their involvement in the program and address their offending behaviour for the period of their probation.

A number of participating agencies have said that while it was difficult to establish the model given it represented such a drastic shift away from standard justice responses, over time the blending of Western and traditional community concepts of justice has led to greater success.

The CHCH model was formally evaluated in 2001, and there have been a number of positive outcomes from the program. These include:

- Low recidivism rates – the evaluation found that of the 107 offenders who had participated in the program since its inception, only two had re-offended.⁴⁴³
- Cost savings – if offenders participated in the model as opposed to being managed through the criminal justice system. The model is funded by provincial and federal government grants to the value of \$240,000 per year – over a 10 year period this equates to \$2.4 million. For the same government services for that period, a projected estimate was between \$6,212,732 and \$15,901,885.⁴⁴⁴
- Increased reporting of sexual assaults and more guilty pleas.
- Greater availability of intensive and culturally appropriate support services for offenders in a community setting.

442 Aboriginal Justice Implementation Commission Final Report, 29 June 2001.

443 Couture J, Parker T, Couture R and Laboucane P, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Native Counselling Services of Alberta, Edmonton, 2001.

444 Couture J, Parker T, Couture R and Laboucane P, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Native Counselling Services of Alberta, Edmonton, 2001.

- Offender monitoring by the community proved to be more effective than monitoring by police or parole authorities. The public nature of the process encouraged community members to be far more vigilant about their children's contact with the offender.

The CHCH model also helped to strengthen and heal the community. This led to wider benefits such as children staying at school longer, young people returning to school to complete their education, young people seeking counselling, and former residents returning to Hollow Water after the improved quality of life offered by the revitalised community became evident.⁴⁴⁵ Overall, the model has helped victims and their families to feel more comfortable reporting sexual abuse because it has given them greater support and more therapeutic responses to offenders of a type not delivered by the mainstream justice system.

Although ACSAT was keen to highlight the potential benefits of such a model, it did not go so far as to recommend its adoption. Instead, it stated that more research was required in the area and recommended that the NSW Government – in consultation with Aboriginal communities – research, develop and implement a new model to address child sexual assault in Aboriginal communities from initial investigation through to sentencing.⁴⁴⁶

13.2 Action 86 of the Interagency Plan

In recognition of ACSAT's recommendation, Action 86 of the Interagency Plan required the then Attorney General's Department – in partnership with Corrective Services NSW and the Office of Aboriginal Affairs – to develop, for further consideration, a model of restorative justice for Aboriginal sex offenders that adapted the principles of the Hollow Water model and circle sentencing.

In response to Action 86, the Attorney General's Department developed a briefing paper outlining the Hollow Water model and concluded that it could be adapted to suit rural, regional and metropolitan Aboriginal communities in NSW. The paper drew heavily from the findings of a report written by Mandy Young,⁴⁴⁷ the current Director of the Department's Victims Services Division, who at the time was managing ACSAT.

The Attorney General's Department recommended to the then Attorney General that an interagency working group be established to progress the development and implementation of a restorative justice model to address child sexual assault in Aboriginal communities.⁴⁴⁸

In responding to our requirement for information, the Department advised us that it has not done any further work to progress the recommendation in its briefing paper or Action 86 due to other priority projects.⁴⁴⁹ Aboriginal Affairs and Corrective Services also advised that neither of them had done any further work to progress Action 86.⁴⁵⁰ However, Corrective Services also pointed out that its own Restorative Justice Unit was not invited to contribute to the implementation of Action 86.⁴⁵¹ We note that the most recent entry for Action 86 in Aboriginal Affairs' monitoring schedule for the Interagency Plan relates to the end of 2009. The entry indicates that a restorative justice model was developed and submitted to the then Human Services and Justice CEOs Group for its consideration. While the Action itself was completed, it is unclear whether there was any attempt by the Aboriginal Child Sexual Assault Senior Officers' Group or the Ministerial Advisory Panel to follow up on the outcome of the CEOs' consideration of the proposed model.⁴⁵²

13.3 The debate about restorative justice

The use of restorative justice models – such as diversionary conferencing (a well-established form of restorative justice for youth offenders) or circle sentencing (an alternative sentencing option for Aboriginal offenders) – for sexual offences is quite a divisive issue, and has been rigorously debated by academics and successive governments across Australia.

Recent academic articles have commented on the growing literature about the effectiveness of restorative justice – particularly in relation to sexual assault cases. However, there is debate about whether restorative justice should become 'mainstream justice for sexual assault or whether it should only be available for juvenile offenders to

445 Department of Attorney General and Justice, *Briefing Paper: Aboriginal Child Sexual Assault Alternative Justice Project*, Undated, p.12.

446 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department NSW, 2006, Recommendation 119, p.21.

447 Mandy Young, *Aboriginal healing circle models, Addressing child sexual assault. An examination of community based healing circles used to address child sexual assault within Aboriginal communities in Canada*, 2007.

448 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012.

449 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012.

450 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012, and Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 28 March 2011.

451 We examined the work of the Restorative Justice Unit as part of our audit given its relevance to post-sentencing restorative justice options – see section 13.5.

452 The most recent update about this Action was only provided to this office by Aboriginal Affairs on 30 November 2012.

encourage them to grow out of crime without punishment and stigmatisation'.⁴⁵³ The argument for restorative justice in the context of sex offences is 'primarily based on the identified limits of the adversarial trial to treat victims appropriately and secure convictions, as well as high attrition rates and low prosecution rates'.⁴⁵⁴

Despite these claims, there are a significant number of critics who warn against the harmful consequences of restorative justice options for child sexual assault cases, particularly for adults and persistent offenders. A primary concern is that the informal nature of conferencing processes can mean that power imbalances may go unchecked – such as the offender minimising their own guilt and shifting blame to the victim – therefore reinforcing the abusive behaviour. The young age of certain victims may mean that they are unable to effectively advocate on their own behalf and may feel pressured to accept certain outcomes. However, these concerns may be mitigated by strict guidelines. Most significantly, though, critics tend to see restorative justice as a 'soft option' – with penalties offered through such processes not matching the serious nature of child sexual assault.⁴⁵⁵

In 2009, the NSW Sentencing Council examined conferencing and restorative justice options and concluded that the use of such options would be inappropriate for more serious forms of sexual offending.⁴⁵⁶ However, there was a legitimate place for restorative justice options for:

*...familial offenders where the family wishes to maintain that relationship, to juvenile offenders where early intervention can have a particular impact on recidivism, and to offending within closely related Aboriginal communities where the strong cultural element and local community involvement are thought to have particular significance.*⁴⁵⁷

The Sentencing Council recommended that, on a trial basis, less serious sex offences should be dealt with by youth justice conferencing and circle sentencing – and noted that this might have a particular relevance and value 'for consensual sexual activity between adolescents, for whom the consequences of being caught up in formal criminal proceedings may be disproportionate to the nature of the conduct involved'.⁴⁵⁸

In November 2010, the then Attorney General provided his report on the review of the *Crimes (Serious Sex Offenders) Act 2006*. The report considered the Sentencing Council's recommendation to include less serious sex offences in youth justice conferencing and circle sentencing on a trial basis, and noted that a number of the submissions expressed some support for less serious sex offences – such as indecent assault and acts of indecency – to be included in these schemes. However, some submissions also expressed caution about including sexual offences in restorative justice programs and did not support the Sentencing Council's recommendation. Given the diverse views from a range of stakeholders, the report supported further consideration of the Sentencing Council's recommendation.

The report also highlighted the joint inquiry into family violence that was being led by the Australian and NSW Law Reform Commissions. The Commissions' report, *Family Violence – A National Legal Response*,⁴⁵⁹ was released around the same time, and examined restorative justice in the context of family violence and sexual assault. For this reason, the review of the *Crimes (Serious Sex Offenders) Act* considered it inappropriate to make any conclusions on these issues before the Commissions had released their findings.⁴⁶⁰

The Commissions' final report noted that 'many of the submissions...indicated concern about, or opposition to, the use of restorative justice in family violence cases, and particularly in cases involving sexual assault'.⁴⁶¹ However, there was some support for sexual offences and restorative justice, with a number of submissions arguing that 'Aboriginal justice models [would] encourage the revival of...culture and lawful ways that prohibit violence and abuse'⁴⁶² and 'effective justice for domestic violence, sexual assault or gendered harms might reside in hybrid models that are not limited by [restorative justice] or by conventional criminal justice'.⁴⁶³ The Commissions also noted the ongoing work being done in this area by other jurisdictions and concluded that it was premature to make recommendations.⁴⁶⁴

453 Annie Cossins, *Restorative Justice and Child Sex Offences*, University of NSW Faculty of Law Research Series, Paper 43, 2008, p.360.

454 Annie Cossins, *Restorative Justice and Child Sex Offences*, University of NSW Faculty of Law Research Series, Paper 43, 2008, p.359.

455 Kathleen Daly and Sarah Curtis-Fawley, *Justice for victims of sexual assault: court or conference?*, School of Criminology and Criminal Justice Griffith University 2004, pp.3-4.

456 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, p.28.

457 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, p.28.

458 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, Recommendation 4.

459 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: A National Legal Response*, Volume 1, October 2010.

460 Department of Attorney General and Justice, *Review of the Crimes (Serious Sex Offenders) Act 2006*, November 2010, p.72.

461 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: A National Legal Response*, Volume 1, October 2010, p.1092.

462 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: A National Legal Response*, Volume 1, October 2010, p.1093.

463 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: A National Legal Response*, Volume 1, October 2010, p.1093.

464 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: A National Legal Response*, Volume 1, October 2010, p.1093.

A number of submissions made to the 2012 review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987* by the Attorney General supported including juvenile conferencing for some sex offences. Juvenile Justice,⁴⁶⁵ Shopfront Youth Legal Centre,⁴⁶⁶ Public Interest Advocacy Centre⁴⁶⁷ and Legal Aid NSW⁴⁶⁸ supported conferences for less serious sex offences such as indecent assault, acts of indecency and acts involving adolescent peer sex.⁴⁶⁹ Community Services also proposed that the Young Offenders Act should have extraordinary options to 'provide pre-court diversionary therapy for children who display sexualised behaviour (for first time sexual offending), especially those who undertake such acts against a person with whom they have a domestic relationship'.⁴⁷⁰

However, in its submission to the review, the NSW Police Force (NSWPF) indicated that it 'does not support the relaxing of current eligibility restrictions in place... to include some of the less serious sex offences that are presently excluded' in youth justice conferencing.⁴⁷¹ It believed 'that sexual offences are too serious and unsuitable for diversion and conferencing is inappropriate'.⁴⁷²

Therefore, at this point in time, there remains a reluctance to implement a pre-sentencing restorative justice model for adults who commit sex offences. However, the recent submissions to the review of the Young Offenders Act, and our own consultations, reveal considerable support by Aboriginal people for a different approach being made available for certain sexual assault offences committed by Aboriginal young people.

13.4 Developing a restorative justice model for young offenders

A strong theme to emerge from our consultations with practitioners who work with young people is that expanding the youth justice conferencing regime to include minor sexual offences, without also ensuring that therapeutic interventions and intensive case management support form part of the criminal justice response, is unlikely to produce better results than the mainstream court process. (We discuss therapeutic services for young people who sexually abuse in detail in Chapter 16.)

The Bureau of Crime Statistics and Research (BOCSAR) released two studies in 2012 on youth justice conferencing to inform the review of the Young Offenders Act.⁴⁷³ It found no significant difference in terms of re-offending between offenders dealt with in a youth justice conference and those dealt with in court. About 64% of the conference group and about 65% of the court group were reconvicted of a further offence in the 24 month follow-up period. BOCSAR also found no difference between the two groups in the seriousness of their re-offending, the time to the first proven re-offence or the number of proven re-offences.⁴⁷⁴

Dr Don Weatherburn, Director of BOCSAR, offered a possible explanation for these findings. Single conferences 'do not address the underlying causes of juvenile offending'.⁴⁷⁵ To be effective, conferences or restorative justice models have to have a therapeutic intervention and/or wraparound support system in place to address the root causes of juvenile offending.⁴⁷⁶

In commenting on the need for therapeutic programs to form part of conferencing processes, BOCSAR noted that:

*...[restorative justice programs] must be designed to address the characteristics of the offenders that can be changed and that are associated with the individual's criminal activities. Merely increasing referrals to community-based services does not work to reduce offending. Effective rehabilitation 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 participant. Effective rehabilitation programs must also be of sufficient intensity to exert a treatment effect.*⁴⁷⁷

465 NSW Juvenile Justice submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, December 2011, pp.5-7.

466 The Shopfront Youth Legal Centre submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, December 2011, p.6.

467 Public Interest Advocacy Centre submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, December 2011, pp.7-8.

468 Legal Aid NSW submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, December 2011, p.5.

469 For the purposes of our audit, we defined adolescent peer sex using the JIRT Referral Unit Guidelines, which define an 'adolescent' as a young person aged 13 years or older, and 'peers' as individuals who are aged within two years of each other who engage in 'non-coercive' sex.

470 Department of Family and Community Services submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, p.13.

471 NSW Police Force submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, p.2.

472 NSW Police Force submission to the Department of Attorney General and Justice review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, p.2.

473 *BB73 – The use of police cautions and youth justice conferences in NSW in 2010* and *BB74 – Youth Justice Conferences versus Children's Court: A comparison of time to finalisation*.

474 *The effect of Youth Justice Conferencing on re-offending*, BOCSAR Media Release, 15 March 2012.

475 Dr Don Weatherburn, *The effect of Youth Justice Conferencing on re-offending*, 15 March 2012.

476 Craig Jones, *Does Forum Sentencing reduce re-offending?*, Crime and Justice Bulletin, BOCSAR, June 2009, p.12.

477 Craig Jones, *Does Forum Sentencing reduce re-offending?*, Crime and Justice Bulletin, BOCSAR, June 2009, p.12.

Conferencing models which build in therapeutic treatment and case management for young people who have displayed sexually abusive behaviours have been adopted with a considerable degree of success in South Australia – one of the few jurisdictions to include sexual offences in youth conferencing for juveniles.⁴⁷⁸ The *Young Offenders Act 1993 (SA)* gives police officers the discretion to divert youth from court to a conference if the young person admits to committing a 'minor offence'. A minor offence is determined by the police officer in charge of the investigation, based on the extent of the harm caused, the character and antecedents of the alleged offender, the improbability of the young person re-offending and, where relevant, the attitude of the young person's parents or guardians.⁴⁷⁹

With the exception of the offence of homicide,⁴⁸⁰ the South Australian Act does not specifically prohibit offences from being diverted from court to conference or formal caution. As a result, police have developed and refined a series of administrative orders over the years to guide their referral decisions. Serious indictable offences are generally not considered suitable to be dealt with as minor offences and, unless mitigating circumstances exist, are dealt with before the Youth Court.⁴⁸¹

In 2006, Griffith University published findings of its archival study (from 1995 to 2001) which compared the court and conference handling of youth sexual offence cases in South Australia to determine which process was the preferable legal intervention from a victim's perspective. The study examined the outcomes for 365 young offenders.⁴⁸² Approximately 39 offenders included in the study (10%) were Aboriginal.⁴⁸³ The study was one of several studies in a program of research on restorative justice in relation to domestic violence and sexual assault matters dealt with under the South Australian Youth Justice Conferencing Scheme.

Case study 20 – South Australia's youth justice conferencing scheme

The study found that cases that were dealt with by conference had a higher share of intra-familial sexual victimisation and had the youngest victims – with 16% being under five years of age.⁴⁸⁴ In the case of child victims, family members or an advocate could represent the child in the conference. In some cases, conferences progressed without a victim, family member or an advocate.

The study found that conferences outperformed court in terms of victim satisfaction. A high proportion of conference offenders apologised to victims, carried out community service, and undertook intensive counselling as part of the Mary Street Adolescent Sexual Abuse Prevention Program.⁴⁸⁵ This program provides an intensive therapeutic intervention, typically one year long, to address the behaviour of adolescents who cause sexual harm aged 12 to 17 years.

The study found that those young people who had no previous history of sexual offending and who were dealt with by conference rather than through Youth Court and who later participated in the Mary Street program, had significantly lower rates of re-offending.⁴⁸⁶ In this case, the strength of conference responses to sexual offending relied heavily on the presence of an effective therapeutic practice that worked alongside the process.⁴⁸⁷

Conferences also provided victims with a quicker outcome. Court cases took over twice as long to finalise than conferences, and victims had to attend court six times on average before their case was finalised – with the outcome in half of these cases being that the charges were either dismissed or withdrawn. Only a very small number of cases led to a conviction.⁴⁸⁸

478 Kathleen Daly, *Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases*, 2005.

479 See section 4 of the *Young Offenders Act 1993 (SA)*.

480 See section 17 (3) (a) of the *Young Offenders Act 1993 (SA)*.

481 South Australia Police (SAPOL), General Order 8980, 199 as cited in the *Report of the Select Committee on the Youth Justice System*, 2005, p.26.

482 Kathleen Daly, *Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases*. *British Journal of Criminology* 46(2), 2006, pp.334-356.

483 Kathleen Daly, Brigitte Bouhours, Sarah Curtis-Fawley, Leanne Weber, and Rita Scholl (2007), South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) Technical Report No. 3: Sexual Assault Archival Study (SAAS), *An Archival Study of Sexual Offence Cases Disposed of in Youth Court and by Conference and Formal Caution*, 3rd edition, revised, expanded, and updated. Brisbane, Queensland: School of Criminology and Criminal Justice, Griffith University, p.54.

484 Kathleen Daly, Brigitte Bouhours, Sarah Curtis-Fawley, Leanne Weber, and Rita Scholl (2007), South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) Technical Report No. 3: Sexual Assault Archival Study (SAAS), *An Archival Study of Sexual Offence Cases Disposed of in Youth Court and by Conference and Formal Caution*, 3rd edition, revised, expanded, and updated. Brisbane, Queensland: School of Criminology and Criminal Justice, Griffith University, p.54.

485 Kathleen Daly and Sarah Curtis-Fawley, *Justice for victims of sexual assault: court or conference?* School of Criminology and Criminal Justice, Griffith University, 2004.

486 Kathleen Daly, Brigitte Bouhours, Roderic Broadhurst, Nini Loh, Youth Sex Offending, Recidivism, and Restorative Justice: Comparing Court and Conference Cases, 16 April 2012.

487 Kathleen Daly, Brigitte Bouhours, and Sarah Curtis-Fawley (2006). South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) Technical Report No. 4: *In-Depth Study of Sexual Assault and Family Violence Cases*. Brisbane, Queensland: School of Criminology and Criminal Justice, Griffith University. Available at www.griffith.edu.au.

488 Kathleen Daly and Sarah Curtis-Fawley, *Justice for victims of sexual assault: court or conference?*. School of Criminology and Criminal Justice Griffith University, 2004.

There is a sufficient body of research arguing both for and against including less serious sex offences in restorative justice models for young Aboriginal people (including models with which have built-in therapeutic and cultural components). Any further reviews or studies are unlikely to achieve much more. In our view, the timing is right to make a commitment to developing a trial in one or more sites. In NSW, the appropriate vehicle for pursuing this issue would appear to be the current review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*.

If a restorative justice model is endorsed by government, it will be important that Aboriginal leaders are involved in its design and implementation. The lack of involvement of Aboriginal people in the mainstream youth conferencing scheme has been cited by Aboriginal leaders as one of the main reasons for its failure to reduce offending by Aboriginal young people. Putting Aboriginal people at the centre of the design of such a scheme does not mean that government has to relinquish its responsibilities. Rather, such an approach would allow government to work in partnership with Aboriginal leaders to develop a response that is more likely to achieve the shared vision of both 'community' and government – that is, diverting young people away from the criminal justice system and towards a more productive future. In this regard, there are various components of the Hollow Water model that are worth considering, as well as existing therapeutic treatment models for young people who sexually abuse currently operating in NSW (such as the New Street Adolescent Service) and similar models in other states.

13.5 Building on post-sentencing restorative justice options

The Restorative Justice Unit within Corrective Services manages a post-sentence conferencing program for adult offenders, which includes sexual assault and other serious offences. The program offers family group conferencing and victim-offender mediation after an offender has been sentenced – for cases where it is deemed appropriate.⁴⁸⁹ Corrective Services has been offering restorative justice conferences for over 10 years and reports that the overall response has been positive.⁴⁹⁰ We are unable to make any specific observations about the success of the program for Aboriginal offenders given that only five have participated in a conference during the five year period of the Interagency Plan (none of these offenders had committed sexual offences).⁴⁹¹

Corrective Services highlighted the importance of handling restorative justice interventions relating to sex offences with a great deal of care and caution. It has a policy of excluding from the program self-referrals from sex offenders and referrals from victims or their treating psychologist where the offender has not successfully completed an appropriate treatment program.⁴⁹²

The restorative justice process is often varied for sex offences to avoid re-traumatising the victim – by, for example, not having the offender give a detailed account of what happened during the offence. Anecdotal feedback collected by Corrective Services suggests that participation in a post-sentence victim-offender conference can be effective in addressing at least some of the harm caused by the offence.⁴⁹³

Corrective Services and the University of NSW are currently undertaking a research project that aims to examine the use of restorative justice processes at the post sentencing stage to resolve conflict after serious criminal offending, and evaluate the immediate and longer-term impact of this process on participants. The results will help identify the strengths and weaknesses of restorative processes for victims and serious offenders and the conditions under which such processes can produce positive outcomes.

The project brief acknowledges that restorative justice is not well understood and is often regarded as a 'soft option', especially not suitable for serious criminal offences. The project will provide:

*...an independent and rigorous assessment of Corrective Services' Restorative Justice program... and contribute to an informed national debate on policy responses to serious crimes by...identifying the strengths and limitations of restorative justice processes and showing how restorative justice can be optimally practised to maximise benefits for participants and the wider community.*⁴⁹⁴

Corrective Services advised us that a workshop will be organised for restorative justice practitioners and researchers to discuss the findings of the study and their implications for practice after the project is completed in 2013. In light of the support during our audit for post-sentencing restorative justice options for Aboriginal victims of sexual assault and Aboriginal sex offenders, there would appear to be merit in Corrective Services including a particular focus on this group as part of any future research programs and forums in this area.

489 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

490 Department of Attorney General and Justice, Review of the *Crimes (Serious Sex Offenders) Act 2006*, p.70.

491 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

492 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

493 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

494 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

Recommendations

56. That the Department of Attorney General and Justice gives consideration to whether the youth justice conferencing scheme should be extended to include certain sex offences committed by juvenile offenders; in particular, Aboriginal juveniles. Any such extension of the current scheme should incorporate participation by young offenders in therapeutic treatment and, for Aboriginal young people, an appropriate cultural response that is formulated by government in partnership with Aboriginal leaders.
57. If youth justice conferencing is extended to include certain sex offences committed by juvenile offenders, that the Department of Attorney General and Justice, and NSW Health, consider establishing a trial restorative justice model for Aboriginal young people in one or more Aboriginal communities in NSW, where access to therapeutic treatment services for young people who display sexually abusive behaviours are accessible and where the local Aboriginal community/s has indicated its willingness and capacity to participate.
58. That Corrective Services considers conducting future research into post-sentencing restorative justice options that include a particular focus on Aboriginal victims of sexual assault and Aboriginal sex offenders.

Chapter 14. Law reform

Only a very small percentage of child sexual assaults is ever reported or investigated.⁴⁹⁵ Nonetheless, as noted in the Interagency Plan, 'strong and consistent law enforcement is a necessary pillar of the Government's overall response' to child sexual assault.⁴⁹⁶ Law enforcement and safe communities comprise the first strategic direction of the Interagency Plan. According to the Plan:

This strategic direction reinforces that all people in NSW have the full protection of the law, and aims to build trust with Aboriginal communities around the role of law enforcement in family and community safety through effective crisis responses and 'circuit breakers'.⁴⁹⁷

The Interagency Plan includes a number of strategic outcomes against this direction, including that 'Aboriginal communities are informed about child sexual assault, and are encouraged to report crime and abuse'; and that 'Victims and witnesses maintain their involvement in the criminal justice process, from initial report to prosecution'.⁴⁹⁸ Action 22 recognises that legislative reform is one of the available avenues for achieving these outcomes, directing Police and the Attorney General's Division to 'explore the introduction of legislative measures including new categories of offences under the *Crimes Act 1900* for grooming and procurement of children for the purposes of sexual assault'.⁴⁹⁹

In response to this Action, the *Crimes Act 1900* was amended in 2008 to make it an offence for an adult to procure or groom a child for unlawful sexual activity.

While not directly in response to the objectives of the Interagency Plan, in January 2008 the Attorney General requested that the NSW Sentencing Council undertake a review of whether the existing penalties for sexual offences were appropriate. The NSW Sentencing Council subsequently recommended that the act of intentionally meeting a child, or travelling to meet a child, after grooming the child for sexual purposes, should be added as an offence.⁵⁰⁰ This amendment was enacted in 2009.

Other amendments made in 2009 as a result of recommendations in the Sentencing Council's report that are relevant to the Interagency Plan include:

- creating a new aggravated offence of sexual intercourse with a child under the age of 10 years, with a maximum penalty of imprisonment for life
- creating a new offence of inciting the commission of a sexual offence
- creating a new aggravated offence of filming a person engaged in a private act where the person filmed was a child under the age of 16 years
- creating new offences of voyeurism and aggravated voyeurism, and
- creating new offences of filming a person engaged in a private act, filming a person's private parts, or installing a device to facilitate observation or filming.⁵⁰¹

Whilst legislative reform has occurred in the area which was specifically highlighted in Action 22 – grooming – in reviewing the relevant strategic outcomes there are a number of additional areas where legislative reform could have been considered within the scope of Action 22, in order to increase community confidence in the criminal justice process, and to minimise the trauma experienced by victims.

We note that the Office of the Director of Public Prosecutions (ODPP) has raised concerns about the large number of 'piecemeal reforms' to sexual assault legislation over the past 26 years, and stated that 'in order to sustain public confidence in the criminal justice system', there needs to be a comprehensive review of the types of sexual offences and penalties in NSW.⁵⁰²

495 See for example: Gordon S, Hallahan K, Henry D, *Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia, July 2002, p.35, www.strongfamilies.wa.gov.au. Accessed 10 August 2012 and/or Queensland Department of Aboriginal and Torres Strait Islander Policy and Development, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, December 1999, p.98, www.communities.qld.gov.au. Accessed 10 August 2012.

496 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

497 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

498 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.9.

499 NSW Government, *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.13.

500 NSW Sentencing Council, *Penalties relating to sexual offences in New South Wales*, Volume 1, August 2008, p.24.

501 NSW Crimes Amendment (Sexual Offences) Bill 2008.

502 NSW Office of the Director of Public Prosecutions, *Submission to NSW Sentencing Council review of penalties relating to sexual offences in NSW*, December 2007.

According to the ODPP, many sexual offences in the current legislation 'are archaic and outdated and do not correspond with modern values and terminology'. Offences such as acts of indecency, indecent assault, and aggravated offences, do not hold clear meaning for the general public, 'are confusing and lack transparency'.⁵⁰³

It was also evident from our review of 27 cases which were prosecuted by the ODPP that there is confusion amongst police as to the circumstances where charges for acts of indecency or indecent assault should be laid. In one third of the cases we reviewed, the ODPP was required to make changes to the charges which had been laid by police. In each of these matters, the offence types included indecent assault, committing an act of indecency, or inciting an act of indecency.

The legislation in NSW does not provide a definition for indecency, leaving it to a jury to assess whether or not an act qualifies as being 'indecent'.⁵⁰⁴ Given the confusion amongst police, it would seem that this is a difficult task for a jury. We note that the United Kingdom comprehensively reviewed its sexual assault legislation in 2002 in order to 'reflect the fact that the society in which we live is significantly different from that of 50 years ago'.⁵⁰⁵ As a result, references to acts of indecency and indecent assaults have been replaced with offences which describe the actual behaviour which constitutes an offence.

We acknowledge that the current review of the *Crimes (Sentencing Procedure) Act 1999* will impact on the penalties applied to sexual offences. However, a broader review of sexual offences, which looks specifically at the offence types and the definitions of those offences, may also be warranted.

During our audit, we examined the potential for other legislative reforms to improve the preparedness of victims and witnesses to maintain their involvement in the criminal justice process. As discussed in Chapter 12, community members repeatedly told us that the trauma for victims in giving evidence in court, the low conviction rates, and the seemingly low sentences, are significant barriers to reporting child sexual assault in the first place.

Lack of communication between agencies across interstate lines is another barrier to preventing and prosecuting child sexual abuse.

Action 65 of the Interagency Plan directed the Department of Premier and Cabinet (DPC), Community Services, Health and Police to initiate an interstate working group with Queensland (and later Victoria) to consider the need for legislative amendments to support interventions and cooperation in cross-border areas on child sexual assault in a range of areas, including privacy and information sharing for child protection. The DPC recently advised our office that 'the NSW and Queensland governments concluded that there was no need for legislative change to support cross-border cooperation. However, in the area of information exchange, they recognise that a national approach is required'.⁵⁰⁶ In this regard, the DPC advised that the Commonwealth, in partnership with states and territories, is investigating the need for changes to legislation to extend the national protocol for sharing information on children at risk. The current status of the law in relation to interstate information exchange and associated risks is outlined in section 14.6.

Our audit has highlighted a number of specific areas where the consideration of legal reform is warranted. While we have focused on the experiences of Aboriginal children, our audit has also brought to light a number of areas where law reform has the potential to improve the way in which sexual assault matters are handled by the criminal justice system for all child victims, in particular in relation to:

- adolescent peer sex
- persistent sexual abuse of a child
- pre-recording evidence
- the use of intermediaries
- the use of joint trials, and
- interstate information exchange.

503 NSW Office of the Director of Public Prosecutions, *Submission to NSW Sentencing Council review of penalties relating to sexual offences in NSW*, December 2007.

504 The District Court Criminal Trials Bench Book recommends that judges direct juries that 'the word "indecent" means contrary to the ordinary standards of respectable people in this community. It is for you to determine the standards prevailing in our community...'. www.judcom.nsw.gov.au. Accessed 6 September 2012.

505 UK Home Office, *Protecting the public: Strengthening protection against sex offenders and reforming the law on sexual offences*, November 2002, p.8, www.archive2.official-documents.co.uk. Accessed 5 September 2012.

506 The DPC advised that the Commonwealth in partnership with states and territories is investigating the need for changes to legislation to extend the national protocol for sharing information on children at risk.

14.1 Adolescent peer sex

Research indicates that a significant proportion of teenagers are engaging in sexual activity prior to the age of consent.⁵⁰⁷ Legislation in some Australian jurisdictions allow, as a defence for engaging in sexual activity with a person under the age of consent, that the two participants were of a 'similar age'.⁵⁰⁸ There is no such legal defence available in NSW, with adolescent peer sex being managed through the operation of discretion on the part of both police and prosecutors.

The available evidence would seem to indicate that these types of matters have been dispensed with reasonably effectively through the use of this discretion. In July 2010, the ODPP reported to the Legislative Council Standing Committee on Law and Justice that:

*We were able to identify 8 matters in the last 5 and a half years where there was a consensual relationship between a 14-16 year old female and the males in each case were 16-17 years of age... The results of these matters were in the main withdrawal or dismissal or if a plea was entered a bond without conviction was imposed.*⁵⁰⁹

Our initial screening of a sample of 248 children who had been reported as being the subject of a sexual offence incident during the life of the Interagency Plan did not identify any cases of peer adolescent sex which had proceeded to hearing.⁵¹⁰

Prior to the establishment of the JIRT Referral Unit (JRU) in 2008, decisions on whether to proceed with these matters were made by individual JIRTs. Between December 2008 and December 2010, the draft JIRT Referral Unit's 'Adolescent Peer Sex Guidelines' stipulated that where there was no evidence of complaint, no relevant child protection history, and no relevant criminal history, an adolescent peer sex referral would be rejected for a JIRT intervention, and referred to the local Community Services Centre. In December 2010, the use of these Guidelines was suspended, due to concerns that since there is no legal defence in these matters, the Guidelines were inconsistent with police obligations in administering the relevant age of consent legislation. However, the Guidelines were reinstated in 2011, with an amendment that where an adolescent peer sex referral has been rejected at the JRU, it must be referred to the local Community Services Centre, and must also be referred to the JIRT for a 'police only' response. As a result, there has been an increase in the investigation of cases of this type since December 2010 against a background of significant resourcing constraints.

Our consultations with police indicate that there is an appreciation of the significant risks associated with not investigating adolescent peer sex matters sufficiently so as to establish that there is no evidence of coercion. However, all three JIRT partner agencies have told us that they have concerns about the increase in criminal investigations of adolescents who are engaged in 'consensual sex' with peers of a similar age. Their concerns relate primarily to the trauma for the young people involved; the impact on the workload of the policing arm of the JIRT, and as a result its capacity to investigate other, potentially more serious, incidents; the possibility that adolescents will not seek treatment for sexual health concerns for fear of being investigated; and the potential damage caused to the relationships between young people and agency staff.

We note that in the consultation paper for their inquiry into particular questions in relation to family violence, the Australian and New South Wales Law Reform Commissions (the Law Reform Commissions) asked how 'similarity in age' of the complainant and the accused should be dealt with.⁵¹¹

Submissions made to the Law Reform Commissions' inquiry, as well as to the review of the *Young Offenders Act 1997*, raised concerns about the possibility that a conviction of adolescent peer sex may trigger the provisions of the Child Protection Register.⁵¹² At present, if an adolescent is convicted of having sexual intercourse with a peer who is under the age of 16, they become a registrable person, and as a result are subject to reporting requirements for a

507 See for example Smith A, Agius P, Mitchell A, Barrett C, Pitts M (2009). *Secondary Students and Sexual Health 2008*, Monograph Series No. 70, Melbourne: Australian Research Centre in Sex, Health & Society, La Trobe University, www.latrobe.edu.au. Accessed 4 September 2012.

508 In the ACT, the child must be aged 10 years or more, with no more than a two year age difference (*Crimes Act 1900* (ACT) s55). In Victoria, the child must be aged 12 years or more, with no more than a two year age difference (*Crimes Act 1958* (VIC) s45). In Tasmania, if the child is aged 15 years or more, there must be no more than a five year age difference; if the child is aged between 12 and 15, there must be no more than a three year age difference (*Criminal Code Act 1924* (TAS) Schd 1 s124). Legislation in Western Australia also allows a three year similar age defence for offences against children aged over 13; however, the accused must also prove that they believed on reasonable grounds that the child was of or over the age of 16 (*Criminal Code Act Compilation Act 1913* (WA) s321). South Australia legislation (where the age of consent is 17 years) includes a similar age defence, however; it applies only where the accused is aged under 17 years and the other party is aged 16 years or more (*Criminal Law Consolidation Act 1935* (SA) s49). Queensland and the Northern Territory do not have a similar age defence, however allow as a defence, where the child is above 12 years in Queensland and 14 in the NT, that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years (*Criminal Code 1899* (QLD) s215; *Criminal Code Act 1983* (NT) s127).

509 Legislative Council Standing Committee on Law and Justice, *Spent convictions for juvenile offenders*, July 2010, pp.57-58.

510 For the purposes of our audit, we defined adolescent peer sex using the JIRT Referral Unit Guidelines, which define an 'adolescent' as a young person aged 13 years or older, and 'peers' as individuals who are aged within two years of each other.

511 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence: Improving Legal Frameworks - Consultation Paper*, April 2010, p.46.

512 See for example submissions by the Law Society of NSW and Legal Aid NSW to the review of family violence law; and submission by Shopfront Youth Legal Centre to the review of the *Young Offenders Act 1997*.

period of between four years and seven and a half years.⁵¹³ In addition, whilst offences committed as a child do not constitute grounds for being refused a working with children check, if a child is found guilty of a registrable offence, they are required to be subject to a risk assessment if, at any time in their life, they apply for a working with children check.⁵¹⁴ While this is not a likely outcome for a large number of young people, it has the potential to have significant consequences for affected individuals, as well as having implications for the administration of these processes.

Delivering an appropriate response to adolescent peer sex cases is extremely difficult. The ODPP, for example, has told us that any changes to the current process in NSW for proceeding with adolescent peer sex cases must ensure that adequate safeguards are in place to compel police to investigate in order to confirm that there is no evidence of coercion. The NSW Police Force also appreciates the significant risks associated with not investigating these cases. The Department of Attorney General and Justice has similarly indicated that the current system is intended to ensure the protection of child victims, and that any 'defence of similar age should... be prefaced on consent, as any other form of activity should continue to be criminalised'.⁵¹⁵ In this regard, we note that the equivalent criminal legislation in Victoria, Tasmania and the ACT (as well as legislation in international jurisdictions such as Canada) all provide examples as to how the issue of consent can be addressed whilst allowing a defence of 'similar age'.⁵¹⁶

The Law Reform Commissions' 2010 report on family violence did not ultimately make any recommendations on this matter; however, it emphasised that 'any review of the relevant legislative provisions... should recognise contemporary realities of consensual and non-exploitative sexual activity between young people'.⁵¹⁷

We acknowledge that reform in this area is contentious, and that there is a need to find a balance between protecting young people from exploitation and abuse, and criminalising normal sexual exploration by adolescents. However, agency staff and community members have consistently raised significant concerns over the course of our audit, and as a result, we believe that a review of the current legislation in NSW may be warranted.

The Victorian Director of Public Prosecutions has a guideline which specifically provides direction on decisions as to whether to prosecute 'sexual offences in "boyfriend/girlfriend" cases'.⁵¹⁸ Irrespective of whether there is a legislative review on the issue of adolescent peer sex, and if so, its outcome, we believe there would be benefit in the Director giving consideration to whether it is necessary to introduce a guideline on exercising prosecutorial discretion in matters of adolescent peer sex, as part of his proposed review of the Prosecution Guidelines.⁵¹⁹

14.2 Persistent sexual abuse of a child

In 1999, section 66EA of the *Crimes Act 1900* was enacted, making it an offence to engage in persistent sexual abuse of a child.

The section provides that:

- (1) *A person who, on 3 or more separate occasions occurring on separate days during any period, engages in conduct in relation to a particular child that constitutes a sexual offence is liable to imprisonment for 25 years...*
- (4) *In proceedings for an offence against this section, it is not necessary to specify or to prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred.*
- (5) *A charge of an offence against this section:*
 - (a) *must specify with reasonable particularity the period during which the offence against this section occurred, and*
 - (b) *must describe the nature of the separate offences alleged to have been committed by the accused during that period.*
- (6) *In order for the accused to be convicted of an offence against this section:*
 - (a) *the jury must be satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions, occurring on separate days during the period concerned, on which the accused engaged in conduct constituting a sexual offence in relation to a particular child of a nature described in the charge, and*
 - (b) *the jury must be so satisfied about the material facts of the 3 such occasions, although the jury need not be so satisfied about the dates or the order of those occasions, and*

513 *Child Protection (Offenders Registration) Act 2000*, section 14A and section 14B.

514 *Child Protection (Working with Children) Act 2012*.

515 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012.

516 See the *Crimes Act 1958* (VIC) s45; the *Criminal Code Act 1924* (TAS) Schd 1 s124; and the *Crimes Act 1900* (ACT) s55.

517 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1142.

518 Director of Public Prosecutions Victoria, Director's Policy: the Prosecutorial Discretion, www.opp.vic.gov.au. Accessed 18 November 2012.

519 NSW Office of the Director of Public Prosecutions, *Annual Report 2011-12*, p.7.

(c) if more than 3 such occasions are relied on as evidence of the commission of an offence against this section, all the members of the jury must be so satisfied about the same 3 occasions...

(11) Proceedings for an offence against this section may only be instituted by or with the approval of the Director of Public Prosecutions...

For all criminal offences, the law requires that the prosecution gives adequate detail of any charge in order to ensure that the accused receives a fair trial. It has been recognised that in child sexual assault matters, there can be significant difficulties in specifying detail about individual offences. These difficulties include:

*...the fact that the complainant may have been very young when the attacks commenced, the attacks occurred regularly over a lengthy period, no clear distinction can be readily made between the separate attacks, and no complaint was made for some time after the attacks began. Some of these problems can be attributed to the fact that the majority of sexual offences against children are perpetrated by persons known to and trusted by the victim.*⁵²⁰

Section 66EA, and similar legislation in other Australian jurisdictions, was intended to overcome these problems, by requiring a lower level of particularisation in relation to individual incidents in which offences occur.

In light of the high proportion of sexual offences against children which are perpetrated over a period of time by someone known to the victim, it was anticipated that the section would be utilised relatively frequently. In reality, ODPP records indicate that between August 1999 and August 2008, it prosecuted 45 cases involving section 66EA. Over this period of time, a 'significant proportion' of the 2,386 child sexual assault trials it prosecuted 'should have attracted consideration of the use of the offence'.⁵²¹ The NSW Bureau of Crime Statistics and Research (BOCSAR) provided us with data on the number of finalised sexual assault and related offences charges in court over the life of the Interagency Plan. According to this data, there were a total of 27 charges laid relating to section 66EA between 2006 and 2011, of which 21 resulted in a guilty outcome.⁵²²

The ODPP has raised its concerns about the application of this section in a number of forums since the commencement of the Interagency Plan.

In 2007, the ODPP made a submission about section 66EA to the NSW Sentencing Council's review of sexual offences. The Council subsequently recommended that the section be amended to make it clear that:

*A separate offence has been created by this section, the gravamen of which is the fact that the accused has engaged in a course of persistent sexual abuse of a child, and that the appropriate sentence to be imposed is one that is proportionate to the seriousness of the offence.*⁵²³

In 2008, the ODPP separately wrote to the NSW Attorney General's Criminal Law Review Division, urging amendment of the section. This correspondence included a suggested draft as to how the section should be re-phrased, based largely on the wording of the equivalent section in Queensland legislation. This draft was primarily intended to meet the outcome proposed by the Sentencing Council, by removing the requirement that the jury must unanimously agree on three specific offences, and focusing, instead, on the requirement that the prosecution prove beyond reasonable doubt the existence of a course of conduct. The then Attorney General referred the issue to a Sexual Offences Working Party for its consideration. A draft report was prepared by the Working Party in early 2011; however, it has not yet been settled.

In 2009, the ODPP again raised section 66EA in its submission to the joint Inquiry by the Australian Law Reform Commission and the NSW Law Reform Commission into family violence law. The Commissions recommended that '*the Australian and state and territory governments review the utilisation and effectiveness of these offences...*'⁵²⁴

We have been advised by the Department of Attorney General and Justice that consultation on the intent and operation of section 66EA will be undertaken this year, with amendments, if required, to be introduced in 2013.⁵²⁵ We welcome this consultation.

520 Model Criminal Code Officers Committee of the Standing Committee of Attorneys General, *Chapter 5 – Sexual offences against the person*; Report, May 1999, p.137, www.scag.gov.au. Accessed 6 September 2012.

521 Correspondence from the Director of Public Prosecutions to the Director, Criminal Law Review Division, Attorney General's Department, dated 4 September 2008.

522 NSW Bureau of Crime Statistics and Research.

523 NSW Office of the Director of Public Prosecutions, *Submission to NSW Sentencing Council review of penalties relating to sexual offences in NSW*, December 2007.

524 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,145.

525 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012.

14.3 Provisions for vulnerable witnesses

The process of giving evidence invariably results in significant trauma for children and other vulnerable witnesses. The *Criminal Procedure Act 1986* defines a 'vulnerable person' as a child or a cognitively impaired person. A cognitive impairment is defined by the Act as including an intellectual disability, a developmental disorder (including an autistic spectrum disorder), a neurological disorder, dementia, a severe mental illness, or a brain injury.⁵²⁶

According to the Act, a vulnerable person is entitled to give their evidence in chief by way of a recording made by an investigating official of an interview with the person.⁵²⁷ In child sexual assault cases, the investigative interviews conducted by JIRT are recorded, and in most cases the JIRT interview is played in court instead of the child giving evidence in person.

The Act specifies, however, that a vulnerable person must be subsequently available for cross-examination and re-examination. In certain circumstances, including in the case of a personal assault offence (such as a sex offence), this evidence is able to be given via CCTV.⁵²⁸ Provision is also made for a support person to be present at the time. As discussed in Chapter 12, the use of remote witness facilities has significantly improved the cross-examination process for vulnerable witnesses.

Despite this, as well as reforms intended to ensure that children are cross-examined in a manner which is appropriate to their age, cross-examination remains one of the most stressful aspects of the prosecution process, both for children and for other vulnerable witnesses.

Consideration of how the criminal justice system engages with vulnerable witnesses is also important. In some circumstances, a vulnerable witness may be less able to communicate effectively with a police officer or the court, and as a result, may be less capable of giving a complete, coherent and accurate account of the events which occurred in relation to an offence.

Reforms have been made in other jurisdictions, such as allowing the pre-recording of all evidence and the use of intermediaries, which have the potential to better enable vulnerable witnesses to engage with the criminal justice system, and reduce the trauma they experience within that system. We discuss intermediary schemes operating in other jurisdictions in section 14.4.

14.3.1 Pre-recording evidence

NSW and Tasmania are the only Australian jurisdictions which do not currently allow for child complainants in sexual assault cases to pre-record their entire evidence (including cross-examination and re-examination) at a pre-trial hearing.⁵²⁹

There is currently no firm evidence as to the effects of using pre-recorded evidence, either on the experience of complainants or on the outcome of trials. However, the possible benefits of a child giving evidence at a pre-trial hearing include that the quality of the evidence may be improved; that it may encourage pre-trial decisions to be made and subsequently shorten the duration of the court process; and that it minimises the trauma experienced by the child.⁵³⁰ Given the potential re-traumatising effect of the court process for a child, any process which makes the system more user-friendly for victims is worthy of consideration.

The Australian and NSW Law Reform Commissions' 2010 report on family violence recommended that all jurisdictions should permit the pre-recording of a child complainant's evidence at a pre-trial hearing.⁵³¹ The recommendation was not explicit as to whether there should be a presumption for pre-recording evidence, or whether it should be available in certain cases.

In this regard, we acknowledge that pre-recording evidence requires a duplication of the use of court resources,⁵³² and therefore, its introduction in NSW would have a range of cost implications. In addition, the ODPP has previously opposed the routine pre-recording of children's evidence in NSW on the basis that it may result in a reduction in the overall timeliness of matters through the courts, given that 'trials in NSW do proceed relatively expeditiously'.⁵³³ In

526 *Criminal Procedure Act 1986* (NSW) section 306M.

527 *Criminal Procedure Act 1986* (NSW) section 306U.

528 *Criminal Procedure Act 1986* (NSW) section 306ZB.

529 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, pp.1,225-1,233.

530 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, pp.1,225-1,233.

531 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, Recommendation 26-7, p.1,233.

532 The process of pre-recording evidence at a pre-trial hearing requires a witness to give evidence via CCTV whilst the judge, prosecutor, defence lawyer and accused are present in the courtroom. As a result it requires the use of a courtroom and the presence of a judge on two separate occasions.

533 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,230.

our consultations with the ODP, it advised us that it would nonetheless like a facility which would allow evidence to be pre-recorded in certain cases. Where there are particular circumstances which warrant it (for example if a child is particularly young, or has mental health concerns, an unstable home environment, or study commitments), leave could be granted by the court to allow for pre-recording to occur.

Our review of 27 cases prosecuted by the ODP highlighted the fact that victims of sexual assault often have a range of circumstances which impact on their ability to provide testimony in court, which could be overcome if a facility to pre-record a child's evidence as part of a pre-trial hearing was available.⁵³⁴

Case study 21

A 13 year old girl was the victim of an alleged aggravated indecent assault committed by a 25 year old man. Around the time of the incident, the girl had poor school attendance, was involved in offending behaviour, and a family member was experiencing mental health difficulties. Some months after the incident, she was placed in kinship care with a relative in a different part of NSW, partly in an effort to remove her from negative influences. When the matter was listed for hearing, 12 months after the incident had occurred, the girl no longer wished to return to court to give evidence, and others who were involved in her care also believed that returning to the town to attend court would be detrimental for the girl. The charges were withdrawn due to a lack of evidence.

We are advised that the Government is currently formulating a response to the Australian and NSW Law Reform Commissions' 2010 report,⁵³⁵ however, as stated above, the relevant recommendation in the Commissions' report does not detail whether the facility to pre-record evidence should be available only by application, or whether there should be a presumption for children giving evidence in this way. Given the feedback provided to us by the ODP, and the unique circumstances in NSW (namely the relative efficiency with which matters proceed to trial), we believe that there would be benefit in the Department of Attorney General and Justice providing a copy of this report to government as part of any consideration of legislative reform to allow an option for children's evidence to be pre-recorded in sexual assault cases.

14.4 A registered intermediary scheme

There are a number of jurisdictions which currently use an intermediary system of some kind for vulnerable witnesses, including England and Wales, Ireland, Austria, Norway, and South Africa. The specific nature of the role fulfilled by intermediaries differs across these jurisdictions; however, ostensibly intermediaries are intended to facilitate better communication between the witness and the police or the court, so that a more accurate account of what has occurred can be obtained. Appropriately qualified intermediaries, such as speech and language therapists, mental health professionals, or special needs teachers, may be used to explain questions and answers to a witness, or to assist questioners in testing a witness's evidence.

Since 1992, legislation in Western Australia has allowed for a child to give evidence with the assistance of a 'court communicator'. However, due to a lack of clarity regarding the training and qualifications required, as well as who is responsible for the process, the facilities have rarely, if ever, been used.⁵³⁶ It is apparent from the experience of Western Australia that a successful intermediary facility would require more than just legislative reform. In our consultations with the ODP, it identified the system which is currently used in England and Wales as providing a potential model for how such a facility could be implemented in NSW.

The Witness Intermediary Scheme in England and Wales was first trialled in six locations in 2004, and has been operating nationally since 2008. The Ministry of Justice operates a list of Registered Intermediaries, which includes appropriately skilled professionals who are able to be used both during the investigation stages and during the court process, to facilitate better communication with vulnerable witnesses.⁵³⁷ According to the *Registered Intermediary Procedural Guidance Manual*, as at February 2011, the scheme had:

*...supported over 4,600 people which has consequently helped to make the justice process accessible to some of the most vulnerable people in our society. In some cases a Registered Intermediary will have been the difference between a victim or witness being able to testify or not.*⁵³⁸

534 Cross-examination and re-examination of the child witness is pre-recorded at a pre-trial hearing with defence counsel, the prosecution and the judge present to enable the evidence to be played to the jury during the trial.

535 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012.

536 Northern Territory Department of Justice, *Review of vulnerable witness legislation*, June 2011, www.nt.gov.au. Accessed 14 November 2012.

537 United Kingdom Ministry of Justice, *Registered Intermediaries – a voice for vulnerable witnesses, Frequently Asked Questions*, March 2011.

538 United Kingdom Ministry of Justice, *The Registered Intermediary Procedural Guidance Manual (2011)*, p.3.

The Witness Intermediary Scheme was the subject of an evaluation between March 2004 and March 2006, prior to the national expansion of the scheme. The evaluation report concluded that:

*Feedback from witnesses and carers in trial cases was uniformly enthusiastic. Carers felt that intermediaries not only facilitated communication but also helped witnesses cope with the stress of giving evidence. Appreciation of the role was also almost unanimous across the judiciary and other criminal justice personnel in [the trial] cases.*⁵³⁹

In our review of 27 cases prosecuted by the ODPP, there were a number where the ODPP reached a decision to withdraw the charges against the defendant because they had formed a view that the complainant would be incapable of providing the testimony which would be required in court. These matters included children who were recorded as having learning difficulties and other developmental challenges which restricted their capacity to communicate at a standard which would be required in giving evidence. While it is not possible to conclude whether an intermediary would have been able to provide the necessary support to these particular children, it is evident that there would be matters of this type where the use of an intermediary could potentially support a child to give evidence who would not otherwise be capable of doing so.

In February 2012, a Criminal Justice Joint Inspection report in the United Kingdom identified that whilst the intermediary scheme was being utilised for cases that went to trial, there was a low level of awareness about its use during investigative interviews. The report recommended that 'Police forces should raise awareness of the benefits of intermediaries and ensure this is considered at the pre-interview stage'.⁵⁴⁰ Our own extensive work both with the NSW Police Force, and with people with disabilities, has identified a clear need in NSW for vulnerable witnesses to have a greater level of support when they are participating in interviews with police from expert bodies such as the Intellectual Disability Rights Service. Therefore, it is critical that any intermediary scheme in NSW consider the needs of witnesses at key stages of the criminal justice process.

While we were not able to identify any comprehensive quantitative evaluations of existing intermediary schemes, the work which has been done in the United Kingdom and other jurisdictions provides a model for how an intermediary scheme could be effectively implemented in NSW. The 2007 evaluation of the Witness Intermediary Scheme indicates that such a model has a clear capacity to reduce the attrition of matters involving vulnerable witnesses from the criminal justice system, including children.

14.5 Joint trials

Child sexual assault cases often involve multiple incidents and multiple victims; for example, a parent may abuse a number of siblings, an uncle may abuse a number of cousins, or a person in authority may abuse a number of children within the scope of that authority. When matters with more than one child complainant proceed to court, they can either be tried jointly or as separate matters.

Separate trials will often mean that a child victim will have to testify more than once. As a result, court processes may be drawn out substantially for victims, with the added trauma of having to give evidence on multiple occasions. This is complicated by the fact that a witness must give evidence in a trial relating to a different complainant without making reference to the offences against them; for example, if offences by a parent against two siblings are tried separately, a child might be required to give evidence that relates to their sibling, without making any mention of the fact that they were also abused by the parent. The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021 (*Time for Action*), described the difficulties of such circumstances:

*"Witnesses swear an oath to tell... the whole truth, yet must stick to a legally constrained script of evidence". The jury does not hear the instructions given to the complainant and may draw inferences about their truthfulness from any resulting awkwardness. They may also draw inappropriate inferences from gaps in the evidence presented.*⁵⁴¹

The ODPP noted that this often has the impact of weakening a case to the point where there is no prospect of conviction, and also increases the likelihood that a trial will have to be aborted by a witness accidentally giving evidence which is inadmissible.⁵⁴²

The primary reason for the separation of court proceedings is to ensure the defendant's right to a fair trial. Evidence which relates to another complainant, and therefore relates to a defendant's prior illegal sexual conduct, may be

539 United Kingdom Ministry of Justice, 2007, *The 'Go-Between': evaluation of intermediary pathfinder projects*, <http://embed.policyreview.tv>. Accessed 14 November 2012.

540 Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, 2012, *Criminal Justice Joint Inspection: Report on the experience of young victims and witnesses in the criminal justice system*, p.11, www.hmcpsi.gov.uk. Accessed 14 November 2012.

541 The National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*, p.110.

542 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,222.

characterised as 'tendency' or 'coincidence' evidence.⁵⁴³ In deciding whether or not to allow joint trials, a judge must determine whether the probative value of tendency or coincidence evidence outweighs the danger of unfair prejudice to the defendant. The possibility of concoction by the complainants is one of the considerations that a court may consider as part of this balancing act.⁵⁴⁴

NSW and Queensland have considered adopting a presumption of joint trial; however, it has previously been recommended against in both jurisdictions.⁵⁴⁵ According to various stakeholders, the resulting situation in NSW amounts to an effective presumption in favour of separating trials, due to the likelihood that a ruling for a joint trial will result in an appeal.⁵⁴⁶

Victoria, and more recently South Australia, have established a presumption in favour of joint trials in sexual offence cases. In Western Australia, the court has the discretion to separate trials where it is likely that joining them will result in prejudice to the defendant, otherwise the decision to hold a joint trial rests with the prosecution. It is also open to the court to mitigate any likely prejudice by providing appropriate direction to the jury.⁵⁴⁷

Time for Action recommended that state and territory sexual assault legislation should be reviewed to ensure it 'ceases the artificial separation of court hearings involving multiple victims of the same offender'.⁵⁴⁸

The Australian and NSW Law Reform Commissions' 2010 report on family violence recommended that a similar provision to that in Victoria be established in federal, state and territory legislation, namely that legislation should:

- (a) establish a presumption that, when two or more charges for sexual offences are joined in the same indictment, those charges are to be tried together; and
- (b) state that this presumption is not rebutted merely because evidence on one charge is inadmissible on another charge.⁵⁴⁹

Case study 22

A 14 year old girl disclosed to police that she had been sexually assaulted by a family member some years earlier, when she was aged between seven and eight. Her older sister had also recently disclosed that she had been sexually abused as a child by the same relative.

The ODPP considered whether or not an application should be made to join the matters; however, it took almost a year from the time that the second lot of charges were laid until a decision was reached. It was ultimately decided that it was unlikely that the court would allow an application, and as a result the matters were tried separately.

The older sister's case was heard first, and verdicts of guilty were returned in relation to 12 of the 14 counts. In addition to giving evidence about the offences against her, the older sister also had to give a number of statements to police about her sister.

The second trial was adjourned a number of times, including due to the concurrent trial for the offences against the older sister. It was eventually heard seven months after the verdict had been reached in the first trial. By this stage, it had been 17 and a half months since the defendant was charged, and more than 20 months since the child first reported the abuse.

The family received significant support from a number of different agencies during this time; however, the relationships between members of the family, particularly the two sisters, suffered. The younger sister had a range of problems linked to the ongoing trial, including poor school attendance and deteriorating academic performance.

543 Tendency evidence and coincidence evidence may be described as 'evidence that a person has acted in a particular way on another or other occasions; or that person has or had a particular state of mind on another or other occasions, from which evidence, a party seeks to have the tribunal of fact draw an inference this person also acted in that way or had that state of mind on the occasion in issue in the litigation.' Judicial Commission of NSW, *Civil Trials Bench Book*. <http://www.judcom.nsw.gov.au>. Accessed 18 December 2012.

544 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, pp.1,219-1,220.

545 In NSW, this was considered by the NSW Criminal Justice Sexual Offences Taskforce in 2005. The Taskforce reported that they 'consider[ed] it undesirable to introduce a presumption in similar terms to that in Victoria because of the real danger that juries may use evidence in relation to one count on a prohibited basis when considering another count.'

546 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,219.

547 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,220.

548 The National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*, p.169.

549 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,225.

The case relating to the younger sister relied primarily on her own testimony. The commentary from various agency staff who supported the young girl suggests that the court process was extremely traumatic for her, and she found the process of being cross-examined to be very challenging. It was noted by service providers that there had been significant stress on the sisters as a result of the two trials, exacerbated by the extended period of time, and the initial uncertainty about whether the trials would be separated.

A jury determined that there was insufficient evidence to convict the defendant of the charges relating to the younger sister and the defendant was acquitted.

There is available evidence which indicates that a presumption of joining matters can be adequately managed by the courts in order to prevent unfair prejudice to the defendant.⁵⁵⁰ Our audit has highlighted the need to examine all measures possible to reduce the trauma experienced by child victims in participating in the court process, including the very real trauma which can be associated with the separation of trials.

We are advised by the Department of Attorney General and Justice that the Government is currently formulating a response to the Australian and NSW Law Reform Commissions' 2010 report. We are also advised that, at the October 2012 meeting of the Standing Council on Law and Justice, Ministers requested that the Evidence Working Group consider issues regarding the operation of the tendency and coincidence provisions of the Model Uniform Evidence Bill. Given the relevance of these provisions to decisions on ordering joint or separate trials, the findings of the Working Group may impact on the operation of joint trials in NSW.

14.6 Interstate information exchange

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* allows government and 'prescribed' non-government agencies within NSW to exchange information that relates to the safety, welfare or wellbeing of a child or young person. The introduction of this legislation arose from recommendations by Justice Wood regarding the urgent need to expand the capacity for relevant agencies to exchange information with each other in order to promote the interests of vulnerable children and young people.⁵⁵¹

The four key principles of Chapter 16A are:

1. Organisations that have responsibilities for children or young people should be able to provide and receive information that promotes the safety, welfare or wellbeing of children and young persons.
2. Organisations should work collaboratively and respect each other's functions and expertise.
3. Organisations should be able to communicate with each other to facilitate the provision of services to children and young people and their families.
4. The needs and interests of children and young persons, and of their families in receiving services relating to the care and protection of children and young people, take precedence over the protection of confidentiality or an individual's privacy.

The benefits of this new legislation have been significant in all areas of child protection practice in NSW. The ability of government and non-government agencies to directly request relevant information from each other (and be proactive about providing it) has meant that information from a variety of sources can be easily gathered to better inform assessments of vulnerable children and better tailor appropriate responses.

However, we are aware of the difficulties which can arise when there is a need for interstate exchange of information between agencies other than statutory child protection agencies, and of initial work done on this issue by DPC, Community Services and the Child Wellbeing Unit agencies in NSW. Given the ease with which alleged perpetrators can travel between states,⁵⁵² any weakness in the regime for exchanging information between states can pose significant risks to children.

Under Part 3A of the *Ombudsman's Act 1974*, designated agencies are required to notify the Ombudsman of allegations of reportable conduct concerning their employees and to investigate them.⁵⁵³ Reportable conduct includes any sexual offence or sexual misconduct committed against, with, or in the presence of a child (including a child pornography offence or an offence involving child abuse material) whether or not, in any case with the consent

550 Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, October 2010, p.1,224.

551 Justice Wood's finding on this issue followed a recommendation that we made to His Honour for a legislative provision of this kind, in Part 3 of our submission to the Wood Special Commission of Inquiry into Child Protection Services in NSW dated April 2008.

552 References to states include territories.

553 Designated agencies include most government (Community Services, Ageing Disability and Home Care, Juvenile Justice, NSW Health, local government) and non-government agencies (e.g. public and independent schools, child care centres, out of home care) in the child-related employment sphere.

of the child.⁵⁵⁴ A reportable conduct investigation that reaches a sustained finding or there is some evidence that the offence occurred⁵⁵⁵ results in a notification⁵⁵⁶ to the Commission for Children and Young People (CCYP), which alerts future employers in NSW to the risks associated with prospective employees.⁵⁵⁷

Allegations of reportable conduct in relation to current employees of designated agencies must be notified to the Ombudsman and investigated by the agency whether they occurred in the recent or distant past; whether they concern conduct at work or outside work; and whether the alleged conduct occurred within NSW or outside. However, where the alleged conduct has occurred outside NSW, many human service agencies have typically been unable to exchange relevant information for various reasons including where the agency does not have the consent of the involved individual. This has led to inaccurate risk assessments and investigations being concluded on the basis of incomplete information and, as a result, children have been exposed to unacceptable risk.

Community Services, as the statutory child protection authority, relies upon the Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance (the Protocol) as its vehicle for obtaining information from other states. Among its purposes, the Protocol is intended to '*provide for cooperation between jurisdictions to facilitate the care and protection of children and young people*'. To this end, the Protocol provides for (among other things), 'information sharing' between state child protection authorities. However, the provisions in the Protocol specifically related to 'information sharing', only refer to relevant child protection agencies providing to their interstate counterparts information that they 'hold' (clause 25).

There are a number of problems with this arrangement. First, consistent with the Protocol, Community Services has taken the view that it should not make a request to its counterpart in another state unless it is acting pursuant to its own legislative responsibilities (this requires it to first form an opinion that the relevant issue has already met, or may meet, the risk of significant harm threshold).⁵⁵⁸ Second, facilitating cross-border exchange of information via statutory child protection authorities may not be effective in cases where the critical information being sought is not actually 'held' by the statutory child protection authority in the state where the information is located. Furthermore, we are aware that particular interstate child protection authorities believe that they do not have the legal authority to even request critical information from a third party agency within their jurisdiction, in circumstances where they themselves do not hold the information being sought and the seeking of such information would not be for the purpose of protecting a child from within their own state. These issues are well illustrated in the following recent case we handled.

Case study 23

Earlier this year, Community Services requested that one of its interstate counterparts obtain critical information from a school within the counterpart's jurisdiction about unconfirmed allegations that a teacher had engaged in a sexual relationship with a student when they had taught at that school. (Under the Ombudsman Act, the teacher's current employer – a NSW school – was under a legal obligation to investigate these historical allegations.) In response to Community Services' request, its interstate child protection counterpart advised that it did not 'hold' any information about the teacher within its own records. Community Services then requested that its counterpart seek relevant information from the relevant school within that state. In response, Community Services' counterpart advised that it did not have the authority to request the critical information from the school because it did not have the power to seek information in circumstances where it was not acting pursuant to performing its child protection responsibilities in connection with a child from within its own state.

In correspondence between NSW Community Services and its interstate counterpart, the latter noted: '*A more national approach in this area of information sharing would be useful and valuable but unfortunately we do not have it at present.*'

554 The full definition, which includes assault, ill-treatment, neglect and psychological harm, can be found in section 25A of the Act. However reportable conduct does not extend to conduct that is reasonable for the purposes of the discipline, management or care of children, the use of physical force that in all circumstances is trivial or negligible, or conduct of a class or kind exempted from being reported. For example conduct that would not constitute reportable includes touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child.

555 Sex offences include child pornography, filming for indecent purposes, and grooming for sex offences.

556 There are currently two types of category notification to CCYP. Category 1 matters are those where the employer has found that the reportable conduct occurred; Category 2 matters are those where the employer has found some evidence that reportable conduct occurred but the evidence is insufficient to prove it occurred. However, changes to the working with children check system will be made during 2013.

557 Reportable conduct investigations are often conducted once the criminal investigation is completed. The reportable conduct investigation may have additional outcomes in terms of criminal proceedings and/or a child protection response.

558 Section 30 of the Children and Young Persons (Care and Protection) Act provides that on receipt of a report, the Director-General can "make such investigations and assessment as the Director-General considers necessary" to determine whether a child is at 'risk of significant harm.' In many cases it is unlikely to be apparent that cross-border information may exist which, in combination with reported information, meets the 'risk of significant harm' threshold.

In response to a recent requirement to provide information to our office about the current status of the implementation of Action 65 of the Interagency Plan – which (among other things) relates to interstate cooperation around information sharing for child protection – the Department of Premier and Cabinet (DPC) advised that, as part of the work plan to implement the *National Framework for Protecting Australia's Children*,⁵⁵⁹ the Commonwealth, in partnership with the States 'is investigating the need for changes to legislation, most likely Commonwealth legislation, to extend the national protocol for sharing information on children at risk'.⁵⁶⁰

We support the urgent need for legislative change to guarantee that any future national protocol for interstate exchange of information is able to both facilitate and promote cross-border information exchange, particularly in circumstances where children's safety is at risk. While there is the potential for this issue to be considered by the recently announced Royal Commission into institutional child abuse, we believe that there are strong grounds to support prompt action on this issue.

The following case study illustrates what can be achieved when quality information is exchanged across borders.

Case study 24

Consistent with our employment-related child protection role, an agency in NSW recently notified us of allegations of sexual misconduct by an employee in 2005 and 2009. The 2009 allegations resulted in a sustained finding of sexual misconduct and the employee was notified to the CCYP. In addition, the NSW Police Force and Community Services had also conducted related inquiries into the employee's conduct that confirmed he posed a significant risk to children.

In 2011, the former NSW employer received an information request from an interstate employer who was currently employing the man in child-related work and had become aware that there had been serious allegations made in NSW. The NSW employer was unclear as to whether it could legally provide the information requested. Following this case being brought to our office's attention, we coordinated a review of all relevant holdings relating to the man and requested Community Services provide a summary of these holdings to its interstate child protection counterpart.

The provision of this information prompted a police investigation. This then led to police promptly laying a number of charges against him in relation to the sexual abuse of children from within that state. He recently pleaded guilty.

Recommendations

59. That the Department of Attorney General and Justice considers:

- a) undertaking a separate, comprehensive review of sexual offence legislation in NSW
- b) (if the issue of adolescent peer sex is not addressed through the statutory review of consent provisions being conducted by the Attorney General), conducting a separate review of consent provisions with the introduction of a 'similar age' defence in mind
- c) providing an option to allow for a child's entire evidence to be pre-recorded in certain sexual assault prosecutions
- d) creating a presumption in favour of joining trials for sexual assault prosecutions
- e) the viability of amending the Criminal Procedure Act to establish a registered intermediary scheme
- f) the observations made in this chapter in conducting its review of section 66EA of the *Crimes Act 1900*.

60. Following any amendments made to section 66EA of the *Crimes Act 1900* that:

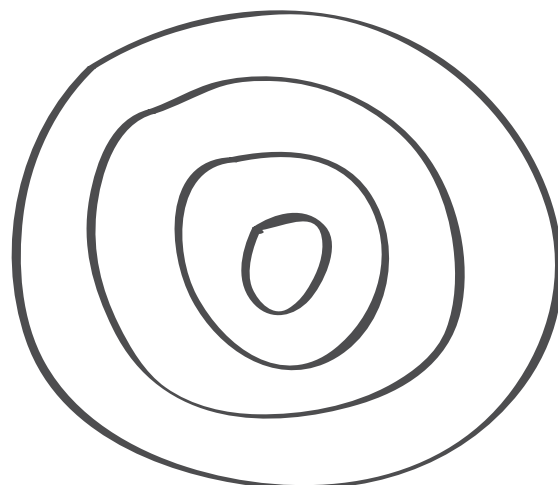
- a) the NSW Police Force conducts an education campaign with police officers, in particular JIRT staff, to promote awareness of the provision
- b) the ODPP conduct an education campaign with prosecutors to promote appropriate use of the provision by police.

559 Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children, 2009-2020*, 2009.

560 The response also refers to meetings which have taken place between NSW border state agencies, particularly health and policing, to improve service delivery to border towns.

61. That the Director of Public Prosecutions includes a review of the processes for managing adolescent peer sex matters as part of his review of the Prosecution Guidelines.
62. That the Department of Premier and Cabinet highlights the issues raised in section 14.6 of this chapter as part of progressing legislative reform (and related policy and practice initiatives) to strengthen the existing interstate information exchange regime.
63. That the NSW Government actively pursues with the Federal Government and its state and territory counter-parts, the need for legislative and related policy change that address the current weaknesses in the regime for cross-border exchange of child protection-related information.

Responding to high-risk young people



Chapter 15. Preventing the drift into adolescent offending

The Interagency Plan's emphasis on intervening early at strategic points recognises that when juvenile risk-taking, school disengagement, family dysfunction and other concerns are neglected and left to accumulate and multiply, the cost of intervening escalates. At the same time, the prospects of positive outcomes diminish for those children whose home environments and upbringing lack the protective factors needed to build resilience and whose involvement in the criminal justice system has started to become entrenched. Strategies to respond to child protection and criminal justice concerns are cheaper, more effective, and produce better results, when used early. Cashmore's research on the nexus between abuse and neglect and adolescent offending shows that although the focus of 'early intervention' is often on interventions 'early in life', it is just as applicable to interventions 'early in the pathway'.⁵⁶¹

In assessing the service response to juvenile offending, including sexually abusive behaviours, it is important to recognise that some agencies are involved in the lives of vulnerable children and young people from a very young age. Police are usually among the first to recognise and report a child or infant's exposure to violence at home, parental substance abuse, family dysfunction, poor nutrition and neglect, and other serious child protection concerns. Police also often spearhead the initial frontline child protection response, such as when there is a need to remove a violent adult from the family home, enforce protection orders or escort children and families to places of refuge. Although the role of criminal justice agencies may change as their focus shifts from reducing children's exposure to child protection risks towards the strategies aimed at deterring them from criminal behaviours, their strategies should still form part of an integrated service response, irrespective of when and how they intervene.

Some of the highest-risk and most difficult to engage adolescents eventually become the responsibility of Juvenile Justice. The comprehensive screening and assessments undertaken by Juvenile Justice and Justice Health when a young person enters detention provide a good opportunity to identify concerns and to begin planning an effective service response. The specialised programs and other interventions offered by both agencies also provide opportunities to start acting on indicators of early problems. However, at present, there are too few services in the community with the capacity to provide a continuum of care and support when young people exit Juvenile Justice. Even when services are available in the community, their lack of integration with those provided in custody, or while under community supervision, often undermines their ability to respond effectively to the complex needs of high-risk adolescents, including those who engage in sexually abusive behaviours. While Juvenile Justice plays a central role in post-release exit planning, the lack of community-based supports in many locations underlines the need for agencies to develop new and more effective service strategies.

These deficiencies in the child protection and broader service systems had a significant adverse impact on the Interagency Plan's ability to achieve many of the reforms and service improvements it recommended. In many cases, specific strategies set out in the Plan failed or had less impact than anticipated because they depended heavily on under-resourced and poorly integrated service systems to deliver on major outcomes. In previous reports,⁵⁶² we have argued that overcoming these challenges requires an increased level of sophistication in terms of identifying those children and families who are most vulnerable,⁵⁶³ and strong governance arrangements to drive interagency case management initiatives and build a comprehensive, integrated service system over time. We discuss these issues in more detail in Chapter 21.

In 2012, we finalised two reports which examined the situation of vulnerable children and adolescents.⁵⁶⁴ The NSW Government has commissioned Family and Community Services to establish a Vulnerable Teenagers Review to recommend strategies to reduce the numbers of older children and young people: re-entering Juvenile Justice; affected by homelessness and long-term instability in their accommodation; and entering out-of-home care. The review will also have a specific focus on Aboriginal young people.

Family and Community Services recently convened a panel of leading Australian child protection and youth sector experts to explore 'what works' and what obstacles must be overcome as part of its review process. We were fortunate to attend the panel discussions. In preparing this chapter, we have further explored the issues raised by the panellists and have highlighted a range of innovative service approaches for young people operating here and in Victoria. We also discuss three new initiatives, each being developed by separate NSW government agencies, yet

561 Cashmore, J, *Family Matters*, No. 89, Australian Institute of Family Studies, 2011, pp.31-41.

562 Most recently in our *Addressing Aboriginal disadvantage* report, October 2011, and in a confidential report on our review of a group of school-aged children from two Western NSW towns – see NSW Ombudsman, 'Working with Aboriginal Communities', *Annual Report 2011-2012*.

563 The improved strategic collection and use of data will also assist in identifying other cohorts of vulnerable people that should be supported through various initiatives.

564 NSW Ombudsman, Confidential report on our review of a group of school-aged children from two Western NSW towns: *Towards intelligence driven child protection*, July 2012 and NSW Ombudsman, *Service provision challenges in responding to very vulnerable older children and young people*, draft discussion paper, July 2012.

each aimed at delivering major improvements to the capacity and cohesiveness of interagency systems for engaging highly vulnerable children and young people, especially those who are at risk of entering a pathway that will entrench their involvement in the criminal justice system.

Finally, in light of the commitment shown by government to adopting an integrated approach to working with high-risk adolescents, we have sought to identify what needs to change to address the structural weaknesses of the current service system. What is clear not only from this audit, but from our many years of reviewing the delivery of human services, is that government agencies need to be prepared to design a service model that truly cuts across the obstacles created by agency boundaries, and which seeks to capitalise on the strengths of the non-government sector and the capacity within individual communities. This includes developing innovative strategies to overcome chronic constraints to agencies' capacity to identify and respond to priority cases, and to ensure that programs and services reach those families who are particularly vulnerable. Without an overarching framework to drive and better integrate the services that are provided to high-risk adolescents and their families, the system will continue to be characterised by duplication, ineffective and inflexible program delivery, piecemeal service responses and gaps that result in young people continuing to get lost in the system.

15.1 Tackling sexual abuse and other risk-taking behaviours

Clinicians experienced in treating problematic or abusive sexual behaviours by children and young people emphasise that it is extremely rare for a child's sexualised behaviour to be their only behavioural issue of concern, their only indicator of trauma, or their only area of therapeutic need. This highlights 'the importance of integrated services as well as specialised therapeutic responses to children and young people with sexualised behaviours'.⁵⁶⁵

The need for integrated services is even more apparent when sexually abusive behaviours are serious enough to trigger a criminal justice response. While those who commit sexual offences (adults and juveniles) are a heterogeneous group,⁵⁶⁶ there is wide agreement that 'the vast majority' of children and young people who engage in sexually abusive behaviours do so because of the particularities of their context or situation, rather than as a result of some pre-existing sexual predilection for children.⁵⁶⁷ Even at the most serious end of the spectrum of abusive behaviours, those convicted of sexual offences, there is a substantial cohort of young people referred to Juvenile Justice's Sex Offender Program (SOP) whose sexual offending was driven by situational factors rather than an innate desire to commit sexually abusive acts.

For some young people, their sexual offending is part of a pattern of general rule-breaking. These young people may be similar to many of the other young people dealt with by JJ. Other young people commit sexually abusive acts for reasons quite different to this... These two groups are not always easily separated and consequently [the] SOP includes an ongoing assessment process within a flexible and individualised treatment protocol.⁵⁶⁸

Strategies to respond to juvenile sexual offending must therefore be flexible enough to engage both those who need specialist help and the general rule-breakers whose offending has a sexual element. The specialised therapy needed to treat some sexually abusive behaviours, together with other concerns, is discussed in the next chapter.

In developing strategies to reduce the incidence of sexual offending by young people, it is important that early intervention and prevention strategies recognise that these young people, including those intent on committing sexually abusive acts, have much in common with other high-risk young offenders. Clinical data shows that inappropriate sexualised behaviours in childhood are closely associated with:

- experiences of childhood trauma
- compromised educational outcomes
- adverse socio-economic conditions
- homelessness or an unstable home-life (including alternate care)
- intellectual impairment or developmental delays
- social isolation and/or difficulties engaging with peers at school, and
- exposure to drug or alcohol misuse.

565 O'Brien, W, Australian Crime Commission, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, 2010.

566 Boyd and Bromfield; Veneziano and Veneziano; Staiger, et al., 2005a, in O'Brien, W., Australian Crime Commission, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, 2010.

567 O'Brien, W, Australian Crime Commission, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, 2010.

568 Juvenile Justice response to NSW Ombudsman Requirement for Information, 11 September 2012.

This list is not exhaustive, nor can it be considered prescriptive or causal. These challenges are just some of the conditions of disadvantage that often characterise the childhoods of those who come to attention for their inappropriate sexualised behaviours.⁵⁶⁹

Similarly, the 'causes' of juvenile offending generally are difficult to identify. However, as with sexual offending, the factors that significantly raise the risks of general offending behaviours are well known.⁵⁷⁰ These factors are reflected in the disproportionately high rates of social disadvantage and poor physical and mental health affecting young people in juvenile detention. The recent Young People in Custody Health Survey showed that:

Nearly half (45%) had parents with a history of incarceration, with Aboriginal young people twice as likely to have a parent who had been imprisoned. Six in ten young people had a history of some form of child abuse or trauma, with young women being nearly twice as likely to have a history of abuse as young men. The majority (87%) of young people were found to have at least one mental health diagnosis and most had significant problems with alcohol or other drugs (78% were risky drinkers; 89% had ever used illicit drugs, of which 65% had used drugs at least weekly in the year prior to custody).⁵⁷¹

On many measures, the risks are higher for Aboriginal young people in custody. For instance, Aboriginal detainees are much more likely to have been placed in care before the age of 16 years (38% Aboriginal, compared to 17% non-Aboriginal), had a parent in prison (61% Aboriginal, 30% non-Aboriginal), or a possible intellectual disability (20% Aboriginal, 7% non-Aboriginal).

Having highlighted that young people who have 'progressed deeper into the juvenile justice system are more likely to have experienced abuse and neglect, have mental health problems and be developmentally delayed', it is important to stress that the majority of children with these kinds of complex needs do not offend.⁵⁷² Nonetheless, these factors can be used to help identify those young people whose multiple child protection risks put them at greater risk of drifting from the child protection system to the criminal justice system, so that any early signs of entering this pathway are met with a priority response.

Our own research shows that agencies – especially Police, Education and Community Services – already have the information needed to identify these young people long before their involvement with the criminal justice system has become entrenched. We recently prepared a confidential report on our review of a group of school-aged children from two Western NSW towns that demonstrates the potential for agencies to use existing information holdings to identify this group, then to use this kind of analysis to guide a more cohesive agency response.⁵⁷³

This 'high-risk' group mostly consisted of children who were missing extended periods of schooling and/or repeatedly coming into contact with police because of their frequent exposure to risks or their own behaviours. Our analysis found that although few had been criminally charged, almost all had accumulated multiple indicators of risk.

Case study 25 – Identifying risks relating to a group of school-aged children in Western NSW

In mid-2012, we prepared a confidential report on our analysis of a group of 48 school-aged children living in two Western NSW towns. Using Education and police records, we identified children who had missed lengthy periods of school through unexplained absences (at least 50 days a year) or suspensions, and/or had frequent contact with police because of their repeated exposure to violence and other risks at home or their own risk-taking behaviours, as well as those identified by either schools or police as being at particular risk. All were Aboriginal and the majority were aged between eight and 11 years. The group also included six alleged victims and two alleged perpetrators of sexual abuse, and 14 children on a 'priority' list created by local police analysts because of particular concerns about their suspected involvement in offending or because of incidents that highlighted specific child protection risks.

When we scrutinised the records that police, Community Services, Education, Juvenile Justice and other agencies held relating to the 48 children and others in their households, we found that most had been exposed to violence at home. The mothers of 46 children (96%) had been reported as victims of domestic violence, including the mothers of 26 children (54%) who had been the victim of 10 or more domestic assaults in the two year period checked. The fathers of 42 children (88%) had been criminally charged, some

569 O'Brien, W, Australian Crime Commission, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, 2010.

570 For children under 13, the long list of recognised risk indicators includes a history of antisocial behaviour; a history of abuse or neglect; disengagement from education; low self-control or impulsiveness; aggression or acts of violence. The recognised risk factors for those aged over 13 include: contact with anti-social peers involved in law-breaking, drugs or violence; a history of prior offences; abuse and/or neglect; poor supervision; low levels of warmth, affection and closeness with parent(s); disengagement from education or employment; and periods of incarceration. Judge Mark Marien SC, 'Cross-over kids' – *childhood and adolescent abuse and neglect and juvenile offending*, National Juvenile Justice Summit, Melbourne, March 2012.

571 D, Indig et al, *2009 NSW Young People in Custody Health Survey: Full Report*, Justice Health and Juvenile Justice NSW, 2011, foreword.

572 Cashmore, J, 2011, *Family Matters*, No. 89, Australian Institute of Family Studies, pp.31-41.

573 See NSW Ombudsman, 'Working with Aboriginal Communities', *Annual Report 2011-2012*.

repeatedly. One father had accumulated 140 charges and 118 convictions over his lifetime, and another had 117 charges and 83 convictions. There were criminal charges against the mothers of 36 children (77%), and despite their young age seven of the children had also been charged.

Education records showed that 36 (75%) of the 48 children had been absent from school for 50 or more days in at least one of the years we checked, and 32 (67%) had been suspended at least once. Combining the days missed through absences and suspensions initially indicated that 19 (40%) of the students had missed the equivalent of a whole school year or longer (200+ days) during the four and a half school years checked. Although Education later explained that recording errors and double-counting might have inflated some of these totals, the students with the highest number of reported days missed all had multiple other indicators of risk.

Community Services records showed that all 48 children had been the subject of risk of harm reports, including 44 (92%) who had at least one risk of harm report or child wellbeing unit event entry in recent years. Although the children's care arrangements were not among the criteria we used to identify our target group for detailed review, it is significant that more than a third of the children listed for review were subsequently found to be living in statutory or supported care (12 children) or in informal care (six children).

When we cross-referenced the agency information holdings on the 48 children we found that:

- For this age cohort (late primary school age and those transitioning to secondary school), the children at greatest risk were readily identifiable through Education and police records alone. There was also a high correlation between the children identified as being at risk due to school absences and/or suspensions and those identified as a 'priority' by police.
- Most were known to be at risk from an early age – 60% of the 48 children were aged two or younger when they were first reported to Community Services as being at risk, mostly because of their exposure to domestic violence.
- Those whose parents had extensive criminal records were among the children at greatest risk, as indicated by the high volume and seriousness of reported child protection issues. These children were also much more likely to be in statutory care or living in an informal care arrangement.
- All the children who were the alleged victims or perpetrators of sexual abuse had a range of other risk factors present – including disengagement from school, exposure to domestic and family violence, exposure to parental substance abuse and comparatively high numbers of abuse and neglect reports. These associated risks were present in all of the sexual abuse cases, irrespective of whether the abuse allegations had been substantiated.

Other common risk factors evident in the records of many of the children included unstable or overcrowded living arrangements, poor nutrition and neglect, and frequent exposure to drug and alcohol misuse – mostly by parents or carers, but sometimes by the children themselves.

A key challenge for agencies tasked with using these kinds of indicators to inform and guide frontline service planning in high-need locations is to develop efficient systems for identifying priority risks.

Our review therefore assessed the potential usefulness of different types of information holdings. We found that incident-based reports remain the primary source for identifying specific and cumulative child protection risks. However, for individual agencies to develop a complete picture of the multiple risks affecting their highest-risk clients, and for them to collectively create a snapshot of the level of service need in each community (including identifying families whose complex needs require a coordinated, interagency response), it became clear that individual agency holdings must be supplemented with other sources. In this regard, by far the most useful sources were records that had already been the subject of some kind of proactive screening or analysis by the agency holding the records, such as the 'priority list' created by the local police command. We recommended that agencies participating in interagency case management programs in high-need locations give priority to identifying and sharing this kind of 'valued-added' analysis.

We know that many of the child protection concerns that significantly raise the risks of vulnerable young people becoming involved in sexual offending also raise the risk of other forms of juvenile offending. What our review of school-aged children from two Western NSW towns demonstrates is that there are opportunities for agencies to come together to create streamlined processes to identify priority risks well before a young person becomes entrenched in the criminal justice system, and to use this kind of intelligence to drive a more efficient and more effective service response.

15.2 The ‘window of opportunity’ provided by the juvenile justice system

Offenders generally, and especially Aboriginal offenders, are highly disadvantaged across all indicators including: health, mental health, housing, educational attainment, employment, alcohol and other drug abuse, and experiences of trauma and abuse. Juvenile Justice and its partner services are therefore responsible for managing some of the most complex and high-need young people in NSW.

The impediments to delivering services and interventions aimed at addressing the vulnerabilities of offenders with complex needs are particularly apparent in custodial settings.

The window of opportunity for Justice Health to provide healthcare to individuals within the custodial setting is usually brief, patients rarely spend their entire sentences within the same correctional centre, with many movements annually between correctional centres and court complexes. As a result, strong partnerships with Corrective Services NSW, Juvenile Justice NSW and the Department of Attorney General and Justice NSW are essential to effective healthcare delivery.⁵⁷⁴

Measures aimed at minimising harm, preventing further abuse and keeping young people out of the criminal justice system, are most effective when applied early and in the community; they should therefore remain a funding priority. The screening and assessment processes undertaken by Juvenile Justice and Justice Health when a young offender enters detention provide valuable insights into what is needed to work effectively with children and young people who fall through the gaps and end up in detention. Used effectively, these assessments can provide valuable intelligence on how best to support these individuals after they exit Juvenile Justice’s supervision, but the information can also be used to refine and improve the collaborative community-based strategies that should have diverted them from custody in the first place.

As the following case study shows, opportunities to intervene can be missed even after serious child protection risks have been identified.

Case study 26 – Identifying opportunities to intervene earlier

One boy who repeatedly fell through gaps in the child protection system before Juvenile Justice identified and started to respond to his serious behavioural, health and substance abuse concerns was A, a 14 year old Aboriginal boy who was included in our review⁵⁷⁵ after being criminally charged for his role in the alleged kidnap and indecent assault of a younger boy. A and a friend had forcibly detained a 10 year old neighbour in a small garden shed, threatening and assaulting the boy while holding him ‘in custody’. At that time, A had been living in an informal care placement with a couple in Western NSW for more than a year. Community Services had not formally assessed the placement or offered proper support – despite knowing about his escalating threats and violence against his siblings, the long history of neglect and instability in his living arrangements, his disengagement from school and other concerns.

He was known to be at risk from a young age. At the age of six, while living with his father (a member of an outlaw motorcycle gang), his stepmother and four siblings, his school reported concerns of suspected abuse and neglect. Community Services recommended providing further support, but closed its file a few months later. In 2007, when A was 12, a series of Community Services and police reports highlighted escalating concerns about him and an older sister. As their relationship with their father, stepmother and other siblings deteriorated, they repeatedly ran away from home. On one occasion, in June 2007, police found A and returned him to his parents. Police told Community Services that he had ‘...worn out his welcome at all his friends’ places and has resorted to living on the streets. Police...spoke to his mother who informed police that [the family] did not want him back and to give him to DoCS’.

In August, the stepmother told police that both A and his sister had ‘been running away from home and becoming involved in criminal activity’ for the previous six to 12 months. She alleged that A had serious behavioural problems ‘due to him being ADHD’ and that the girl was sexually active. This and other police reports highlighted concerns about instability in the children’s living arrangements and their reluctance to return home. A Community Services assessment noted police concerns that ‘if no intervention takes place for him he will end up involved in serious criminal activity’.

Community Services interviewed the boy and assessed that the likelihood of continuing harm was high. They proposed finding appropriate accommodation for him and his sister, interviewing their father and stepmother, and arranging relationship counselling. There are no records on KiDS to indicate this occurred. The plan was closed in September 2007 with a note, ‘no longer providing a service’.

574 Julie Babineau, Chief Executive, Justice Health, in the Justice Health and Forensic Mental Health Network’s *Year in Review 2010/2011*, p.3.

575 The boy in this case study was identified after we asked police to provide us with data about Aboriginal children who had been the subject of a reported incident of child sexual abuse in the 12 focus communities during the life of the Interagency Plan (2007-2011). This process identified 248 Aboriginal children. By then interrogating the police records to identify whether charges had been laid, and the outcomes of those charges, we identified 85 juvenile suspects linked to these incidents. This boy was one of just two juveniles charged and convicted of sexual offences – though these were overturned on appeal.

The following November, Community Services received a call from the stepmother 'reporting that her son is out of control' and that he '...has threatened to burn the house down...she has been asking for help...[he] is ADHD and...she and her husband can't manage. Caller said the other children are frightened of [him]'. The following day the stepmother claimed that she had exaggerated her concerns in order 'to get some action from DoCS'. While Community Services again identified the need to find alternative accommodation, the boy remained in his parents' care.

It appears there was no attempt to find alternative accommodation until a few months later after A, then aged 13, caused havoc in his family with a series of serious threats and assaults over a two-week period. A Community Services summary of the incidents states that he:

...grabbed a knife from the kitchen, walked outside to a sibling put one hand on their shoulder and then put the knife towards her head/chest area and said, 'I'll stab you'. [A] then had a bath with a sibling and started to push [his] head [under] the water about 10 times for a period of up to 20-30 seconds at a time. He threatened to kill his oldest sibling and the younger ones and then...threw 4 bricks at his oldest sibling, one hit her in the back.

A was arrested and charged. His father and stepmother refused to allow him back in the home, and said there was no-one in their extended family willing to care for him. After being advised of A's charges and history, the local youth refuge said they were unable to accept him that night. He remained in custody until a woman and her partner, who lived in a small town more than 400km away, agreed to take him in. It appears they met A through the woman's daughter, who sometimes cared for him and his sister.

As A entered this informal care placement with few clothes or possessions, his new carers requested help. A's new carers had limited financial means to support him – the woman's partner had chronic health problems and they also had full-time care of two young grandchildren. Community Services records indicate that they provided money for clothes and that a caseworker spoke with A about enrolling in a new school. It is not clear what, if any, other support was considered. There is no indication of counselling or other interventions to address his increasingly violent behaviours. The plan was allocated to an early intervention team, but eventually closed on 12 August 2008 due to 'competing priorities'. The care placement remained informal.

The criminal charges relating to the March 2008 assaults against his siblings were A's first. His next was six months later when he was charged with possessing 1.69 grams of cannabis. After that, he was often in trouble. In the nine months before the indecent assault incident in June 2009, he accumulated 20 charges for property offences, drug possession and bail breaches.

A was remanded in custody for almost five months after the indecent assault incident because of concerns that returning him to his carers would result in him associating with his co-accused, who lived nearby. By contrast, his 15-year-old co-accused was remanded in custody for less than a week before being bailed to his mother's care. Neither boy was convicted in relation to the kidnap and indecent assault charges.

The screening and assessments done while in juvenile detention exposed the extent of A's heavy cannabis use and its likely contribution to his escalating criminal behaviour – especially after he moved away from his family and began to steal to support his drug habit. An assessment done during a further period of detention in early 2010 noted that he had regularly consumed the drug since the age of 11, and immediately before the move to live in the informal care placement he was smoking 'four cones a day'. They concluded that his drug use may have compromised his intellectual development and was probably to blame for his frequent lapses of attention and difficulties concentrating. A clinical report in March 2010 concluded: '*It is likely that the diagnosis of ADHD was erroneous and that the apparent 'symptoms' were probably reflecting a poor concentration span which was related to the effects of substance abuse and also his intellectual deficits...*' The assessments do not indicate how he was able to regularly obtain illicit drugs from a very young age.

Juvenile Justice reviewed the boy's medications and other health needs. It initiated treatment for his heavy drug use and sought an assessment of any potential risks he might present to the two young children in his carers' home before returning him to the informal care placement. But instead of returning to his carers, A went back to his father and stepmother, despite police records showing that his father's extensive criminal history included repeated involvement in extremely violent assaults and in the use and supply of illicit drugs. It appears he was unable to re-enrol at his former high school, despite attempts by a school counsellor at the Juvenile Justice Centre to assist. When his relationship with his father and stepmother again broke down, he moved in with his sister. He was not attending school, had no job, and was unable to obtain Centrelink support because he was not yet 16.

In early 2011, he was charged on six occasions for his alleged involvement in aggravated break and enter, drug possession, car theft and armed robbery offences. Many were committed while under the influence of drugs. Juvenile Justice managed to secure him a place in a drug and alcohol treatment program, but he absconded about a month later. He was returned to juvenile detention and remains in custody.

This case highlights the multiple service challenges confronting agencies in responding to complex needs. Despite the *Keep Them Safe* reforms to improve the cohesiveness of the child protection response, capacity constraints and a lack of place-based collaborative case management options continue to impact on the delivery of child protection services in many locations. While the comprehensive screening and assessments provided by Juvenile Justice and Justice Health upon admission to a Juvenile Justice Centre can often play a critical role in identifying child protection risks (as well as other issues that might have been missed by earlier attempts to intervene), there are significant gaps in continuing that care when the young person returns to the community.

15.2.1 Identifying and assessing young people with complex needs

Juvenile Justice has a unique ability to identify and assess critical issues that might have been missed at an earlier stage, including learning disorders and intellectual disability, mental health concerns, substance abuse disorders, child sexual assault victimisation and other issues impacting on the health and wellbeing of young people entering custody. For those with complex needs, the screening and assessments conducted upon admission to Juvenile Justice can provide valuable insights into their vulnerabilities, risk-taking and multiple service needs. These could be used to plan the mix of interventions needed to support each detainee upon exiting Juvenile Justice. They could also provide a foundation for improving service frameworks generally.

The Interagency Plan recognised that effective screening and assessment processes are essential to identifying needs and providing an appropriate service response. Action 53 requires Justice Health, in partnership with Corrective Services and Juvenile Justice to:

Review...health and mental health screening processes to ensure that questions and protocols to address child sexual assault victimisation are adequate.

Justice Health's research highlights the importance of holistic screening and assessments that consider issues associated with sexual assault victimisation in the context of detainees' exposure to risk and risk-taking behaviours generally.

Justice Health's *Young People in Custody Health Survey* highlighted the need to screen for evidence of sexual assault victimisation.⁵⁷⁶ Unpublished Justice Health analysis about the 30 (9.7%) respondents to the 2009 survey who reported having been sexually abused as children shows that a disproportionate number of detainees with child sexual abuse histories are female, aged less than 15 years, had a history of being placed in care, had parents who were in prison, had unsettled accommodation before custody and had a history of being bullied.⁵⁷⁷ Although these factors were 'all significantly associated with childhood sexual abuse', Justice Health found that:

It is not possible to determine the nature of the association between these characteristics and childhood sexual abuse. Some may have occurred as a result of the abuse, while others may be more associated with its cause. It is presumed that the illicit drug use and mental health correlates that were significantly associated with participants with a history of childhood sexual abuse are likely outcomes as a result of the trauma of being abused.⁵⁷⁸

Juvenile Justice and Justice Health each screen and assess young people following admission to custody. In broad terms, Juvenile Justice is responsible for criminogenic interventions while the Justice Health and Forensic Mental Health Network provides health interventions. Juvenile Justice is responsible for providing welfare interventions, psychology and drug and alcohol counselling services. Justice Health provides specialised health care such as psychiatry services, drug and alcohol detoxification, opioid substitution programs and withdrawal management. Despite considerable overlap in each agency's roles and responsibilities, it appears that the two agencies have appropriate case planning and information exchange processes in place to minimise duplication and coordinate interventions.

15.2.1.1 Screening and assessment processes

Upon entering custody or community supervision, Juvenile Justice requires all young people to undergo a comprehensive assessment to 'identify areas of criminogenic risk and need'. The information gathered via a series of direct interviews with the young person and their family, and with other relevant parties such as schools or employers, is used for background reports to assist the Court in sentencing and to guide offence-focused interventions delivered to the young person as part of community supervision.⁵⁷⁹ Juvenile Justice said the information gathered about the young person's family and living circumstances, education and/or employment, peer relations, substance abuse, leisure and recreation, personality and behaviour and attitudes and beliefs is used to complete its Youth Level of Service/Case Management Inventory - Australian Adaptation (YLS/CMI-AA) tool.

⁵⁷⁶ D Indig et al, 2009 *NSW Young People in Custody Health Survey: Full Report*. Justice Health and Juvenile Justice NSW, 2011, p.162.

⁵⁷⁷ Response by Justice Health to NSW Ombudsman Requirement for Information, 5 October 2012.

⁵⁷⁸ Response by Justice Health to NSW Ombudsman Requirement for Information, 5 October 2012.

⁵⁷⁹ Juvenile Justice response to NSW Ombudsman Requirement for Information, 20 September 2012.

Although this general screening does not directly explore sexual assault victimisation, Juvenile Justice said disclosures of sexual abuse or abusive behaviours may arise at various points, particularly in response to questions about prior offending, family relationships and living circumstances.⁵⁸⁰ As part of its admissions process, Juvenile Justice also uses a Detainee Risk Assessment Questionnaire to identify any immediate needs, issues or concerns; particularly physical or mental health concerns, self-harm or suicide risk, anger or alcohol or drug use.

Within 24 to 48 hours of their admission, detainees should also be assessed by a Justice Health Registered Nurse to identify and address any recent or ongoing health issues.⁵⁸¹ This initial assessment 'identifies physical, mental health and drug and alcohol issues including young people at risk and their demographics'.⁵⁸² It includes 'Young Person at Risk' questions about exposure to violence, abuse, unwanted sexual experiences or other incidents that might need to be reported to the Child Protection Helpline.⁵⁸³

15.2.1.2 Targeted assessments

For young people who remain in custody for more than 10 days, Justice Health has a comprehensive assessment tool to supplement the information gathered in the initial assessment. At present, 94% of young people who remain in custody longer than 10 days receive this further assessment.⁵⁸⁴ There is also a six-monthly comprehensive assessment update tool used to follow up on the progress of young people who have lengthy custodial sentences.

Juvenile Justice and Justice Health also use a number of specific-purpose tools. Juvenile Justice's focus on responding to criminogenic issues is often reflected in the tools it uses, such as the Juvenile Sex Offender Assessment Protocol-II (JSOAP-II) that Juvenile Justice uses for those convicted of sexual offences to assess the risks of re-offending and to identify risk management strategies. Juvenile Justice uses the tool at the start and end of its supervision, but can also use it during supervision to assess new information or a significant change in circumstances. In response to concerns noted by the NSW Sentencing Council about JSOAP-II's accuracy in determining risk in relation to specific populations, including Aboriginal offenders,⁵⁸⁵ Juvenile Justice said the very small numbers of young Aboriginal offenders convicted of sexual offences meant it was currently not feasible to develop an Aboriginal-specific risk assessment tool. However, it said that 'current clinical impressions' indicate that there is no reason to suggest that the current tool will be less effective with Aboriginal young people.⁵⁸⁶ A common criticism of JSOAP-II is that it is better at predicting non-sexual re-offending, as research shows that young people who sexually offend are more likely to be reconvicted of a non-sexual, rather than sexual, offence.⁵⁸⁷

As Justice Health provides health interventions, its specific-purpose tools focus on health concerns. For example, its Mental Health Observation and Assessment Tools (MHOAT) explore mental health issues, including areas of child safety, exploitation, domestic violence, abuse and neglect. Two Justice Health teams that routinely use the MHOAT are: its Adolescent Court and Community Team (ACCT), a multi-disciplinary Justice Health team that works in children's courts and with agencies in the community to identify, assess and assist high-risk young people with mental health issues; and its Community Integration Team (CIT), which coordinates the transition of health care for young people in custody with significant mental health and/or problematic drug and alcohol issues when released from detention. These programs are considered further below.

15.2.1.3 Improving and using assessment information

Juvenile Justice is currently reviewing its overall assessment and case management processes. Its aim is to consider ways to enhance the impact of offence-focused interventions to young clients affected by issues such as intellectual disability, mental health concerns or a history of sexual or physical assault.⁵⁸⁸ As Justice Health's screening and assessments already collect a range of information relevant to these issues, its instruments and processes and the mechanisms needed to share appropriate information are important components of Juvenile Justice's review. Additionally, in its submission to our audit Justice Health highlighted the need to critically examine:

- the validity, reliability and cultural appropriateness of a number of mental health and childhood trauma questionnaires and diagnostic instruments for use among Aboriginal people
- the experience of childhood sexual abuse among Aboriginal women in prison, and

580 Juvenile Justice response to NSW Ombudsman Requirement for Information, 20 September 2012.

581 Juvenile Justice advised that this occurs within 24 hours, whereas Justice Health advice is that it occurs within 48 hours.

582 Justice Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

583 Justice Health, 'Adolescent Health Initial Assessment Form', JUS060.430.indd, April 2011.

584 Justice Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

585 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in NSW*, Volume 3, May 2009, pp.36-51. Other 'specific populations' the Sentencing Council mentions are people with an intellectual disability and adolescents.

586 Juvenile Justice response to NSW Ombudsman Requirement for Information, 11 September 2012.

587 C Boyd, presentation, *Young people with problem and abusive sexual behaviours*, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, www.communities.qld.gov.au. Accessed 5 December 2012.

588 Juvenile Justice response to NSW Ombudsman Requirement for Information, 20 September 2012.

- culturally responsive interventions for Aboriginal people in contact with the criminal justice system who have a history of childhood sexual abuse.

While these are discreet research tasks, and Justice Health is well placed to undertake this work in conjunction with its ongoing surveys of adult and juvenile detainees, there is also a need for stronger collaborative frameworks to ensure that agencies use the analysis to drive improvements to their interventions.

Juvenile Justice and Justice Health have 'a strong collegiate relationship, with both agencies working together to ensure the best possible outcomes for the young people in contact with the criminal justice system.'⁵⁸⁹ Both agencies have indicated that this collaboration has been assisted by the recent introduction of information sharing provisions that provide guidance on the kind of client information that must be shared, and for what purpose.⁵⁹⁰ While their cooperative approach appears to support more informed and better planned interventions in custody and, to some extent, while under supervision in the community, the lack of integration between their services and those provided in the community remains a structural weakness in the current system.

In addition, the information gathered through screening and assessments in custody should inform the wider processes used for identifying and responding to children and young people at risk. At a minimum, it should form part of the young person's case history and be used to guide the planning for collaborative interventions aimed at supporting and assisting that individual upon exiting Juvenile Justice custody or supervision. As any time spent in juvenile detention indicates the likely presence of high-risk behaviours and an acute shortage of protective factors, all Juvenile Justice clients should be deemed as highly vulnerable. As we discuss in the final section, responsibility for providing the coordinated services needed to support their re-entry into the community should not be left to Juvenile Justice alone.

15.2.2 Creating stronger links with services in the community

Interventions initiated by the juvenile justice system are likely to have little impact unless accompanied by strong linkages with external services to provide a continuum of care and support in the community.⁵⁹¹ For this reason, Juvenile Justice and Justice Health have a number of initiatives aimed at improving the continuity and cohesiveness of services to improve offenders' health, mental health, access to safe housing, education, employment and other concerns.

The hands-on assistance that Justice Health's Community Integration Team provides to young detainees who have a mental illness or issues of problematic substance abuse is an example of a practical and effective post-release support.

Case study 27 – The Community Integration Team (CIT) program

Established in 2008, the CIT program connects young detainees who have a mental illness or problematic substance abuse issues to specialist and generalist services in the community. It now operates in 11 locations, coordinating care for young people in custody prior to and during the critical post-release period. In 2011-12, 459 young people were referred for CIT assistance. Of these, 77 (17%) had mental health problems, 141 (31%) had a drug and/or alcohol problem, and 241 (52%) had both mental health and substance misuse issues. During this period, 96 (21%) returned to custody. Demand for CIT services were similar in 2010-11, when 478 young people were referred for assistance – 81 (17%) had mental health problems, 134 (28%) had drug and alcohol problems, and 263 (55%) had both, with 87 (18%) returning to custody despite CIT support.⁵⁹²

Justice Health says clients who use the CIT's post-release supports are much less likely to return to custody. It says CIT support halves the rates of CIT clients returning to custody within three months of release. In addition, the CIT has doubled its 'occasions of service' since 2009, while halving inappropriate referrals; assisted high numbers of Aboriginal young people (61% in 2011-12); succeeded in targeting high proportions of clients with co-morbid drug/alcohol and mental health issues (52% in 2011-12); increased the mental wellbeing of those young people who complete their care plans (144 or 31% in 2011-12), as evidenced by formal outcome measure data; and helped high numbers of country clients, with almost half of all CIT referrals coming from rural areas.⁵⁹³ Juvenile Justice praised this initiative, saying that it adds significant value to its own work with CIT clients.

589 Email from Julie Carter, Service Director Adolescent Health, Justice Health & Forensic Mental Health Network, 11 October 2012.

590 Chapter 16A relates to the exchange of information and co-ordination of services under the *Children and Young Persons (Care and Protection) Act 1998*.

591 D Indig et al, *Juvenile Justice and Justice Health, 2009 NSW Young People in Custody Health Survey: Full Report*, 2011, p.163.

592 Juvenile Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

593 Juvenile Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

Justice Health receives ongoing funding from the Mental Health and Drug and Alcohol Office to provide CIT services in Gosford, Wagga Wagga, Dubbo and Sydney, but relies on Indigenous Health National Partnership Agreement funding to provide CIT services to Grafton, Kempsey, Broken Hill, Penrith, Fairfield, Newcastle and Wollongong. This partnership funding ends in 2013. In addition, Justice Health said there was an identified need to further extend CIT supports to regions with large Aboriginal populations, including Tamworth, Moree, Batemans Bay and Queanbeyan, but no funds to do so.⁵⁹⁴ The events described in the earlier case study on responding to child protection risks occurred in areas not yet serviced by a CIT.

Juvenile Justice's initiatives to reduce the number of young people falling through the gaps in services when they leave custody include a range of accommodation supports that it provides – directly or in partnership with NGOs – as part of its discharge planning process. As demonstrated by case study 26 about the 14 year old boy who was remanded in custody for almost five months because he had nowhere else to go, the current state-wide shortage of safe, suitable accommodation can be a significant problem for some young people trying to exit remand or detention. The Young People in Custody Survey found that in the six months prior to custody, 6.1% of young people in custody were sleeping on the streets or in unsettled lodging; 8.7% reported living with friends or 'couch-surfing'; and 13.4% had moved accommodation four times or more or had no fixed address.⁵⁹⁵ For young people with complex needs and no family supports, there are no easy solutions.

Case study 28 – The Joint Tenancy Assistance Program (JTAP)

For a few young people who have no family support and have exhausted all other options, one intensive Juvenile Justice support program aimed at highly vulnerable young people with complex needs is its JTAP. In partnership with Housing NSW and CatholicCare, Juvenile Justice uses JTAP to provide stable long-term accommodation, case management and tenancy management support to juvenile detainees who have been homeless for at least 12 months and who are unable to access supported accommodation services. Support commences prior to release from custody and continues for at least 12 months. The program uses a staged approach to progress participants towards independent living.⁵⁹⁶

With access to between four and six Housing NSW properties in inner Sydney to manage the first stages of transition to independent living, JTAP was able to assist 45 participants in its first 11 years of operation.⁵⁹⁷ While the numbers are limited, JTAP's success in engaging clients with complex needs is impressive. Most (93%) of the 45 clients had a mental illness, 50% had histories of sexual abuse, 70% had left school by Year 9 or earlier, 100% had been under the influence of alcohol or drugs when they offended, and 100% had been homeless for at least 12 months.⁵⁹⁸ Despite their lack of family support, complex needs and offending histories, many graduated to independent living, 67% resumed their education and completed Year 10, and some went on to Year 11 and TAFE, one-third found jobs and 100% were supported to manage their drug and alcohol issues.⁵⁹⁹ Some have been able to use their experience to help younger siblings find safe and stable accommodation.

The small, intensive program has created a valuable blueprint for 'what works' when helping young people with complex needs to learn to live independently. The principles of the program are now being adapted and applied to develop other accommodation supports. In partnership with non-government agencies, Juvenile Justice now has 11 accommodation programs. The \$3.2 million it spent on these supports in 2011-12 included services based in Riverina Murray, the North Coast and Western Sydney that are funded through the National Partnership Against Homelessness.

Initiatives to link young offenders with community-based supports should also occur early in their contact with the juvenile justice system. In 2011-12, Juvenile Justice received a budget enhancement of \$2.9 million (\$2.8 million recurring) to recruit more than 20 new frontline staff to provide high-quality bail supports at children's courts across NSW.⁶⁰⁰ Their role involves actively screening all young offenders who are refused bail and remanded in custody, and to work with the offenders, their families, court officials, specialist services and other service providers to, qualify for bail. Upon bail being granted, the bail support plans and other forms of assistance provided by these staff aim to ensure compliance with bail conditions.⁶⁰¹

594 Juvenile Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

595 D Indig et al, *2009 NSW Young People in Custody Health Survey*, Justice Health and Juvenile Justice, 2011. p.15.

596 Response by Juvenile Justice to requirement for information, 11 September 2012

597 S Rovik, *Joint Tenancy Assistance Program Review Report*, June 2009.

598 S Rovik, *Joint Tenancy Assistance Program Review Report*, June 2009, p.13.

599 S Rovik, *Joint Tenancy Assistance Program Review Report*, June 2009, p.4.

600 Email from Ms Kay Elphick, Juvenile Justice, dated 14 March 2012.

601 Juvenile Justice response to NSW Ombudsman Requirement for Information, 11 September 2012.

One valuable specialist support that Juvenile Justice's bail support staff rely on to reduce the number of vulnerable young offenders remanded in custody and improve their compliance with bail conditions is Justice Health's Adolescent Court and Community Teams.

Case study 29 – Adolescent Court and Community Teams (ACCT)

The Adolescent Court and Community Teams are multi-disciplinary Justice Health teams that work in courts and with agencies in the community to identify, assess and assist high-risk young people with mental health issues and substance abuse problems before they enter (or re-enter) custody. The ACCT assesses their suitability for diversion into community-based mental health or substance abuse treatment, providing courts with an alternative to detention.

In 2011-12, the service received 684 referrals (160 or 23% were Aboriginal) and diverted 472 mentally ill patients from the courts into treatment. In 2010-11, it received 752 referrals (161 or 21% were Aboriginal). Of these, 489 young people were diverted into treatment.⁶⁰² The Mental Health and Drug and Alcohol Office funds Justice Health to provide this service in the Bidura (Glebe), Parramatta, Woy Woy, Wyong, Sutherland and Campbelltown Children's Courts, and the Indigenous Health National Partnership Agreement funds ACCT services at Broadmeadow (Newcastle), Dubbo, Port Kembla, Nowra and Wagga Wagga until mid- 2013. Additional areas of identified need include Tamworth, Taree, Queanbeyan and Hornsby.⁶⁰³

The ACCT program also helps existing community services to manage particularly high-risk young people with existing or emerging mental health presentations. This service began in 2006 and has been operating state-wide since 2009. In 2010-11, the service received 56 referrals, and conducted full assessments of 43 (77%) clients – including seven Aboriginal clients. In 2011-12, it received 21 referrals and conducted full assessments of 10 (47%). Five were Aboriginal.

What the Community Integration Team, Joint Tenancy Assistance Program, Adolescent Court and Community Teams and other successful case management supports have in common is their use of partnerships with other agencies and community-based services to assist in creating the services needed to identify and keep groups of highly vulnerable young offenders out of juvenile detention. In each case, the starting point for the interventions is a proper assessment of the client's service needs, thus enabling the programs to identify and prioritise risks and vulnerabilities. This kind of quality information is an essential prerequisite to planning and implementing a coordinated service response.

Although Justice Health's CIT and ACCT initiatives are successfully identifying vulnerable young offenders and providing practical, hands-on supports to improve the coordinated service response to priority cases, both programs rely heavily on supplementary funding from the Indigenous Health National Partnership Agreement. Urgent consideration should be given to how this work will be funded and extended after the current partnership agreement ends in mid-2013.

The loss of valuable expertise and experience is a critical risk for initiatives that rely on limited-term funding for much of their operations. Research on place-based coordination programs shows that programs fail when they lack skilled leaders, practitioners and staff.⁶⁰⁴ If specialist place-based services have, over time, created effective, well-managed teams, built up their expertise and established strong links with partner agencies and services, it is important to keep these teams together. Delays in renewing funding and uncertainty about ongoing support, can lead to the loss of good staff, impacting on the programs' effectiveness while teams are rebuilt and links are re-established with partner agencies.

A related issue is the need for clear documentation of the governance arrangements that agencies create to support their interagency work. Collaborative place-based initiatives must formalise their agreements with local services in the community, and ensure that the roles and responsibilities of respective partners are reflected in service level agreements and memoranda of understanding. At present, interagency initiatives to engage young offenders with complex needs in the community are often ad hoc and too reliant on the goodwill and diligence of individual caseworkers. Changes in personnel can cause many such initiatives to falter or fail.

Justice Health conceded that a number of its collaborative partnerships with other services would benefit from formalising its agreements with those partners.⁶⁰⁵ It said that a recurring challenge for its CIT or ACCT programs is to overcome the reluctance of some community-based health services, many of which already operate at or near capacity, to accept high-need young offenders with mental illnesses and challenging behaviours. Formalising the

602 Juvenile Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

603 Juvenile Health response to NSW Ombudsman Requirement for Information, 5 October 2012.

604 J Stewart, S Lohar & D Higgins, *Effective practices for service delivery coordination in Indigenous communities*, Resource sheet no. 8, Closing the Gap Clearinghouse, December 2011.

605 NSW Ombudsman consultation with Juvenile Health program managers, 12 September 2012.

agreed frameworks on how such requests should be assessed is a way to ensure that service requests from high-need clients are considered on their merits. In addition to reducing the incidence of ad hoc decisions to exclude a young person, such agreements should also specify what additional supports partner agencies agree to provide to services that take on the primary responsibility for helping young people with complex needs.

While these principles apply to interagency activities generally, they are especially important when trying to coordinate multiple services to respond to the complexity of needs that typically affect young people in the juvenile justice system.

15.2.3 Strengthening intensive supports for priority families

In NSW, individual agencies or services often invest in programs to strengthen the quality and intensity of supports for the high end users of their services. As we noted in our *Addressing Aboriginal Disadvantage* report,⁶⁰⁶ Juvenile Justice's Intensive Supervision Program (ISP) is one of the more promising examples of this kind of intensive, tailored support. ISP provides comprehensive family-based supports to a small number of young people and families in Newcastle and Western Sydney. As with the intensive accommodation support programs discussed earlier in this chapter, ISP's strength is its capacity to successfully engage a particularly vulnerable cohort of clients and provide them with an intensive, individualised mix of services over an extended period to address the many environmental or situational factors that influence adolescent offending.

To be eligible for the ISP, a young person must: be aged 11 to 16 years; have a significant offending history and be at risk of entering custody; have stable housing and a parent or carer who is willing to participate; be subject to a community supervision order of at least six months; and live close to one of the two ISP trial sites.⁶⁰⁷ Unlike the Milwaukee Wraparound,⁶⁰⁸ which actively targets juvenile sexual offenders and, where appropriate, includes Multi-Systemic Therapy (MST) treatment in the family's care plan, ISP excludes young people whose primary offence is a sexual offence. The ISP manager says the NSW program is modelled on a 'standard' MST program, and that an MST model specifically adapted to address sexual offending behaviours would be needed if sexual offenders were to be accommodated by ISP.⁶⁰⁹

Juvenile Justice advised that 37 (85%) of the 44 families enrolled in the ISP in 2010-11 successfully completed the program. Just over a third of these (15 families) were Aboriginal. Preliminary data indicates a 60% drop in offending by young people during the program, and a 74% fall in the six months after completing the program. Other achievements include decreases in drug and alcohol use and better parenting skills.⁶¹⁰ An evaluation of the ISP is due to be completed by December 2013.

The ISP's early success in engaging families prompted Juvenile Justice's Western Region staff to create Act Now Together Strong (ANTS), a program based on a problem-solving approach known as Family Functioning Therapy. ANTS intervention strategies are said to be tailored to meet the needs of each family. In practice, two Juvenile Justice staff meet weekly with participating families for up to six weeks. Their work is supported by an advisory panel consisting of the regional director, an ANTS project officer and local managers. Juvenile Justice claims that its initial evaluation of the eight families who completed a pilot of the ANTS Model showed that there were some reductions in the incidence and seriousness of re-offending behaviours. The Australian Research Council has agreed to fund a three-year study of collaborative family problem-solving strategies used by the ANTS Model.

Despite receiving no formal budget enhancements to implement ANTS,⁶¹¹ the Western Region initiative appears to be successfully influencing positive change. While these strategies have the potential to be applied more widely, the limited duration and scope of ANTS interventions, and the lack of formal links with partner agencies, indicate that it may be of limited use to the most vulnerable families. In this regard, the intensive supports provided by the ISP are better able to engage families with complex needs. The ISP's main limitations are its inability to assist families who live outside its two small trial areas, its exclusion of sexual offending and, because it is not an interagency program, its inability to directly access complementary supports from other agencies.

Engagement in education or training is a widely recognised as 'an important determinant of young people's wellbeing, future employment prospects and participation in the workforce and the community'.⁶¹² In response to our request for advice about how the ISP could be improved, Juvenile Justice said that there was a need to find more effective strategies to re-engage ISP participants in school or vocational activities. It suggested that consideration

606 NSW Ombudsman, *Addressing Aboriginal disadvantage: the need to do things differently*. A special report to Parliament under s31 of the *Ombudsman Act 1974*, October 2011.

607 Juvenile Justice response to NSW Ombudsman Requirement for Information, 14 September 2012.

608 The Milwaukee model is discussed at 15.4.1.1.

609 Michael Szyjan, ISP manager, speaking to an Institute of Criminology seminar, 'All in the Family? The use of Family Intervention Programs and Methods in Juvenile Justice', Sydney University, 24 October 2012.

610 Juvenile Justice response to NSW Ombudsman Requirement for Information, 14 September 2012.

611 The ANTS model was designed by Western Region staff and offered to specific staff as a new initiative for working with clients and their families.

612 J Cashmore and M Paxman, *Longitudinal study of wards leaving care: four to five years on*, Social Policy Research Centre, 2007.

be given to employing additional teachers' aides, requiring mandatory school attendance and reviewing schools' behavioural management procedures. At present, these kinds of improvements to the ISP require Juvenile Justice to put the case for change to Education. If Education was an active partner in the ISP, the suggested changes could be considered as part of the ISP casework, rather than as an interdepartmental request. An even more integrated approach might involve streamlined access to a shared pool of funds, whereby decisions to allocate resources towards measures (such as employing an aide to intensify learning supports) could be made by a multidisciplinary team and the family.

Juvenile Justice also recommended that the current ISP model be extended to other high-need areas, starting with Redfern and Campbelltown. The costs might be considerable. The ISP asserts that its 'clients' are not just the young offenders in the program, but also their families, peers, schools and neighbourhoods.⁶¹³ As ISP interventions are aimed at particularly high-need families, the expenses associated with influencing a young person's environment and targeting the family's many needs can also be high. At present, the ISP is largely reliant on Juvenile Justice directly funding these activities. Without a significant enhancement to its budget, or an efficient way of harnessing resources and in-kind support from other agencies, Juvenile Justice will struggle to extend the ISP to additional sites.

We agree that there is a strong argument to invest in expanding the capacity of quality, intensive and family-focused program supports such as the ISP to other areas of identified need. There are also benefits in expanding the availability of many less intensive (and less expensive) options. But if capacity building initiatives in such a complex service landscape are to have an impact, they must be accompanied by broader, place-based frameworks featuring strong and accountable governance arrangements, an accurate knowledge of the level of local needs and a clear vision of their purpose. These issues are discussed further in section 15.4 below.

15.3 Integrated case management programs

In NSW, attempts to create more holistic responses to address the many underlying causes of juvenile offending behaviours have largely relied on the initiative of individual agencies investing in trials of integrated case management programs. In broad terms, these programs attempt to respond to the multiple issues affecting high-risk young people and other clients with complex needs by using various frameworks that try to deliver coordinated agency interventions. The most active proponent of these programs is Family and Community Services, which has responsibility for the two leading programs in this area – Family Case Management (FCM) and Supporting Children, Supporting Families (SCSF) – formerly known as the Anti-Social Behaviour Pilot Program.

The SCSF program was originally established by Police, Community Services and other agencies in Dubbo over seven years ago, as a forum to bring service providers together to coordinate interventions targeting young people with complex needs. The model was later adapted and extended to other locations and is now responsible for having to provide a coordinated 'whole-of-government' support to children and young people with 'multiple and complex needs' in 17 locations across the state.⁶¹⁴ It is by far the most 'far reaching' integrated case management program. SCSF was formerly managed by the Department of Premier and Cabinet but, about 18 months ago, responsibility for its operation was shifted to Family and Community Services.

Our initial observations of the Dubbo model were positive.⁶¹⁵ Although resource-intensive and only able to assist a handful of families at a time, its initial successes in helping young people with complex needs demonstrated the value of the concept and that it should be developed and expanded. Yet the feedback from participating agencies about the subsequent SCSF model has been far less encouraging. A recent evaluation of the program confirms that there have been disappointing practical outcomes from the program over its seven years of operation.

Case study 30 – Supporting Children, Supporting Families

As part of our review of school-aged children in Western NSW, we consulted staff from agencies that participated in the program. They told us of the positive impact the program had when it first began. Despite emphasising that the concept of coordinated agency case management remained sound, they said positive outcomes had been rare in recent years. In feedback provided in late 2011, they cited a number of factors that had impeded the effective coordination of joint casework. These included:

- poor preparation, with some agencies that have key casework responsibilities attending the meeting with insufficient or outdated knowledge of the children's or families' circumstances

613 Michael Szyjan, ISP manager, speaking to an Institute of Criminology seminar, 'All in the Family? The use of Family Intervention Programs and Methods in Juvenile Justice', Sydney University, 24 October 2012.

614 Eastern Beaches, Blacktown, Campbelltown, Darling River, Lake Macquarie, Liverpool, Leichardt, Macquarie Fields, Mt Druitt, New England, Port Stephens, Richmond, St Mary's, Orana, Tuggerah Lakes, Parramatta and Wagga Wagga.

615 NSW Ombudsman, *Working with local Aboriginal communities – Audit of the Implementation of the NSW Police Aboriginal Strategic Direction 2003-2006*. A Special Report to Parliament, April 2005.

- agencies delegating attendance to inexperienced staff or relieving staff who lacked detailed knowledge of the families or who lacked the authority to commit their agency or organisation to a particular course of action
- confusion about processes for identifying when, and in what circumstances, decisions about jointly managed cases should be escalated from case managers to senior officer level or higher
- the development of a practice whereby agencies that nominate families for assistance were usually required to take on lead agency responsibility for the case, even if their agency had little direct involvement with the family and was not best-placed to coordinate the response and monitor progress
- the logistical difficulties associated with seeking input from and relying on the assistance of agencies that have few or no staff based in remote locations and haphazard attendance by some agencies, resulting in meetings being cancelled at short notice
- basic program governance problems, including frequent changes in responsibility for chairing the meetings and providing secretariat and other support, and
- due to staffing shortages, principally with Community Services, the program did not reach out to Brewarrina as was originally intended.

Remarkably, staff from participating agencies persevered with the program despite the numerous barriers to achieving positive outcomes and little to indicate that action would be taken to resolve these problems.

Against the background of these concerns, and after having received a complaint in 2012 from the mother of a 15 year old Aboriginal girl whose daughter's case had been referred to SCSF site in metropolitan Sydney, we decided to initiate an inquiry into the operation of the program. The young girl in question was at risk of educational neglect and had already had substantial contact with Police and Juvenile Justice. She was the subject of more than 300 police event records and had been charged with a variety of offences. Of significant concern, were recent records which showed that the girl and her friend were being supplied drugs in exchange for sexual favours. These matters were investigated by police. Due to the girl's risky behaviour and problematic school history, she was referred to SCSF.

During the course of our inquiry, we received information from agency representatives participating in the program that it was not operating well in that location and was not providing the type of support needed to manage the very complex risks faced by the girl.

We recently received FACS' response to our inquiry and it included a copy of an evaluation conducted by a firm of consultants in June 2012. The evaluation highlighted many of the same concerns that we had been raising around weak governance processes and poor accountability.

The other major integrated case management program, Family Case Management (FCM), began as a *Keep Them Safe* reform. The program was implemented in response to a Wood Inquiry recommendation that government agencies should identify their 'high end' users and provide these families with integrated, case-managed responses.⁶¹⁶ An evaluation of Stage 1 of FCM, which operated in three regions, provides useful insights into integrated case management practice generally; particularly in relation to issues such as determining who should be targeted for assistance, and how.

At least part of the problem is the complexity of the issues that these programs must tackle. Although FCM was established to identify 'high end' users and provide them with integrated case management responses, an evaluation found that its trial sites in Western NSW experienced acute difficulty in getting families with complex needs to engage with the program. A number of inter-related factors contributed to this problem, including uncertainty about which families to engage, limits to the capacity of staff to case manage clients with multiple and complex needs, a lack of training and local community distrust of participating services. In response, the FCM agencies shifted their focus to 'medium users' whose problems were less acute, but who were more willing to engage and who were easier to assist.⁶¹⁷ While shifting the focus of interventions from 'high end' to 'medium' users might increase the likelihood of achieving positive outcomes, this fails to resolve the issue of how the families with the most complex needs should be managed and supported.

Despite considerable government investment in these and other programs which are intended to improve the quality and availability of child protection and other community services in select locations, all have fallen well short of their objectives. Too often, these initiatives lack accountability and effective governance. In small, relatively isolated towns, the funding of programs intended to enhance service availability often leads to the creation of 'competing' programs,

⁶¹⁶ *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, November 2008, Recommendation 10.7.

⁶¹⁷ ARTD, *Stage 1 Family Case Management, Appendices for Interim evaluation report for NSW Department of Premier and Cabinet*, 27 April 2011, p.12.

each with their own reference committees and multiagency case management groups. Overlap in program objectives and the client groups that each targets, is another common feature of this disjointed approach.

The difficulties agencies experience in trying to coordinate and sustain their responses to families with complex needs was highlighted by the case of one young boy who was the victim of sexual abuse over a sustained period and who, a few years later when he was aged 14, was charged with 'aggravated indecent assault' for his alleged role in separate attacks by a group of boys on two girls in a local park.⁶¹⁸ In this case, local agencies had long recognised that the boy was at risk and engaging in increasingly risky behaviours, but repeated attempts at intervening failed.

Case study 31 – The need for ongoing and coordinated agency responses

The difficulties agencies have in trying to coordinate and sustain their responses to families with complex needs was highlighted by the case of B, an Aboriginal boy from Western NSW. In early 2007, when B was aged 10, a police investigation found that he and other young boys had been sexually abused by an Aboriginal support worker from their school over an extended period. The perpetrator, who admitted to the offences, later told police that he himself had been sexually abused over a four-year period when he was a child.

Then, three and a half years later, B was criminally charged for his alleged involvement in two attempted gang rape incidents. In the intervening period, local police and other agency staff recognised that B was at acute risk of 'going off the rails', and worked hard to get him and his family the help they needed. Progress was intermittent. Some interventions resulted in positive connections with the boy and his family, but none of the programs were sustained for long enough to have a lasting impact.

Although B was known to be at risk from a very young age, most of the 39 'child at risk' reports about him were submitted after he was found to have been sexually abused. About half were submitted by police. Most raised concerns about inadequate supervision, frequently running away from home, stealing food and staying out late at night. More than a year after the sexual abuse disclosure, the police officers who returned B to his parents' care one night (despite his objections to being taken home) submitted a 'child at risk' report that noted:

Previous child at risk reports indicate that [he] is the victim of serious offences which are currently before the courts. [He] and his mother are working with DoCS in relation to [his] behavioural problems. The reports also indicate that [he] is continually running away from home and not returning home after school and roaming the streets all hours of the night. These reports also indicate that [his] mother has concerns that [he] may be sniffing petrol (this was denied by [him]). [He] is on anti-depression medication... Police have extreme concerns for the welfare and safety of [B]...

The various attempts by agencies to help the boy and his family included referrals to a community mental health worker, a psychologist and a visiting sexual assault counsellor, to the local PCYC, to Community Services' Intensive Family Based Support (IFBS) program, to the interagency Anti-Social Behavioural Program (ASBP) and then to the Northern Territory's Brahminy residential program for 'at risk' young people. Some of these programs achieved some progress – but none provided the intensive, long-term mentoring and support needed to help B successfully reverse his disengagement from school, his increasingly aggressive and defiant behaviours and deteriorating family relationships, and his escalating contact with police while on the streets late at night.

It appears that an Aboriginal caseworker established a connection with B when the family was first referred to IFBS for a three-month intervention in August 2008. At that time, B was living in emergency foster care. He responded well to strategies aimed at improving his behaviour at school and at home. His family relationships improved and he was restored to his parents' care. IFBS's assistance then ended. Community Services referred the family back to IFBS in early 2009. Although his mother welcomed IFBS's renewed support, she was confused about why the first intervention had ceased. The family was also the subject of an ASBP referral for interagency case management.

In early 2010, with the active support of staff from local agencies and Juvenile Justice's Changing Habits and Reaching Targets (CHART) program, B gained a place on the Brahminy program. Despite experiencing difficulty when he first arrived, he was later reported to be making substantial progress. This ended prematurely when his mother, who had cancer, urged him to come home. Although all sources noted intermittent improvements in his behaviour after his return, concerns persisted. Various police, Juvenile

⁶¹⁸ The boy in this case study was identified after we asked police to provide us with data about Aboriginal children who had been the subject of a reported incident of child sexual abuse in the 12 focus communities during the life of the Interagency Plan (2007-2011). This process identified 248 Aboriginal children. By then interrogating the police records to identify whether charges had been laid, and the outcomes of those charges, we identified 85 juvenile suspects linked to these incidents. This boy was one of just two juveniles charged and convicted of sexual offences – though these were overturned on appeal.

Justice, Community Services and Education records note concerns about him 'running with the wrong crowd', his continuing difficulties at school and his mother and father's limited parenting skills. Later in 2010 he was charged for his alleged involvement in the indecent assault of two girls in separate attacks by a group of boys on the same night.

A few days after B was charged with the indecent assaults, his mother advised Juvenile Justice that he had been told not to return to school until his charges had been heard at court. It seems the school was concerned that attending school would put B in breach of apprehended violence orders (AVOs) intended to protect the victims of the assaults. Juvenile Justice contacted the local School Education Director, who helped put arrangements in place for B to return to school without breaching the AVOs. About a month later, the school contacted the local JIRT to report that B had walked out of class, thereby breaching his bail. His supervising Juvenile Justice officer contacted the principal, explained that the breach was not relevant to JIRT's investigative role, and queried why Juvenile Justice had not been contacted as previously agreed. Records indicate that, with the assistance of school staff, Juvenile Justice continued to monitor his behaviour and school attendance.

Further disruptions to his school attendance again put him in breach of his bail conditions in November 2010. On one occasion, the school contacted his father – who suggested calling the police. The school did so, without first contacting the Juvenile Justice officer as previously agreed. His mother and the Juvenile Justice officer then went to the school and spoke to the principal about the school's decision to call police. The principal agreed that the Juvenile Justice officer should escort B home, but the boy refused to go home until his mother finished work. Instead he went to the Juvenile Justice Community Office, where he did school work.

At the age of 15, he received an 8 month suspended sentence for the indecent assault matters – but it appears that this was later overturned on appeal. From mid-2011 he spent brief periods in custody for other matters. Then, in early 2012, he was sentenced to a minimum of one year in juvenile detention for aggravated break and enter, car theft and offences relating to a police pursuit.

Although the boy in this case lived in a town where agency resources were scarce and demand for assistance was high, it is clear that local agencies recognised the need to give his case priority attention and made every effort to help. The lack of coordination and episodes of poor communication highlight the need for agencies and other services to have an agreed, consistent contact to work directly with the family to provide hands-on support, monitor progress and confer with the family and agencies on any changes in the strategies being used. The agencies' records of the boy's case history indicate that the boy and his family were most responsive when someone linked to a program or agency was able to establish a personal connection and build a relationship of trust with the family. Yet each time that lead responsibility for intervening shifted to a new program or agency, this relationship-building had to start afresh.

The need for agencies to support an approach involving a 'hands-on' contact person playing a coordinating case management role becomes vital when a case – and the related agency activities – become more complex. After the boy in this case became the responsibility of Juvenile Justice and the many concerns about his frequent exposure to risks had been compounded by the need to manage the risks that he posed to other children, the complexity of his case increased and the demands on services accelerated. Despite agreement that keeping the boy engaged at school was crucial to achieving positive outcomes, there appears to have been no clear strategies on how agencies could help the school, the family and Juvenile Justice achieve this goal. Although the evidence indicates that the local Juvenile Justice officer succeeded in making a strong connection with the family and actively tried to help coordinate agencies' responses, confusion about who had authority to respond to various incidents, and what strategies to use, undermined the effectiveness of agencies' broader attempts to bring about positive change.

15.3.1 Coordinated Approaches for Complex Clients – FACS' new proposal

FACS has now acknowledged that its integrated case management programs need to be rationalised. In November 2012, it advised us of its plans to merge SCSF, FCM and Complex Case Panels under a single framework known as, 'Coordinated Approaches for Complex Clients.'

The framework is not confined to the families of children and young people in contact with the child protection system and will extend to adult clients of all FACS agencies. It is envisaged that the framework will achieve integration through 'local collaboration based on shared local data'. A lead agency will be assigned to manage individual cases, and two higher levels of regional and state-wide oversight will be created to deal with systemic barriers and obstacles.

We were asked by FACS to provide feedback on its draft framework, which is due to be rolled out in the first quarter of 2013.

In light of the problems that we have consistently highlighted in relation to the operation of integrated case management programs – including their limited results to date – we welcomed the direction being taken by FACS. However, although the general direction of the framework is positive, we informed FACS that we remain concerned about whether the proposed governance structures underpinning the program will be sufficient to overcome the significant problems identified in relation to the local operation of SCSF.

We were particularly concerned that the draft structure centred on FACS agencies only and, in all essential respects, was very similar to the structures already in place for the SCSF and FCM programs. Therefore, it is difficult to see how FACS will have the necessary ‘buy-in’ with partner agencies to overcome the problems associated with past weaknesses in governance. In our view, these weaknesses have been significant contributors to the less than optimal outcomes being delivered by existing integrated case management initiatives. During our discussions with FACS, we underlined the importance of any framework for integrated case management having more than just the ‘support’ of partner agencies and/or ‘linkages’ with related initiatives – instead, we stressed that it must be developed closely with human service and justice agencies, and be integrated with existing and planned initiatives (for example, the Department of Education’s *Connected Communities* strategy – which aims to put schools at the centre of service delivery in 15 school sites across NSW).

Although it is pleasing that FACS has recognised the flaws in approaches to integrated case management so far, it is concerning that such a pivotal program as SCSF, and its former incarnation, the Anti-Social Behaviour Pilot Program – so fundamentally flawed in terms of its design and implementation – could continue to operate for seven years.

15.4 What’s needed to deliver a genuinely integrated response?

When the Wood Inquiry into child protection services recommended that agencies develop more effective place-based supports to improve the coordination and cohesiveness of their interagency case management practices, it anticipated that each agency would first identify and assess ‘common high end users’ of frontline services.⁶¹⁹

The multiple issues and complexity of simultaneous needs affecting highly vulnerable adolescents, and other high end users of agency services, present immense challenges for communities across NSW. This is especially the case for communities in locations with chronic shortages in frontline service capacity and comparatively high numbers of vulnerable children and families. Despite considerable government investment in a variety of programs intended to improve the quality and availability of child protection and other community services in high-need locations, there are still no interagency case management frameworks capable of bringing together the mix of services needed to engage high end families in a meaningful way, and to sustain those intensive supports for long enough to be effective.

The two main multi-agency case management models operating in NSW have so far failed to deliver on what they promised. Both the Supporting Children, Supporting Families and the Family Case Management programs have demonstrated the central importance of creating strong local and regional governance arrangements to drive interagency case management initiatives and build a comprehensive, integrated service system over time. If FACS’ Coordinated Approaches for Complex Clients Framework does not properly wrestle with these issues of governance and accountability in relation to initiatives that must be delivered across human service and justice agencies, this framework is unlikely to be any more successful than its predecessors.

We have highlighted the benefits of Justice Health and Juvenile Justice’s screening processes, which provide opportunities to identify, and start responding to, the multiple needs of particularly vulnerable individuals. But the lack of integration between the programs and services provided in the juvenile justice environment, and those provided in the community, remains a crucial weakness.

The challenges associated with providing a continuum of care and support are compounded by a lack of appropriate services in many communities. In providing advice to our audit about the adequacy of services for Aboriginal young people, Juvenile Justice expressed frustration at the lack of coordination or partnerships ‘within and between’ various government services.

Juvenile Justice says a number of factors exacerbate these system failures, including: complexities and inefficiencies of state and federal funding arrangements; poor accountability resulting in targeted funding failing to reach Aboriginal people; and short funding cycles making it difficult to develop and implement evidenced-based programs and to create and retain a quality workforce with strong links to the community. One consequence of the huge service gaps created by these complex, inefficient and disjointed arrangements is that Juvenile Justice must invest heavily in brokerage arrangements in poorly serviced, high-need locations ‘to purchase services from local non-government agencies to perform specific follow-up with young people’.⁶²⁰

619 *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, November 2008, at 24.100.

620 Juvenile Justice response to NSW Ombudsman Requirement for Information, 14 September 2012.

However, our audit also found some positive changes. The relatively recent development of targeted supports such as Justice Health's Community Integration Teams (CIT) is helping to close these service gaps by connecting certain young detainees to the specialist and generalist services they need. While the CIT provide valuable post-release supports for juvenile detainees who experience mental illness or problematic substance abuse, they are only available in those locations that have access to CIT services and only where there are community-based services willing and able to provide this ongoing care. There is clearly a need to extend both the CIT and the capacity of supports in the community. There is also a need for these targeted initiatives to form part of a broader, overarching framework capable of connecting high-risk adolescents to the community-based supports needed to help them start creating a different future.

15.4.1 Progress towards a better service model for vulnerable teenagers

The evidence obtained from our audit of the Interagency Plan and our related community development and child protection work has demonstrated the need for greater investment in targeted, cost-effective strategies to improve the quality and availability of local community-based supports for highly vulnerable adolescents who are beginning to offend. In order to focus attention on this group, we circulated a discussion paper in July 2012 on the challenges associated with delivering services to highly vulnerable older children and young people.⁶²¹ After detailing the case histories of seven young people to illustrate the complexity of their needs, we concluded by summarising some of the significant policy and service delivery challenges involved in providing a cohesive service response to those needs, including the need to:

- better define and identify those older children and young people who are most vulnerable, focusing on particular child protection risks
- intervene early and provide targeted support before adolescent offending becomes entrenched
- develop better strategies for engaging marginalised older children and young people in the education system
- provide a comprehensive and integrated multi-agency case coordination response
- expand the availability of stable therapeutic residential support options, and
- strengthen responses to young people who are exposed to sexual predators.

As we noted at the outset of this chapter, the NSW Government commissioned FACS to establish a Vulnerable Teenagers Review to recommend strategies to reduce the numbers of older children and young people:

- re-entering Juvenile Justice
- affected by homelessness and long-term instability in their accommodation, and
- entering out-of-home care.

The Review's terms of reference will go well beyond the services currently provided by FACS.

Ultimately, the Review and other important initiatives must be planned and implemented in a way that forms part of a broader, more cohesive state-wide framework for identifying and responding to children and adolescents with complex needs. To achieve this, the framework must actively incorporate all major service providers, especially Education, Health and other universal services, but also community and non-government providers, and specialist agencies such as Juvenile Justice.

A major challenge for the Review will be to incorporate other major initiatives targeting this age group. Related developments in the juvenile justice system include the review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*; as well as the recent Youth on Track review into youth justice issues that the former Chief Executive of Juvenile Justice NSW conducted on behalf of the Department of Attorney General and Justice.⁶²² We were recently advised that recommendations arising from the Youth on Track review have been referred to Cabinet for consideration.

In seeking to create a new model for delivering education and training in NSW's most vulnerable Aboriginal communities, the *Connected Communities* strategy recognises that stronger links to services such as health, welfare, early childhood education and care, and vocational education and training are essential to achieving improved learning outcomes in high-need locations. By making participating schools the site for delivering a wider range of programs and services – not just education-specific services and not just during school hours – the aim is to open

621 NSW Ombudsman, *Service provision challenges in responding to very vulnerable older children and young people*, draft discussion paper, July 2012.

622 The aim of Youth on Track was to examine 'best-practice evidence-based research and policies in relation to the early identification of young offenders and early and entrenched offending in children and young people', and to identify 'the most effective ways to prevent young people from becoming involved in crime'. Juvenile Justice submission to the review of the *Young Offenders Act 1997* and the *Children (Criminal Proceedings) Act 1987*, December 2011.

the door for 'all key players with funding or a contract to deliver services locally, [to] sit around the table to identify resources, capacity and opportunities'.⁶²³

Although primarily an Education program, *Connected Communities*⁶²⁴ forms part of a broader scheme of planned reforms initiated by the NSW Government's Ministerial Taskforce on Aboriginal Affairs. Established in August 2011, the Taskforce is examining ways to enhance the overall wellbeing of Aboriginal people, starting with strategies intended to significantly improve educational and employment outcomes. Additionally, the Taskforce is exploring the related issue of improving service delivery to Aboriginal communities and the accountability mechanisms needed to make this happen.

15.4.1.1 Outcomes from FACS' expert panel

The panel of leading child protection and youth sector experts that FACS convened in October 2012 provided an excellent platform for confirming the major obstacles that must be overcome in order to deliver a much better response to this high-risk group. The interactive panel discussions also allowed NSW practitioners to hear from their Victorian counterparts about a range of innovative service models being developed and implemented across that state. Later in this section, we highlight a number of these models.

There was strong agreement among panel members that attempts to engage highly vulnerable teenagers are much more likely to succeed when they:

- are based on local community partnerships
- adopt models that develop 'place-based' community supports
- engage young people and link them with consistent 'natural supports'
- have access to an array of holistic 'wraparound' services, and
- include the option of providing intensive, targeted services and keeping consistent supports in place for as long as is needed.

Key obstacles to achieving this more cohesive, individualised service response are the current service fragmentation, constant shifts in responsibility and poorly implemented attempts at 'sharing responsibility' that often result in the failure of any one agency, or NGO, taking or at least being empowered to effectively take, overall responsibility for the service response. Members of the expert panel also noted other major obstacles, including:

- a lack of a coherent and inclusive state-wide policy to guide service provision
- collaborative partnerships always having to start from scratch because of a lack of formal agency commitments to these partnerships
- the reluctance of some established services to 'concede turf', and
- that privacy concerns are often deliberately misused as an excuse to withhold important case information.

The panel heard arguments that the integrated multi-agency 'Wraparound' model used in Milwaukee, and in some other parts of the United States, had gone some way to successfully overcoming a number of these challenges. Given its focus on young people with histories of sexually abusive behaviours, we had separately examined the Milwaukee model during our audit.

Case study 32 – Milwaukee Wraparound

The 'Wraparound' program run by Milwaukee County targets children and adolescents with serious or complex needs and who are at immediate risk of placement in residential treatment, juvenile detention or psychiatric hospitalisation. The county it services has almost a million residents and an area about two thirds the size of Greater Sydney.

The model relies heavily on Child and Family Teams made up of service providers, family, friends and other 'natural supports' from the family's social networks to create and implement individualised tailored care plans. Wraparound plans typically include a mix of formal services and interventions, together with community services and informal or natural supports provided by family, kin, mentors and others. Depending on identified needs, the individualised plans can include intensive services, such as multi-systemic therapy, motivational interviewing, cognitive behavioural therapy, offence-specific treatments and other recognised therapies, together with generalist supports such as mentoring.⁶²⁵ The team meets regularly to assess progress against

623 NSW Department of Education and Communities, *Connected Communities – Report on consultation*, 2012.

624 See Chapter 21 - Place-based service delivery for further discussion of this strategy.

625 S Gilbertson & P Goldfarb, 'Operationalizing a System of Care: Wraparound Milwaukee's Strategies for Serving Youth and Families with a history of harmful/high risk behaviour', from <http://gucchdtacenter.georgetown.edu>. Accessed 30 November 2012.

the agreed outcomes. As with wraparound-type programs elsewhere, there is flexibility to amend the plan when set-backs occur or outcomes fail to be achieved.

The Milwaukee Wraparound began in 1995 with the help of a six year \$15 million grant from the US Centre for Mental Health Services. The main sources of ongoing funding are the state and county agencies responsible for providing child welfare, health and juvenile justice and court services. Funds are pooled to maximise flexibility and to ensure that there is sufficient money to broker services for participating families. Wraparound Milwaukee draws from this pool to contract 72 care coordinators from nine community agencies, whose role includes facilitating service delivery from a network of 204 agency and individual service providers. There is also an on-call Mobile Urgent Treatment Team made up of psychologists, social workers, nurses, case managers and consulting physicians to provide crisis intervention services if needed.

The program actively targets young people with histories of sexually abusive behaviours. The 875 families enrolled in the program as at July 2012 included 216 'high-risk' young people, 73 juvenile sex offenders and 10 registered sex offenders.⁶²⁶ Since 2000, a total of 790 adjudicated juvenile sexual offenders have participated, including 147 in 2011. The average monthly cost for young people adjudicated of a sexual offence was \$4,225 in 2011, compared with an estimated \$8,500 a month for programs in detention centres and \$1,500 per day for in-patient psychiatric care. The average monthly cost for other Wraparound clients is lower at \$3,485.⁶²⁷

The rationale for including sexual offenders in Wraparound is that intensive treatment and supervision within the community has proven to be much more effective in treating sexually abusive behaviours than programs provided in custodial settings. Those who successfully complete community-based treatment have an extremely low rate of recidivism.⁶²⁸ Wraparound also claims to have contributed to a substantial drop in juvenile detention generally, from 375 youth placements in 1996 to 90 placements in 2008. Evaluations also indicate lower rates of recidivism, high program completion rates and improved school attendance.

A feature of the Wraparound model is that families receive coordinated support from the outset rather than being passed from one program or service to the next. It starts with a holistic assessment of the family's needs; creates a multidisciplinary team to form and deliver individual care plans; and aims to provide the team and family with simple, streamlined access to the information that is combined with the support and services they need. Where necessary, the tiered supports can include periods of intensive interventions such as multi-systemic therapy. These are intended to be provided with sufficient intensity and duration as needed to be effective. When appropriate, the supports can be 'stepped down' to less intensive options. Over time, the family and its 'natural supports' are expected to become the young person's main source of ongoing support.

Other features making the Milwaukee model worth considering in the NSW context are its pooled funding approach and its integrated delivery of the model across human service and justice agencies, and the non-government sector.

15.4.1.2 Innovative project development and delivery – Victoria

Closing these service gaps requires greater investment in transition points, and in fundamental services such as safe and suitable accommodation and in appropriate therapeutic responses. It also requires the active participation of universal service providers, notably Health and Education. For older children and adolescents, Education has a particularly important role to play in engaging or re-engaging young people in the school environment, and creating pathways into employment. The expert panel convened by FACS in October supported the arguments outlined in our *Keep Them Safe?* and *Addressing Aboriginal disadvantage* reports⁶²⁹ that programs to reduce the number of our most vulnerable older children and young people 'falling through the cracks' must be supported by place-based systems that have the capacity to systematically identify families who are at greatest risk, then provide those families with consistent service supports.

The Victorian members of the expert panel described two recent developments that have the potential to improve service capacity in that state, while improving the cohesiveness of those services. One recent change is the use of seed funding to encourage innovation in the development of new community-led initiatives to expand services for homeless people.

626 Wraparound Milwaukee program website, <http://county.milwaukee.gov>, Accessed 3 September 2012.

627 Milwaukee County Assistant District Attorney, Matt Torbensen, see S. Gilbertson & P. Goldfarb, 'Operationalizing a System of Care', from <http://gucchdtacenter.georgetown.edu>, Accessed 30 November 2012.

628 From S Gilbertson & P Goldfarb, 'Operationalizing a System of Care', from <http://gucchdtacenter.georgetown.edu>, Accessed 30 November 2012.

629 NSW Ombudsman, *Keep Them Safe?*, August 2011; *Addressing Aboriginal disadvantage: the need to do things differently*. A special report to Parliament under s31 of the *Ombudsman Act 1974*, October 2011.

Case study 33 – Seed funding to support community-led service innovation

Under a two-stage plan, a government-led health, housing, education and human services partnership will spend \$25 million over three years to develop Homelessness Innovation Action Projects. In the first stage (April 2012 to June 2013), there is seed funding to establish and deliver 10 projects.

Rather than invite tenders for government-prescribed services with mandated throughputs, the plan called for community-led proposals that can achieve specific service outcomes. These varied for particular cohorts, but for youth services they included 'has a regular income source, health issues are managed, is engaged in school, training or employment, has relevant life skills, is in stable accommodation, is connected to family/friends or the community, and is committed to their case plan'. The first stage also includes some funding to 'upscale' projects that demonstrate early success.

Stage II (July 2013 to June 2014) provides \$10 million to expand or continue those projects that demonstrate successful outcomes for clients.⁶³⁰

One of the 10 pilots funded in the first stage is the Geelong Project, an early intervention youth homelessness partnership between youth organisations, Swinburne University and schools and community services in Geelong. The supports provided by the Geelong Project's multidisciplinary teams of youth, family, education and employment, disability, mental health and drug and alcohol professionals have a particular emphasis on keeping their participants engaged in education.⁶³¹

The panel was told that strong senior executive leadership supporting this work had been an important factor in helping to break down some of the policy and funding 'silos'. This progress was linked to another recent development, an ongoing program of broader service delivery reforms that started with the restructure of Victoria's Department of Human Services.

Case study 34 – Integrating the delivery of interdepartmental services

In trying new ways to develop holistic, place-based services in areas of highest need, the Department of Human Services – whose responsibilities include housing, child, family and youth services, women and disability services – is implementing a number of service reforms. Initial changes include a restructure that has abolished the department's separate program areas, and taking on functions outside its portfolio, including certain education and economic development responsibilities.

As a result of these reforms, it was able to use Education land to build on-campus facilities for its Youth Foyers project, an early intervention and prevention model targeting youth homelessness. The Government has committed \$30.1 million to develop three 40-bed Youth Foyers on the campuses of TAFE colleges⁶³² to provide young people with stable accommodation and 'the right support' from a consortium of support agencies, including homelessness support services, education providers and housing managers with links to health and welfare services.⁶³³ The foyers' service 'platforms' focus on the place, the learning, personal skills, accredited education, and strong links with health services. TAFE's expertise in working with disengaged students influenced the decision to co-locate the foyers on TAFE sites in high-need locations.

Although the Department of Human Services has primary responsibility for funding and supporting Youth Foyers, it has initiated Services Connect, a program intended to develop and trial organising frameworks in two regions to support better integration of government support for these kinds of 'managed support' initiatives in the future.⁶³⁴ One feature of the proposed reforms is streamlined case management practices for individuals and families accessing various services. Under this case management model, the aim is to create 'one needs identification → one client record → one key worker and team → one (family) plan'.⁶³⁵

While still in their early stages of development, efforts by government to strengthen the integration of work across portfolios to improve outcomes for vulnerable children are guided by three key policy principles:

- shared responsibility across government, the sector and the community for protecting vulnerable children and their families
- connected services that cut across silos and better meet the needs of children and families
- working in local areas to provide better services in areas with high concentrations of vulnerability.⁶³⁶

630 Department of Human Services, Call For Submissions, Family Violence and Homelessness Innovation Action Project/s 12/7770, 5 July 2012.

631 Source, www.timeforyouth.com.au Accessed 1 December 2012.

632 Department of Human Services, *Human Services: The case for change*, 2011.

633 Media release, the Hon Wendy Lovell MLC, Minister for Housing, Children and Early Childhood Development, 26 April 2012.

634 G Callister, Secretary, Department of Human Services, *Human Services: The case for change*, presentation.

635 Department of Human Services, *Human Services: The case for change*, 2011, p.28.

636 Victorian Government, *Victoria's vulnerable children: Our shared responsibility*, Directions Paper, May 2012.

15.4.2 Conclusion

There is no doubt that NSW must move to a more integrated approach. The current system for engaging high-need families is complex, inefficient and disjointed, with duplication in some areas and enormous gaps in others. There is a need to invest in building service capacity across the state, including investing in the skills of those who are responsible for delivering better outcomes to clients. Interventions should also aim to put the needs of individuals, families and local communities ahead of the needs of programs and agencies, and aim to provide streamlined, cost-effective access to the right support.

In developing a high-level framework to support more efficient and effective place-based case management practices, a number of the principles underpinning service integration reforms in Victoria⁶³⁷ and those used in the Milwaukee Wraparound program to foster cohesive, integrated service systems, could be applied to the NSW context.

Recommendations

64. Against the background of past and current initiatives focused on providing an integrated, multi-agency response to those older children and younger people who are at most at risk in connection with their self-destructive and/or offending behaviour, we recommend that the NSW Government considers the observations made in this Chapter with particular regard to:
- a) Addressing the need to enhance the service system's 'early intervention' capacity both in terms of intervention 'early in life' and 'early in the pathway' towards self-destructive and/or offending behaviour.
 - b) Making the structural changes required to enhance the capacity of services delivered in the community to provide a continuum of therapeutic (and other) supports to young offenders who are exiting the juvenile justice system.
 - c) Considering how Justice Health's CIT⁶³⁸ and ACCT⁶³⁹ initiatives will be sustained post the expiry of the Indigenous Health National Partnership Agreement in mid-2013.
 - d) Addressing the need to formalise the collaborative arrangements between Justice Health and its partners within communities (including community-based services). These arrangements should deal with matters such as:
 - the nature of the client group
 - assessments as to eligibility for support
 - the nature of the support to be provided.
 - e) Ensuring that there is an evaluation of the success of the ISP⁶⁴⁰ model and the ANTS⁶⁴¹ program in the Western region with the view to considering whether these initiatives should be expanded.
 - f) Ensuring that FACS' Vulnerable Teenagers Review and its proposed *Coordinated approaches for Complex Clients* are integrated with a range of existing and planned initiatives (for example, *Connected Communities*, the work of CIT services, the ISP program etc) and ensure that the proposed program has the support of key government and non-government Human Services and Justice agencies, and the necessary governance and accountability arrangements in place to minimise the risk of program failure.
 - g) Determining how government will evaluate whether current and future work that is being, or will be, undertaken to strengthen the integration of work across portfolios to improve outcomes for vulnerable older children and younger people ultimately leads to:
 - i. Shared responsibility across government, the sector and the community for protecting vulnerable children and their families
 - ii. Connected services that cut across 'silos' and better meet the needs of children and families
 - iii. Demonstrated success in providing better services in areas of high concentration of vulnerability, and
 - iv. Positive evidence-based outcomes for vulnerable older children and younger people (including clear evidence of improvements in the six areas that we identified in Section 15.4.1 of this chapter).

637 Department of Human Services, *Human Services: The case for change*, 2011, p.27.

638 Community Integration Team.

639 Adolescent Court and Community Teams.

640 Intensive Supervision Program.

641 Act Now Together Strong Program.

Chapter 16. Therapeutic responses to sexually abusive behaviours

When sexually abusive behaviour brings children and young people into contact with the health, child protection and criminal justice systems, this should prompt an assessment of whether the behaviour warrants referral for casework or therapeutic intervention. Until recently, children and young people who sexually abused other children received limited attention. Although this abuse was seen largely as an issue that should be managed within a criminal justice framework, charges and prosecutions were rare – especially for children aged 10-14 years where, in addition to proving the child committed the wrongful act, the prosecution must also prove that the child was capable of forming the necessary criminal intent.⁶⁴²

Changes over the past decade have significantly raised awareness of sexual abuse by children, together with the negative social, emotional and financial consequences of these behaviours.⁶⁴³ There have been marked changes to treatment strategies, spurred on by a growing awareness that sexually abusive behaviours by children and young people respond well to therapeutic interventions. Treatment strategies are moving away from an adult sex offender model, and now emphasise more holistic, child centred, family focused interventions which recognise that the sexually abusive behaviours must be addressed in conjunction with other concerns. This means that the effects of issues such as, family violence, exposure to pornography, mental health, and multiple placements in care must be tackled along with the sexually abusive behaviours.

In NSW, these recent changes in therapeutic strategies have been accompanied by a small expansion in treatment services. Children under 10 are primarily the responsibility of NSW Health's already stretched sexual assault and child protection services which often have limited capacity to provide specialist help to children who sexually abuse other children. There is also a handful of specialist programs in the community for older children and young people who are not involved in the criminal justice system but display sexually abusive behaviours, such as the New Street program. Yet despite the recent expansion of these services to a handful of regional centres outside Sydney, the demand for treatment far exceeds supply. There are also no clear referral pathways for young people who are criminally charged, but not yet convicted – leaving a significant group of potentially high-risk cases with no service response.⁶⁴⁴

The *Breaking the Silence* report identified the need for additional and improved services for young people with sexualised behaviours who are not involved with the criminal justice system. The report argued that Aboriginal communities in high-need rural locations were particularly poorly serviced in this regard.⁶⁴⁵ In response, the prevention and early intervention component of the Interagency Plan highlighted the importance of intervening at 'strategic points in time' to reduce the occurrence of child sexual assault in Aboriginal communities. The Plan envisaged more coordinated delivery of prevention and early intervention services and effective support for families at risk. The need for effective treatment to prevent escalation and recidivism of sexual assault crimes for 'young sex offenders' was singled out by the Plan for specific attention.

The Interagency Plan foreshadowed that treatment programs would be developed that effectively target young people who have engaged in, or are at risk of engaging in, sexually abusive behaviours in order to prevent entrenched 'patterns of sexual offending'. The Plan specifically referenced 2005 research indicating that 'on average, perpetrators commit their first child sex offence during adolescence (around 12 years old)' and noted that 'evidence demonstrates that treatment programs for young people are effective and can reduce sexual re-offending'.⁶⁴⁶

Action 56 directed Health to:

Establish an additional community-based treatment program (based on the New Street model) to service rural areas to treat Aboriginal children and young people under 10 years and 10-17 years who sexually offend or display sexually abusive behaviours, which is accessible through self and agency referral and operates outside the criminal justice and child protection systems.

642 Section 5 of the Children (Criminal Proceedings) Act 1987 creates an irrebuttable presumption that a child under the age of 10 years cannot be guilty of a criminal offence. For children aged 10 to 14 years, the common law doctrine of *doli incapax* creates a rebuttable presumption that a child under the age of 14 is not capable of forming the intent necessary to commit a crime. This means that children aged 10 to 14 may be charged, but that the prosecution must prove that the child defendant committed the wrongful act and that in committing the act he or she knew that it was wrong in the criminal sense.

643 Barbaree, H E, and Marshall, W L, *An Introduction to the juvenile sex offender, terms, concepts and definitions (chapter 1)* in Barbaree & Marshall (eds.), *The Juvenile Sex Offender*. Guilford Press, 2006.

644 However, we acknowledge that providing services to children who have been charged, but not convicted, entails a range of complexities involving their legal and human rights.

645 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future*, 2006, p.51.

646 NSW Government, *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, pp.19-20.

The first Rural New Street program was established in 2008 at Tamworth. *Keep Them Safe* funding was provided to extend Rural New Street services to Newcastle in 2010 and to create an additional service in Dubbo in 2011. The Hunter New England Local Health District also received *Keep Them Safe* funding in 2009-2010 to provide services for children younger than 10 years who display inappropriate sexualised behaviour.

In its final report on the Plan's implementation, the Ministerial Advisory Panel on Aboriginal Child Sexual Assault (MAP) highlighted that the New Street service does not provide services for children under 10 years old, noting that this is an 'ongoing area of need'.⁶⁴⁷ With the exception of the New Street 'Sydney' service – which is funded by Community Services to work with children as young as eight years old – the target age group for the program is children 10 years and older.

During the initial rollout of the Interagency Plan in 2007, the focus on enhancing services to children under 10 appears to have been secondary to the establishment of the Rural New Street services. Our review of the evidence provided by Aboriginal Affairs and Health indicates that it was not until the implementation of *Keep Them Safe*, that steps were taken to start enhancing the services available to this younger age group. The separate but related governance processes used to monitor the implementation of Interagency Plan actions that were also reflected in the *Keep Them Safe* action plan, appear to have contributed to the MAP not being given accurate information to inform its views about this important service need.

During our audit, we sought information from Health to identify the nature and distribution of therapeutic services available for children and young people who sexually abuse or who display problematic sexualised behaviour, to assess the capacity of the service sector to respond to demand for these types of services. We also required specific information about the participation of Aboriginal clients in these services. In doing so, we had regard to the concerns raised by the MAP in early 2012 about the ability of Rural New Street to provide a culturally appropriate service to Aboriginal children and young people:

*...the MAP is concerned about reported issues such as high staff turnover, lack of appropriate training of Aboriginal counsellors, and whether New Street is an appropriate model for Aboriginal children and young people.*⁶⁴⁸

From the documentation that we read it was not evident that efforts were made by Aboriginal Affairs to examine data relating to the substantially increased Aboriginal participation rate in the program; nor was there any analysis of the considerable steps taken by New Street to improve its recruitment and development of Aboriginal staff to deliver a culturally responsive service model.⁶⁴⁹ In this regard, the Interagency Plan performance framework did not include any indicators relating to the numbers of Aboriginal children and young people who accessed treatment programs for sexually abusive behaviours; nor was there any reference to such data, or to the performance of Rural New Street, in the final report on the future direction of Aboriginal child sexual assault that was prepared by Aboriginal Affairs.⁶⁵⁰ In response, we sought data relating to these issues from Health as part of our audit. In section 16.3.3 we discuss the New Street network's success over recent years in dramatically increasing the participation of Aboriginal clients in the program. However, in doing so, we note the program's limitations in reaching Aboriginal children and young people living in more remote parts of Western NSW.

In relation to therapeutic treatment programs for Aboriginal young people in a custodial setting, the Plan directed Juvenile Justice – through Action 69 – to review its current sex offender programs and adapt them where necessary to suit the needs of Aboriginal young people. This action was completed. However, discussions with Juvenile Justice and Justice Health revealed that the sex offender programs delivered within both the custodial and community supervision environments face a number of challenges. The limited period of time that Juvenile Justice has to work with young detainees, and those on community supervision orders, together with the often poor linkages made with services for young people when they exit Juvenile Justice, will often have a detrimental impact on the success of these interventions. In this chapter we discuss ways to ensure a much better continuum of care for this very high-risk group.

Our audit has revealed that as with many other jurisdictions, specialised therapeutic services in NSW have evolved in a piecemeal fashion. Despite the multi-faceted nature of the problem, individual agencies have largely been left to develop their respective responsibilities without the aid of an overarching policy⁶⁵¹ or legislative framework to guide overall service planning for this work. The reforms made by the Victorian Government in 2007 to implement a state-wide therapeutic treatment scheme for all reports of sexual abuse by children and young people under 15 years old, provides an example of an overarching framework. We discuss the Victorian model and its applicability to NSW later in this chapter.

647 Ministerial Advisory Panel on Child Sexual Assault in Aboriginal Communities, *Report to the Minister for Aboriginal Affairs*, February 2012, p.6.

648 Ministerial Advisory Panel on Child Sexual Assault in Aboriginal Communities, *Report to the Minister for Aboriginal Affairs*, February 2012, p.5.

649 We were provided with documentation relating to Aboriginal Affairs' monitoring of the Plan's implementation.

650 Aboriginal Affairs response to the NSW Ombudsman Requirement for Information, 23 October 2012.

651 We note that the New Street services network operates through one framework that includes interagency partners in regular advisory board meetings.

16.1 Ensuring broad labels don't inform service planning

When working with sexually active children and adolescents who engage in abusive or coercive behaviours, there is wide agreement that the language used should accurately describe the behaviours of concern – and avoid the use of broad, negative labels such as 'sex offender' and 'perpetrator'.⁶⁵² Therapists emphasise that treating sexual abuse as a 'behaviour that can change with intervention', is a way to open doors to important possibilities – starting with the young person who committed the sexual abuse taking responsibility for their abusive acts and acknowledging the impact such behaviour has on others.⁶⁵³

The most commonly used terms – 'problem sexual behaviours' and 'sexually abusive behaviours' – cover a wide spectrum of sexualised acts, yet the terms overlap and each can include behaviour that is coercive and involves force. Although there is currently no agreed approach to the terminology, the term 'problem sexual behaviours' is often applied to children below the age of criminal responsibility, and the term 'sexually abusive behaviours' is often used for older children and young people. Clinicians and researchers warn that using age in this way is problematic. Conflating all sexualised behaviours by children aged 10 or older as 'sexually abusive behaviours' is misleading and counterproductive. Conversely, children below the age of criminal responsibility are capable of using coercion or force to engage other, usually younger, children in sexual activity. Referring to these acts merely as 'problem sexual behaviours' understates the harm these acts can inflict on victims, and can impede recognition of the urgent need for specialist care for the child responsible for the act.⁶⁵⁴ These age-based distinctions are sometimes reflected in departmental policies, and can influence decisions about whether a child's behaviours might warrant therapeutic intervention.

Therapeutic services in NSW, such as the New Street Sydney and Rural New Street programs, can provide specialist treatment for young people who sexually abuse others only if there has been a decision not to proceed with criminal charges. Experienced clinicians working in this area have observed that, in practice, once a decision is made to treat an incident or series of incidents as a potentially actionable offence and the young person as a suspected offender, it is rare for police and others involved in the criminal justice process to consider the young person's therapeutic and child protection needs. If the young person is convicted, sentenced to juvenile detention or community supervision, and assessed as eligible for a treatment program, then treatment may be provided. However, treatment is much less likely to be provided to those who are charged, but not convicted. This leaves a potentially very high-risk group of young people with no treatment for their sexually abusive behaviours, and few incentives to consent to treatment and complete the treatment program even if it was offered.

As most sexually abusive behaviours will not attract a criminal sanction, decisions on whether to charge the young person should not influence assessments of their therapeutic needs.

16.2 How prevalent is sexual abuse and problem sexual behaviour among children and young people?

Understanding the prevalence of sexually problematic or abusive behaviours by children and young people is essential to planning services and interventions, but accurate estimates of the level and types of abuse are difficult to determine. The Mental Health Coordinating Council⁶⁵⁵ and NSW Sentencing Council⁶⁵⁶ quote research that estimates that children and young people are responsible for about a third of all child sexual abuse.

There is growing recognition that siblings are responsible for a significant proportion of child sexual abuse and assaults. Although largely hidden, sibling abuse is often considered to be the most common type of intra-familial abuse, the least reported, and the least analysed and discussed.⁶⁵⁷ The secrecy that often surrounds sibling abuse makes it difficult to determine its prevalence. Some sources estimate sibling assaults to be five times more prevalent than father-child assaults,⁶⁵⁸ and that about half of adolescents who perpetrate sexual offences do so against a sibling.⁶⁵⁹ The New Street Adolescent Service has estimated that half of its cases relate to abuse against a sibling.⁶⁶⁰

652 W. O'Brien, *Problem sexual behaviour in children: A review of the literature*, ACC, 2008, p.7.

653 While there are a range of similarities between children under ten and young people over ten in this group, there are also many differences such as the capacity of a child under-five to 'take responsibility'.

654 W. O'Brien, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, ACC, 2010, p.14.

655 Mental Health Coordinating Council, *Reframing Responses, Stage Two: Supporting women survivors of child abuse — an information resource guide and workbook for community managed organisations*, 2010, p.11.

656 NSW Sentencing Council, *Penalties relating to sexual assault offences in New South Wales, Volume 3*, May 2009, p.109.

657 D. Tolliday, Reintroducing young people to their family where there has been sibling sexual abuse, Child and Family Welfare Association of Australia Inc. (CAFWAA) and Centre for Excellence in Child and Family Welfare 2005 National Symposium.

658 Carlson, Maciol & Schneider (2006), in Heyman S. & Tolliday D., *Responses to sexual assault including sibling sexual assault*, presentation dated 30 November 2011, www.keepthemsafe.nsw.gov.au Accessed 9 October 2012.

659 Latzman, Viljoen, Scalora & Ullman (2011), in Heyman S. & Tolliday D., *Responses to sexual assault including sibling sexual assault*, presentation dated 30 November 2011, www.keepthemsafe.nsw.gov.au Accessed 9 October 2012.

660 Review of NSW Health Counselling Services, Final Report to NSW Department of Health, 11 February 2011, ARTD Consultants, p.71.

The Aboriginal Child Sexual Assault Taskforce (ACSAT) has said that its consultations with Aboriginal communities have revealed a strongly held belief that sibling abuse is a major contributor to child sexual assault among Aboriginal people. Furthermore, community feedback has indicated that sibling abuse is 'rife' in some communities.⁶⁶¹ However, it is likely that family reluctance to report incidents and involve authorities will always be a factor that inhibits the ability of agencies to uncover and respond to sibling sexual abuse.

16.2.1 What does the data indicate?

It is not possible to estimate the prevalence of sexually problematic or abusive behaviours by children and young people by viewing mandatory reporting, criminal incident or health service data in isolation. Currently, there are no uniform requirements on agencies for collecting and using data about children with sexualised behaviours. This is partly because police, courts, child protection and health services each have differing responsibilities and data needs.

During our audit we examined data that has potential relevance to the level of involvement of children and young people in reported problematic sexualised behaviours and sexual abuse.

Police data on all reported sexual abuse offences for the five year period of the Interagency Plan's operation, shows that each year about 900 juveniles on average are implicated as suspects in these offences.⁶⁶² Over the same five year period, 16% of the sex offences that juveniles were suspected of committing led to a charge.

As previously noted, juveniles the subject of criminal charges are less likely to be referred to a community-based diversion program such as New Street. And, due to the small number of juveniles convicted of sexual offences, only very few will participate in programs offered by Juvenile Justice.

Most juveniles who are reported to police as suspected sexual offenders should also be the subject of risk of significant harm reports made to Community Services for 'child inappropriate sexual behaviour'.⁶⁶³ For children younger than 10 years, state-wide mandatory reporting data held by Community Services is the leading source for estimating the number of children who may benefit from a therapeutic response to address their sexualised behaviours.⁶⁶⁴ However, to obtain a more 'refined' snapshot of potential need in this area, it is much more useful to utilise information that has been the subject of further assessments by local Community Services Centres (CSC) following the Child Protection Helpline's initial receipt and assessment.

Child protection data for 2010-11 relating to children of all ages shows that 2,197 risk of significant harm reports made to Community Services involved 'child inappropriate sexual behaviour' as the most prevalent reported issue – this represents just over 2% of all reported issues.⁶⁶⁵ The annual public reporting by Community Services does not break this data down further by the number of children associated with the reported issue, their age or Aboriginality. However, we understand such a report can be produced by Community Services. Data that Community Services provided to us for our audit showed that the majority of the reports of this kind referred to a CSC for a response involved children nine years and under.⁶⁶⁶

While Health was able to provide us with 2011 service data for the New Street – Sydney, Rural New Street – Western, Rural New Street – Hunter New England and the Sparks program,⁶⁶⁷ almost all Local Health Districts (LHDs) were unable to provide figures on the services they provided to children under 10 years with problematic sexualised behaviour or how many children were refused help because they made no disclosure of victimisation or due to capacity constraints.

There is scope to strengthen the use of the various state-wide data to inform high-level service planning in this area of need. Part of any assessment of the level of need for therapeutic services would also need to include relevant local agency data within particular locations.

661 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.3.

662 NSW Bureau of Crime Statistics and Research.

663 Reports at the lower end of the risk threshold about this issue should be made to the Child Wellbeing Units operated by Health, Police, Education and FACS.

664 The JIRT sexual abuse criteria indicates that local Community Services Centres (CSCs) will assess reports made to the Helpline about 'sexualised behaviour and allegations where offenders are 10 years and under'.

665 Department of Family and Community Services: *Community Services, 2012, Annual statistical report 2010/2011*, Information Management Branch Planning and Corporate Performance Directorate, p.32.

666 Data was provided by the following age categories: 0-5 years; 6-9 years; 10-14 years; 15-17 years and age not stated for a small number. Reports are categorised as being referred to a CSC or a 'JIRT' for a response.

667 Formerly known as the Hunter Sexualised Behaviour Program.

16.3 Availability of community-based therapeutic treatment

Despite recent enhancements to therapeutic programs – due in part to the implementation of Action 56 of the Interagency Plan and *Keep Them Safe* funding – there are still relatively limited treatment options in NSW available to children and young people who display sexually coercive or abusive behaviours. The few specialist treatment programs that are available are located in Sydney, Newcastle and a few regional locations. All operate at full capacity. There are also a range of factors⁶⁶⁸ which impact on the entry criteria for these programs, further limiting access to treatment for many vulnerable children.

In his final report, Justice Wood called for ‘integrated, multi-disciplinary and co-located’ services to be ‘established in locations of greatest need, by outreach if necessary’. Justice Wood recommended an expansion of the availability of ‘...sexual assault counselling, forensic services for sexual assault victims, PANOC services, services for adolescents aged 10-17 years who display sexually abusive behaviours...’⁶⁶⁹

The New Street network of services delivered by NSW Health provides the primary program for specialised treatment for young people aged 10-17 with sexually abusive behaviours in the Sydney, Newcastle, Tamworth and Dubbo areas. Eligibility to access the program requires ‘confirmed’⁶⁷⁰ evidence that sexual abuse has occurred and a decision by investigating authorities not to prosecute. High-need children and young people and families living outside these areas are sometimes referred to NSW Health’s sexual assault services; or to child, youth and family counsellors, child and adolescent mental health services or child protection counselling services. The Department of Family and Community Services (FACS) also contracts service providers to deliver therapeutic treatment for this cohort. For example, New Street Sydney has been contracted by FACS since 2007 to work with young people (aged eight to 17 years) with high and complex needs living in out-of-home care who have demonstrated sexually abusive behaviours.

The Hunter New England LHD operates the Sparks program, a specialist service for children under 10 years who demonstrate problematic sexualised behaviours living in the Hunter region. The difference between this specialist program and many of the services provided by other LHDs for this group of children, is that eligibility is not predicated on the children first having to disclose that they have been victims of sexual abuse themselves. In fact, a number of the responses that we received from LHDs indicated that sexual assault services have been confused about their role in these cases and there have been inconsistencies in the services provided.

The limited availability and uneven geographic distribution of specialist counsellors is highlighted by the NSW Commission for Children and Young People’s register of practitioners who are accredited to work with children and young people who sexually offend against children. Most are based in metropolitan and large regional centres and about 80% of the listed practitioners are employed by one of the specialist programs such as New Street or in-custody programs managed by Juvenile Justice or Corrective Services.

In terms of residential facilities, New Pathways is Australia’s only out-of-home care residential program that works with young people with both complex needs and sexually abusive behaviour.⁶⁷¹ Established in 1997, New Pathways receives about \$1.6 million annually from Community Services⁶⁷² to provide highly structured treatment and support for males aged 12 to 17 years.⁶⁷³ The service is run by the Youth Off The Streets foundation. It operates from a rural property in the Southern Highlands, south of Sydney. Although expensive, an ARTD Consultants evaluation in 2009 found that the estimated annual cost of \$253,148 per client is broadly consistent with Community Services’ payments for other forms of high-range intensive residential care.

There are significant challenges in finding safe and stable placements for young people with sexualised behaviours, and multiple placement breakdowns are common. The only other services actively working with this group of young people are the New Street network, and Juvenile Justice’s programs for sexual offenders. While the New Street model is more cost-effective on many measures, its ability to treat high-need young people requires that they be able to find safe and stable accommodation in the community. For a small number of highly vulnerable young people, New Pathways might be their only safe alternative to juvenile detention.

As we discuss in section 16.4, there are numerous impediments to delivering effective therapeutic interventions in a custodial environment including the limited time allowed by a control order or a community supervision plan. In addition, as the data in the previous section shows, only a very small number of young people enter treatment via proven criminal convictions. For this reason, it is crucial that there are adequate services available in the community to respond to young people who sexually abuse or who display problematic sexualised behaviours across NSW.

668 For example, Community Services must confirm the ‘sexually abusive behaviour’.

669 Recommendation 10.4, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, November 2008.

670 ‘Confirmed – matters reported, appropriately investigated and view formed the young person had sexually abused another’. Email from Dale Tolliday, Clinical Adviser, New Streets & Cedar Cottage Services dated 12 December 2012.

671 Who have not been dealt with via the criminal justice system.

672 In 2010-11 Community Services allocated \$1,646,285 for the program – *Family and Community Services Annual Report 2010-11*, Funds Granted to Non-Government Organisations, p.72.

673 L Berry and C Herring, presentation to 2nd Annual National Juvenile Justice Summit, Melbourne, 9-10 March 2011.

These services must have clear referral pathways, and be well integrated with justice and human service agencies and funded non-government organisations.

As the discussion below illustrates, the evidence provided by Health about its lead programs and services in this area is very encouraging. However, once again, the problem is not one of quality but quantity. For Aboriginal children in particular, many of whom live in remote parts of the state, accessing culturally competent and quality treatment programs is even more of a concern given the limited geographical reach of the Rural New Street service.

16.3.1 Services for children under 10

NSW Health has lead agency responsibility for 'whole-of-government' responses to children under 10 who exhibit problem sexual behaviours or sexually abusive behaviours. For this reason, we asked all LHDs to provide us with advice on the assistance their local sexual assault services have given to children under 10 years.

16.3.1.1 The need for reliable service data for this age group

Most LHDs were unable to provide figures on the number of children referred for counselling and other assistance for their problematic sexual behaviours, what proportion were Aboriginal or whether the services provided are sufficient to address current demand. The few that were able to provide partial figures confirmed that there is a need for these services. Mid North Coast LHD said one of the centres in its district reported that 16 children under 10 were referred for assistance in 2011 (including five Aboriginal children). Services were provided to a third of those who had been referred (two non-Aboriginal and three Aboriginal children). A notable exception to this inability to provide basic data was the handful of LHDs that had access to a specialist service operating in their district such as New Street or the Sparks program.

Individual sexual assault services need to know which children and families are eligible for assistance. Similarly, Health needs data on the number of children currently being referred for help to deal with their problematic or abusive sexual behaviours, the reasons for the referrals and how many are being turned away and why. While it is apparent that some services are responding, others aren't. And when services are provided, Health has no way of knowing whether the interventions are helping, hindering or having no impact at all.

The lack of data about this service area is a significant deficiency. Without basic information, there is no way to assess the adequacy of current services and how they could be improved.

In its response to our notice requiring information, Nepean Blue Mountains LHD foreshadowed the 'imminent' introduction of a new Ministry of Health policy that will include a requirement for LHDs to begin to collect 'data relating to this client group'.⁶⁷⁴ As we noted in Chapter 10, Health is currently updating its database to capture Sexual Assault Service data. Therefore, this presents an opportunity to build in data collection relating to the number of children referred to services for counselling and other assistance for their problematic sexual behaviours, as well as data relating to service outcomes.

16.3.1.2 Health's policy on service eligibility

Most LHDs indicated that services are provided only if the children displaying the sexualised behaviours also disclose that they have been victims of sexual assault. A number of LHDs expressed frustration at the 'policy requirement' that eligibility to access counselling depended on there also being a disclosure of victimisation. One regional LHD stated:

*Services are provided inconsistently in the [Murrumbidgee] LHD to children under 10 years who display sexualised behaviours. This is generally due to lack of clarity about the role they should play in these cases given the minimal policy guidelines relating to sexualised behaviours where abuse has not been confirmed.*⁶⁷⁵

Others, such as Hunter New England LHD, indicated that the sexual assault services in their district apply a more pragmatic approach:

*All SASs...provide this type of service where there is substantiated (or a belief is formed) that the child has been sexually abused.*⁶⁷⁶

⁶⁷⁴ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

⁶⁷⁵ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

⁶⁷⁶ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

Far West LHD indicated that it wants to work with the under 10s group, but presently lacks the staffing capacity to do so:

*This service is currently not provided by the Broken Hill Sexual Assault Service, as the current counsellor is not trained in working with children under 10 years. Also, as there is currently only one counselling position filled, it is not possible for this counsellor to work with both the victim and the other child who has displayed sexually abusive behaviours towards them.*⁶⁷⁷

In its response, Northern NSW LHD explained that the current policy relating to services provided to this client group is dated and lacks the resources needed to sustain it:

*...as per MOH [Ministry of Health] policy, [sexual assault services] within the NNSW LHD provide services to children under 10 with problematic or abusive sexual behaviours only when those children are also victims of sexual abuse... In 1997/98 the MOH introduced the 'Children Under 10 with Sexualised Behaviours Program' but with no funding attached.*⁶⁷⁸

Northern LHD listed a number of positive local initiatives that arose as a result of efforts at that time to implement this program, including specialist training for local staff, but concluded that:

*It was not possible to sustain commitment to this program in the absence of any [budget] enhancements. This critical need for a program of this nature is recognised locally...*⁶⁷⁹

An Issues Paper published by NSW Health in 2005, *Responding to children under 10 who display problematic sexualised behaviour or sexually abusive behaviour*, highlighted research showing that it was common for children who have been sexually abused 'to react by exhibiting sexualised behaviours'. The authors explained that this had prompted some to wrongly 'purport' that children who display problematic sexualised behaviours or sexually abusive behaviours, must also have experienced sexual abuse:⁶⁸⁰

*However, while studies suggest that sexually abused children display more sexual behaviour difficulties than other children...there have been no conclusive studies to demonstrate that sexualised behaviours are in themselves a reliable predictor of a sexual abuse history. Studies of children with sexualised behaviour problems have found substantiated sexual abuse histories to exist in between 38% and 48% of cases.*⁶⁸¹

The authors emphasise that health workers should therefore take care to avoid assumptions that children with sexual behaviour problems have histories of sexual abuse. However, they acknowledged the practical difficulties this can present when providing therapy and support to children who might or might not have been abused in the past.

*Also tied to the question of whether individual cases have a history of sexual abuse is the need for care on the part of health workers in treating these children. Where children do have a history of abuse, they are often reluctant to disclose this history. If a child does disclose, it is often only after many sessions of treatment... Health workers tread a fine line in being open to a disclosure of history of abuse without assuming its existence.*⁶⁸²

Despite acknowledging that not all – or even a majority of – children who display problematic sexual behaviours will themselves have been victims of abuse, the Issues Paper proposed no change to this aspect of Health's policy. Nor did the authors advocate any substantial change to the primary age group targeted by the policy. They said there should be 'some flexibility' in extending services to some children aged between 10 and 12 years, but only on a case-by-case basis and only in relation to a limited range of exceptional circumstances.⁶⁸³ The paper concludes that, in general terms, the services provided by the New Street program should remain the principal avenue for providing therapeutic assistance to children aged 10 to 17 years, while assistance for those who have been convicted of a sexual offence should remain the responsibility of Juvenile Justice.

It is not clear what, if any, action Health took in response to the issues raised by the Paper. Although Health did not provide us with specific advice about its policy in this area, the 2010-11 *Keep Them Safe Annual Report* indicated that the project officer attached to Hunter New England's Sparks Program has been tasked with developing a policy directive for Health on responding to children under 10 who display harmful sexualised behaviour including outlining minimum standards of practice, a best practice service model and associated guidelines.

We were recently advised by NSW Health that its policy 'Responding to Children under Ten who Display Problematic or Harmful Sexual Behaviour (PHSB)' is being developed in line with NSW Kids & Families' state-wide strategic plan, and will focus on improved service responses for children under ten who display PHSB. In light of the

677 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

678 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

679 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

680 NSW Health, *Responding to children under ten who display problematic sexualised behaviour or sexually abusive behaviour*, Issues Paper, May 2005.

681 NSW Health, *Responding to children under ten who display problematic sexualised behaviour or sexually abusive behaviour*, Issues Paper, May 2005.

682 NSW Health, *Responding to children under ten who display problematic sexualised behaviour or sexually abusive behaviour*, Issues Paper, May 2005.

683 NSW Health, *Responding to children under ten who display problematic sexualised behaviour or sexually abusive behaviour*, Issues Paper, May 2005.

significant confusion among LHDs about Health's current policy in this area, we recommend that advice is provided immediately to LHDs about the current status of this policy.

16.3.2 Specialist services for children under 10 – the Sparks Program

Keep Them Safe supported the finding of the Wood Special Commission of Inquiry that 'an effective therapeutic intervention is needed for children in this target group – that is, children under 10 who present with harmful sexualised behaviours'.

One specialist service for these children is the Sparks program,⁶⁸⁴ formerly known as the Hunter Sexualised Behaviour Program. Based in Newcastle, the Sparks Program is part of a multidisciplinary Child and Family Health Team that provides assessment and treatment to children and families in and around the Hunter region.

The program views a child's sexualised behaviours as only one part of their behaviour and relevant history. In this regard, the program adopts the view that any problematic behaviours are likely to be symptomatic of some broader stress, dysfunction or trauma within the child's family. The children and their families are given individualised treatment plans that focus on building relationships and connections. As the sexualised behaviours are treated as symptoms of more complex issues and the pace is determined by the family, the therapeutic process may take some time.⁶⁸⁵

The Newcastle Sexual Assault Service and the Child and Family Health Team established the Sparks Program in 1997, after being provided with funding for 0.8 of a full time equivalent (FTE) position to establish the joint initiative. This was enhanced in early 2010 with *Keep Them Safe* funding for one additional position; this bringing funding for the program to 1.8 FTE positions. There are no Aboriginal-identified positions.⁶⁸⁶

Hunter New England LHD received 67 referrals in 2010 and 54 in 2011, with a current caseload (as at September 2012) of 53 children and families. A snapshot analysis of the 2011 data showed that although 20% of the children referred to the program in 2011 were Aboriginal, Aboriginal children and families were much less likely to start the therapy than non-Aboriginal families.

The Sparks Program's 2011 referral data showed that:

- Forty-three (80%) of the 54 children referred were non-Aboriginal, and 11 (20%) were Aboriginal.
- Thirty-five (81%) of the 43 non-Aboriginal families started the program, whereas just five (45%) of the 11 Aboriginal families started.
- Two non-Aboriginal children were referred on to other services because they were older than the target age, and two Aboriginal children were referred on because they lived too far away to participate – one to a child protection counselling service and the other to a sexual assault service.⁶⁸⁷
- Six non-Aboriginal and four Aboriginal children did not start the program.

Of the 40 children and families who started the program in 2011, the outcome data showed that as at September 2012:

- Twenty had successfully completed the program, 17 were still attending and three were discharged after not attending appointments.
- Of the five Aboriginal children and families who started in 2011, two had successfully completed the program and the other three were still attending.⁶⁸⁸

Hunter New England LHD expressed concerns about the comparatively low starting rates for Aboriginal children and families referred to the program. Of the four Aboriginal children who were referred but did not start, two families declined the service because they had no current concerns about their child, one family was offered several appointments but failed to attend; and the fourth child was referred on to a child protection counselling service in another area after moving to live with a family elsewhere. Hunter New England LHD acknowledged that the figures showed that there is room to improve its work with Aboriginal families:

*As the snapshot of figures provided for 2011 indicate, and is supported by experience in the program in other years as well, clinicians have, at times, had difficulties in engaging Aboriginal families in the service. The service has implemented several strategies including working with Aboriginal specific services.*⁶⁸⁹

684 Hunter New England LHD provided no explanation for the name change. Elsewhere SPARKS is sometimes used in reference to 'Support Program for Abuse-Reactive Kids'.

685 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

686 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

687 When making the referrals, Sparks Program staff offered workers in those services advice on working with children with problematic sexualised behaviours.

688 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

689 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

They said further work is planned to address the lack of engagement by Aboriginal clients with the service. In doing so, the program should look at the steps taken by the Rural New Street program in recent years to revise their services and to successfully engage Aboriginal families – see section 16.3.3.1.

The 2010-11 *Keep Them Safe Annual Report* noted the high demand continuing to be experienced by the Sparks program. The report indicated that new referrals to the service had increased from the previous year – 19% of referrals were Aboriginal clients. The service also advised us that ‘the level of demand for the program is consistently in the upper-end of its capabilities’. In addition to providing direct services to clients, the program provides advice to clinicians about children who are older than 10 years and outside the geographical boundaries of the program.

Hunter New England LHD hopes to conduct an evaluation of the Sparks program in 2013. While the 2010-11 *Keep Them Safe Annual Report* committed to examining the Hunter New England LHD’s sexualised behaviour program, the most recent annual report does not indicate whether there are plans to extend the advisory role played by the Sparks program or to implement a similar specialist service in other LHDs.

16.3.3 New Street Sydney and Rural New Street programs

For children and young people aged 10 to 17 years whose sexualised behaviours will not be receiving a criminal justice response, their best chance of receiving specialist help to address their abusive behaviours is to secure one of the limited places available on the New Street Sydney program in North Parramatta, or one of the Rural New Street programs in Newcastle, Tamworth and Dubbo. These are small, innovative NSW Health programs that provide coordinated, specialist treatment services to young people, with priority given to 10 to 14 year olds.

New Street Sydney (formerly known as the New Street Adolescent Service) was established by NSW Health in 1998 as part of efforts to extend its child protection programs. In recent years, and specifically in response to Action 56 of the Interagency Plan, New Street has expanded into a network of three services at four locations:

- New Street Sydney, based at North Parramatta – for referrals from LHDs in Sydney and the Central Coast.
- Rural New Street Hunter New England, based at Tamworth (2008) and Newcastle (2010) – for clients in the Hunter New England LHD.
- Rural New Street Western, Dubbo (June 2011) – for the Western and Far West LHDs.

Funding enhancements from *Keep Them Safe* enabled NSW Health to establish the Rural New Street service at Dubbo; expand the Hunter New England service at Tamworth to an additional site at Newcastle; and enhance the services to families in Sydney and, to some extent, the Central Coast. There are also now identified Aboriginal counsellor positions at each site.⁶⁹⁰

In September 2012, New Street Sydney said it was in the final stages of establishing a ‘satellite’ service in the Central Coast. This will involve using New Street Sydney as a ‘hub’ to support limited program services to the Central Coast through the provision of staffing, resources and clinical supervision. This initiative has commenced by placing two New Street counsellors in Central Coast LHD facilities for one day per week. Providing a service to families in their own communities is intended to cut the hours that participating families spend travelling to access regular counselling sessions, reduce the number of families withdrawing before completion and strengthen interagency relationships.

Since 2007, New Street Sydney has also been contracted by the Department of Family and Community Services to work with young people aged eight to 17 years who live in out-of-home care with high and complex needs.

The New Street programs are voluntary and can take up to two years to complete; therefore, this requires a sustained commitment from participating families. Eligibility for the programs requires ‘confirmed’⁶⁹¹ evidence that sexual abuse has occurred and a decision by investigating authorities not to prosecute. *Breaking the Silence* reported that between 80-90% of the young people referred to New Street had sexually abused a close family member, with about half having sexually abused a sibling.⁶⁹²

In summary, New Street’s approach puts the onus on young people who have sexually abused to take responsibility for their behaviours, for their role in creating the opportunities to sexually abuse, and for the impacts their behaviours have had on the child they abused and his or her family. In addition, it also emphasises that parents/carers and agencies such as Health and Education hold significant responsibilities in relation to providing safety and care for these young people.⁶⁹³

690 New Street and Cedar Cottage Annual Reports 2010/11, NSW Health, p.1.

691 ‘Confirmed – matters reported, appropriately investigated and view formed the young person had sexually abused another’. Email from Dale Tolliday, Clinical Adviser, New Streets & Cedar Cottage Services dated 12 December 2012.

692 Attorney General’s Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.166.

693 ‘Program principles’, from *New Street Adolescent Service: An early intervention program for young people who have sexually abused*, information pamphlet, April 2005.

A 2006 evaluation found strong evidence for the effectiveness of the New Street program. It showed that – compared with those who were referred to the service but could not be offered a place (the referral group) and those who dropped out before completing the program (the withdrawal group) – the young people who successfully completed the treatment were less likely to re-offend,⁶⁹⁴ less likely to be reported as victims of crime themselves, and were the subject of fewer child protection reports. Those who fared worst on all outcome measures were the young people who withdrew before completing the program.⁶⁹⁵

*The high cost of reoffending by untreated young people and young people who fail to complete treatment in terms of numbers of victims and level of severity of reoffending, presents a strong argument for the continuation and enhancement of the New Street treatment program and for its location within a coordinated interagency response that expedites referral to the program and supports the participation of the young people and their carers to complete the program.*⁶⁹⁶

16.3.3.1 Working with Aboriginal families

Although ACSAT's 2006 *Breaking the Silence* report acknowledged that New Street was effective for participants who successfully completed the two-year treatment program, it also noted that its limited resources enabled it to accept just 25% of the high-need families referred for assistance. Also, because of the nature and location of the program, it could only provide services to clients within a two hour drive of its base in Western Sydney.⁶⁹⁷ In addition, Aboriginal participation at that time was minimal. Of the 433 young people referred to New Street in its first eight years of operation, just 22 young people (5%) were Aboriginal. (Some were referred twice, accounting for a total of 30 referrals; of the 30 referrals received, 20 did not progress past the referral stage, six were accepted but withdrew, two completed the program and two were still participating.) The taskforce concluded that New Street's inability to successfully engage with Aboriginal families indicated that it was not an effective option for Aboriginal offenders.⁶⁹⁸

Since then, changes at New Street to address these concerns have produced a remarkable turnaround in Aboriginal participation.

*In 2005 New Street commenced a comprehensive process of improving the service offered to Aboriginal families. Since that time the participation rate of Aboriginal families has steadily increased...to consistent rates of between 20 and 25%.*⁶⁹⁹

New Street started by requiring all staff to undertake Aboriginal cultural competency training, then recruited and trained Aboriginal staff and reviewed policies and strategies to enhance its capacity to provide culturally sensitive and safe practices. This included partnerships with Aboriginal organisations, creating flexible referral pathways and – with the assistance of Aboriginal staff – developing ways of working to better assist Aboriginal young people and their families to engage and feel comfortable with the service. New Street amended certain policies that had the effect of excluding Aboriginal clients, such as the strict requirement that participants attend all sessions. Senior managers believe that Aboriginal community confidence in the program has grown as word-of-mouth knowledge of these changes has spread.⁷⁰⁰ Although New Street Sydney has no established targets for Aboriginal participation, nine (22.5%) of the 40 families participating in its program in late 2012 were Aboriginal.

Rural New Street Hunter New England's Newcastle and Tamworth sites provide a mix of outreach and centre-based services, with Tamworth providing the greater number of outreach services to families and communities. The service reported that it received 25 referrals in 2011 – consisting of 19 clients aged 10 to 14 years, and six aged 15 to 17 years. Although just three of the 10 to 14 year olds and one of the older referrals were Aboriginal, all four started treatment.⁷⁰¹ The service's advice to us did not indicate how many non-Aboriginal families started in 2011. However, its *2010-11 Annual Report* stated that it had the capacity to accept just 10 (40%) of the 25 families referred for assistance that financial year. The service advised us that the low rate of accepted referrals in 2011 was due to problems attracting and retaining a specialist workforce to rural centres. This remains an ongoing challenge. As of December 2012, the service was fully staffed, including two Aboriginal workers. The referral acceptance rate is now in line with current resourcing.

Rural New Street Western was established in June 2011 with a specific brief to engage Aboriginal families and carers, including a requirement that at least half of its clinical activity and community development be targeted to assist

694 'Re-offending' was defined broadly to include all 'criminal reports' about the young person, irrespective of whether there was sufficient evidence to support a criminal charge.

695 Laing L, Mikulsky J & Kennough C, *Evaluation of the New Street Adolescent Service*, University of Sydney, May 2006.

696 Laing L, Mikulsky J & Kennough C, *Evaluation of the New Street Adolescent Service*, University of Sydney, May 2006, at p.6.

697 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future - Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.167.

698 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future - Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.175.

699 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

700 Consultation with New Street Sydney staff, 7 October 2011.

701 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

Aboriginal families. The program provided referral data for the 12 months from 1 September 2011 to 31 August 2012. The data shows that 11 (52%) of the 21 referrals aged 10 to 14 years in that period were Aboriginal. Just one older client had been referred – a 15 year old non-Aboriginal boy. Five of the 11 Aboriginal families had started treatment, four were still in the preliminary planning stages, and two had not started. By comparison, four of the non-Aboriginal families had started the program, two were in the preliminary stages and four had not started for various reasons. Of the five Aboriginal boys who had started treatment, one was still in the program and three were in the assessment stage.⁷⁰²

16.3.3.2 Staying on the program

Because the New Street programs are voluntary and require a sustained commitment from participants, any unexpected events or changes in circumstances can create a high risk of disruption or cessation of attendance. As case study 35 below demonstrates, there are also particular challenges when participants withdraw from the program, especially those who have shown high-risk behaviours and a reluctance to undertake treatment voluntarily.

Case study 35 - High-risk young boy withdraws from treatment

A teenage Aboriginal boy started the Rural New Street program, but then withdrew. He was referred to the service after he was found to have repeatedly sexually abused, assaulted and threatened his younger sister over an extended period. Immediately after she disclosed the abuse, the boy was returned to his mother's care. His sister, aged 10, stayed with her father in another town and steps were taken to ensure her safety.

Police records show that they dropped the charges after the children's father, who was the person who reported the abuse to police, *'informed investigators that he does not wish to have the matter fully investigated with a view to having his son charged and his daughter having to give evidence against her brother'*. The father said he had been told that his son had gained a treatment placement in New Street, which he described as a program for abusers who admit the offence and are willing to participate. Without his support, with no physical evidence and with such a young witness, the chances of a successful prosecution would be low.

Soon after, the charges were dropped and a few weeks after the New Street counselling started, the mother left her son in the care of her parents and moved away. The new carers declined numerous offers to continue the voluntary counselling. As Community Services had already closed its file and stopped its involvement, a senior officer in the agency advised Rural New Street to report their concerns about the boy to the Helpline.

Helpline records show that it received a call requesting caseworker support to get the boy to resume counselling. The call record notes the changes in the boy's care arrangements, his grandparents' refusal to support the counselling, the boy's lack of empathy for his sister and his failure to show *'any understanding of the severity of what he has done'*. It also notes comments the boy made during counselling that support Rural New Street's assessment that *'there is a significant risk that [the boy] may sexually abuse other children'*. The Helpline assessed the report as a Risk of Significant Harm (ROSH) matter, and referred it to the local CSC for a follow-up visit within 10 days. Six days later, the case was closed without further action due to competing priorities.

This case highlights the danger of relying on voluntary arrangements to divert young people with high-risk behaviours into an extended treatment program. Once the charges were dropped, his mother had left and Community Services closed its file, Rural New Street's chances of keeping the boy engaged in the two-year treatment program diminished. As the 2006 evaluation of New Street services shows, partial or incomplete treatment is the worst possible outcome. The evaluation showed that the young people who withdrew before completing the program fared worst on all outcome measures than any other group – even worse than the young people who received no treatment.⁷⁰³ Other clinical studies also emphasise the importance of completing the full program of specialised counselling.⁷⁰⁴

Among the events that can disrupt a family's participation and lead to them withdrawing are decisions by other agencies to discontinue assistance provided to a family. In our consultations, New Street's counsellors and clinicians emphasised that they rely heavily on partner agencies to help keep families engaged. They said the positive feedback and other support that many schools and principals provide to families is often an important factor in keeping the family engaged. We were told that Community Services' ongoing support is also often critically important. In addition to providing much-needed financial support for incidental expenses such as petrol money for

702 Western LHD, NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

703 Laing L, Mikulsky J & Kennough C, *Evaluation of the New Street Adolescent Service*, University of Sydney, May 2006.

704 O'Brien, W, Australian Crime Commission, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, ACC, 2010

families required to travel long distances, or offsetting the costs of childcare for other siblings, Community Services caseworkers often reinforce messages about the need for families to stay involved.

While the current agreement between Health, Community Services, Police, Juvenile Justice and Education details the respective responsibilities of each agency when responding to young people with sexually abusive behaviours, there is a need to update and strengthen the advice on interagency collaboration. This could include specifying the principles that should guide decisions that have the potential to adversely affect outcomes. A revised agreement could reduce the likelihood of changes in agency personnel or program support affecting a family's willingness to maintain their commitment to New Street counselling.

16.3.3.3 Providing outreach services

A significant challenge for all of the New Street and Rural New Street programs, and particularly for the program based at Dubbo, is to find ways to reach clients in high-need communities in outlying areas while maintaining the quality of the clinical and other services provided. Rural New Street Western is responsible for delivering services to communities in the Western and Far West NSW LHDs. Together, these LHDs cover about 60% of NSW – including some of the state's most remote and disadvantaged Aboriginal communities.

In July 2012, Rural New Street Western started four-weekly clinical outreach visits to clients in Bourke and in September 2012 it began to provide similar outreach support to clients in Walgett, Lightning Ridge and Goodooga. New Street staff also provide specialist training to other Health staff in those and other Western NSW locations.

Rural New Street Western recognises that any 'satellite or outreach' programs it establishes in remote locations must be properly staffed and supported if they are to be effective. A critical challenge is to overcome the difficulties associated with recruiting and placing specialist staff in remote sites, especially in small towns where there is a high risk of the sensitive nature of its work becoming common knowledge. Any specialist placements in remote locations would also require regular support, debriefing and clinical supervision, and staff there would need to travel long distances to receive ongoing specialist training. In addition, any new staff would require additional support, especially early in their placements. A preferable approach would be to use the specialist staff and resources based at larger centres such as Dubbo to create a 'service hub' that is capable of supporting the delivery of a full suite of program services via a number of 'satellite' services located in high-need locations across Western NSW. Similarly, establishing service hubs at Broken Hill in Far West NSW and at regional centres in southern and northern NSW would enable Rural New Street to support networks of satellite programs in high-need locations in those regions.

16.3.3.4 Addressing funding issues

The current lack of funding to recruit a senior clinician at Rural New Street Western means that any such 'satellite positions would be extremely difficult to adequately support with current resources'.⁷⁰⁵ The funding shortfall appears to have been an administrative oversight. When the service was established, it was allocated funding for only two of its three full time equivalent counselling positions and with no money to lease commercial premises. There were also insufficient funds to cover superannuation and workers compensation requirements. As this left the service with a projected \$206,000 funding shortfall for the 2011-12 financial year, a decision was made to defer the recruitment of a senior clinician.

Over time, we are advised that this funding shortfall will affect the range and quality of clinical services that Rural New Street Western can deliver. The service anticipates 'a reduction of 25% of clinical service delivery'.⁷⁰⁶ In our view, Rural New Street Western should be extending its clinical and other services to high-need locations in outlying locations in its service area. Yet budgetary constraints may actually lead to a reduction in the services it provides. Even if no action is taken, current rent, staffing and other costs will leave the service with a projected \$58,000 shortfall in 2012-13. The Western NSW LHD has submitted a business case to NSW Health to review its funding for Rural New Street Western.⁷⁰⁷

New Street Sydney is also experiencing budgetary difficulties that limit its ability to extend its services. Its recurrent funding of \$756,000 from Health in 2011-12 was supplemented by \$280,000 in Family and Community Services funding for the services that it provides to 13 children in out-of-home care, and \$139,000 from the Centre for Aboriginal Health. Delays in filling some vacant positions had enabled the New Street Sydney budget to avoid going into the red, but the service noted that:

*Across time New Street Sydney has experienced a significant erosion of funding. [There has been] ongoing correspondence between the Ministry of Health and Western Sydney Local Health District [to] seek a resolution to this issue.*⁷⁰⁸

⁷⁰⁵ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

⁷⁰⁶ NSW Health, *New Street and Cedar Cottage Annual Reports 2010/11*, p.42.

⁷⁰⁷ NSW Health, *New Street and Cedar Cottage Annual Reports 2010/11*, p.42.

⁷⁰⁸ NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

While immediate priority should be given to reviewing the adequacy of funding for existing New Street services, we believe this should be followed by planning for the expansion of New Street's network of services into new regions with high levels of need. Analysis commissioned by NSW Health supports this view. A February 2011 report on child protection and sexual assault counselling services highlighted concerns about the adequacy of access to services for children under 10 years who display sexually abusive behaviours, and for children and young people aged 10-17 years who sexually offend.⁷⁰⁹

16.3.3.5 Expanding and evaluating services

In its *'Analysis of the report of the review of NSW Health counselling services'* in April 2011, the Ministry of Health acknowledged that there are gaps in the services provided and recommended that NSW Health should consider establishing additional Rural New Street programs state-wide if funds became available.⁷¹⁰ At that time, New Street services were operating from sites in Sydney, Newcastle and Tamworth, and were already in the process of being established in Dubbo. An April 2012 update of Health's implementation plan lists the recommendation to further expand the Rural New Street network as an action, but includes no advice on implementation. When we asked Health to clarify whether it plans to implement this action, the response dated 7 November 2012 advised that 'this action remains under consideration by the Ministry of Health'.

The staged expansion of a successful NSW Health program has a precedent in the Aboriginal Maternal Infant Health Service (AMIHS). It began in 2000 as a trial of antenatal and postnatal programs to provide targeted support to Aboriginal women and infants in the Western NSW, Hunter New England and North Coast regions. Its success in improving the health of Aboriginal women during pregnancy, and decreasing perinatal morbidity and mortality for Aboriginal babies, led to its expansion in 2007 (from seven programs in six former NSW Area Health Services to over 30 programs with many more sites across NSW). Community Services contributed joint funding with Health for two years to support the state-wide expansion. The AMIHS now covers about 75% of Aboriginal births.⁷¹¹

Crucial to the decision to expand the AMIHS were the evaluations that demonstrated its effectiveness. The Rural New Street Western and Rural New Street Hunter New England services were founded with an expectation that they would be evaluated as they developed and there are 'plans in place for multi-site clinical review, evaluations and research projects' involving all of the New Street services. *Keep Them Safe* has provided some additional funding to help facilitate this activity. The New Street network is expanding and has added considerably to the array of programs, services and supports it now provides. As any decision to further expand New Street to other regions must be contingent on robust, quality data demonstrating its effectiveness – including a specific focus on services for Aboriginal clients – consideration should be given to enhancing New Street's current research budget.

16.4 Juvenile Justice programs to address sexually abusive behaviours

Juvenile Justice plays a crucial role in identifying and offering specialist assistance to convicted young offenders who need help to tackle problematic or abusive sexual behaviours and other concerns. The agency offers therapy for sex offenders, violent offenders, offenders with substance abuse problems and other specialist interventions in custodial and community environments.⁷¹²

Offenders generally, both adults and juveniles, are highly disadvantaged across all indicators –including health, mental health, housing, educational attainment, employment, alcohol and other drug abuse, and experiences of trauma and abuse. Therefore, the interventions provided must often deal with multiple, overlapping concerns. These indicators of disadvantage are especially acute for Aboriginal people, who make up a substantial proportion of the juvenile detention population as well as those who are under the supervision of Juvenile Justice in the community.

Despite the challenges of responding to clients' multiple needs within the limited time allowed by a control order or a community supervision plan, the interventions provided by Juvenile Justice provide a rare opportunity for young offenders and their families to make the changes needed to get their lives back on track. It is therefore vitally important that young offenders – many of whom have long histories of abuse, trauma or neglect and may have missed out on receiving specialist help at an earlier point – have access to quality programs that maximise the chances of achieving positive change.

Although Juvenile Justice's Sex Offender Program (SOP) is one of the oldest and largest programs of its kind in Australia, the clinical practice of assessing and working with young people who commit sexual offences is still in its infancy. Until recently, this and other adolescent sex offender programs were heavily influenced by the programs

709 ARTD consultants, 'Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence services mapping. Final Report to NSW Department of Health' February 2011.

710 NSW Ministry of Health, 'Analysis of the Report of the Review of NSW Health Child Protection, Sexual Assault and mapping of Domestic and Family Violence Counselling Services, April 2011.

711 E Murphy and E Best, 'The Aboriginal Maternal and Infant Health Service: a decade of achievement in the health of women and babies in NSW', *NSW Public Health Bulletin*, 23(4) 68-72, <http://dx.doi.org/10.1071/NB11051> Accessed: 13 June 2012.

712 Juvenile Justice, *Annual Report 2008-2009*, p.25.

used for adults. It was common for clinical interventions to emphasise the need for participants to alter their sexually deviant behaviours, often with little or no regard to the environmental or situational factors that might have contributed to these behaviours.⁷¹³

A 2006 review of Juvenile Justice's SOP recommended sweeping changes. The focus has now shifted from clinical interventions that specifically target the sexually deviant aspects of the offending, to interventions based on programs that have proved to be effective with adolescent offenders generally.

16.4.1 Implementing Action 69

Another impetus for change was the scrutiny provided by the ACSAT review. It criticised the lack of treatment options for children and young people who display sexually abusive behaviours but who are not yet involved in the criminal justice system, and questioned the effectiveness of sex offender programs run by Corrective Services and Juvenile Justice. The Taskforce was particularly concerned about the ability of voluntary, 'culturally irrelevant' programs to engage Aboriginal people, whether in custody or in community settings.

Action 69 of the Interagency Plan therefore required Juvenile Justice, in partnership with Corrective Services, NSW Health and Community Services, to:

Review current Juvenile Sex Offender Programs provided in juvenile detention and where necessary adapt programs to the needs of Aboriginal young sex offenders aged 10-17 years and encourage completion of treatment programs.

As the period that a young person spends in custody or under supervision in the community is usually brief, Action 69 also emphasises the need to link to community-based treatments to encourage continuity of treatment post-release.

In its 2008-09 annual report, Juvenile Justice reported that its:

...Sex Offender Program (SOP) has been comprehensively re-developed and is being piloted at a number of sites around NSW during 2009. The new program takes into consideration the recommendations from the review of the SOP undertaken in 2006, literature and best practice interventions that focus on the individual needs of a young person as well as the criminogenic factors relevant to a young person who has offended.⁷¹⁴

Juvenile Justice advised us that all young people who are charged or convicted of sexual offences are referred to its SOP for assessment and treatment as appropriate. The custodial and community programs are delivered by 11 counsellors in metropolitan and regional locations. Treatment mostly involves one to one counselling work with the young person. Duration and intensity of treatment varies. Juvenile Justice said it was common for SOP counsellors to work with the young people until the end of their supervision.⁷¹⁵

The revised program now centres on a counselling plan that is 'developed through a functional analysis of the young person's offending'. The plan for each individual has three main components: working with the individual; working with the young person's family or carers; and transition from Juvenile Justice.⁷¹⁶

Although family involvement in the therapy is seen as essential to bringing about positive behavioural changes, Juvenile Justice says its custodial SOP often has difficulty in convincing families to participate. It said that: 'Families are not mandated to work with JJ, so encouraging them can be difficult, especially with the shame issues that often accompany sexual abuse'.⁷¹⁷ Those who live some distance from where their young relatives are held are often the hardest to engage.

The SOP that Juvenile Justice delivers in community settings is similar to the custodial program. Juvenile Justice said that treatment in a community environment provides greater scope to engage families, but that the reluctance of relatives to participate is still a challenge.

Juvenile Justice provided the following data on Aboriginal and non-Aboriginal referrals to its community and custodial sex offender programs between 2009 and 2011.

713 I. Nisbet, *Review of the Department of Juvenile Justice Sex Offender Program*, December 2006.

714 Juvenile Justice, *Annual Report 2008-2009*, p.44.

715 Juvenile Justice response to NSW Ombudsman Requirement for Information, 11 September 2012.

716 Juvenile Justice response to NSW Ombudsman Requirement for Information, 11 September 2012.

717 Juvenile Justice response to NSW Ombudsman Requirement for Information, 11 September 2012.

Table 15. Participants in Juvenile Justice sex offender programs 2009-2011

	COMMUNITY SOP			CUSTODY SOP		
	2009	2010	2011	2009	2010	2011
Aboriginal	16	20	21	15	14	12
Non-Aboriginal	85	79	56	26	24	17
Unknown	23	17	12	1	2	1
Total	124	116	89	42	40	30

Source: Juvenile Justice.

Although the figures show that Aboriginal young people now make up a substantial proportion of the participants in Juvenile Justice's community-based sex offender program – 24% in 2011 and of those in its custodial program – 40% in 2011, the actual number of eligible individuals at any one time – and in any of the 11 locations where the programs are currently provided – is very low. These local numbers limit the scope for options such as group therapy. Juvenile Justice also noted that the geographic spread of its clients presents challenges in ensuring that those convicted of sex offences receive specialised counselling.⁷¹⁸

*With only 10.5 specialist SOP counsellors across the jurisdiction, it is inevitable that many young people are allocated to a non-specialist counsellor. The problem is more acute in regional areas, but there are metropolitan offices without a SOP counsellor. In regional areas, all counsellors (specialist or generalist) are supervised by a clinical supervisor who is familiar with sexual offender work.*⁷¹⁹

Juvenile Justice will commence rolling out a Mentoring Program for SOP workers in February 2013, which will work to develop the skills of all counsellors working with SOP clients. The program will support staff through needs-based skills development, delivered through group and individual mentoring sessions.

The small number of Aboriginal participants also limits the scope for Juvenile Justice to adapt the program – in accordance with Action 69 – to meet the specific needs of Aboriginal offenders. Advice we received from Aboriginal Affairs said that Juvenile Justice's interventions were reviewed with the intention of implementing an Aboriginal-specific sex offender program by late 2009, but that the low numbers of Aboriginal sex offenders in custody at any one time meant that this was not feasible.⁷²⁰

A more immediate concern is the lack of basic information about what, if anything, Juvenile Justice's current interventions are achieving. At present, Juvenile Justice is unable to access information on its CIMS database⁷²¹ about how many young people referred to the Sex Offender Program actually start treatment or successfully complete their individual programs. Juvenile Justice's 2006 review of the SOP was particularly critical of the lack of quality data about client progress and outcomes.

*...there appears to be some inconsistency across the Department in how SOP clients are identified and entered in the CIMS database. There do not appear to be any systems in place to effectively monitor program fidelity, treatment progress or client outcomes. It is therefore not currently possible to determine whether the SOP is helpful, harmful or has no effect at all.*⁷²²

Therefore, a number of the recommendations from the 2006 review focused on improvements to guidelines, information and data quality in order to improve the targeting of the program's interventions and establishing the records needed for informed assessments of the program's effectiveness. Juvenile Justice has since taken steps to act on these recommendations and SOP referral, assessment, participation and completion data, is now actively collected on its CIMS database. This will allow, over time, for the monitoring of client progress and evaluation of program effectiveness.

In its submission to the ACSAT inquiry, Juvenile Justice listed some of the factors that constrain its ability to deliver SOPs in a custodial environment. After acknowledging the lack of Aboriginal-specific child sexual assault and other specialist services in its centres, it urged caution in starting treatment in circumstances where participants are often unable to complete the program:

718 Ombudsman consultation with Juvenile Justice program managers, 9 November 2012.

719 Richard Parker submission to ACC, dated 8 March 2010, in ACC, 'Youth justice: challenges to responding to young people with sexually abusive behaviours', www.crimecommission.gov.au Accessed 13 November 2012.

720 Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 14 March 2011.

721 CIMS is the Juvenile Justice Client Information Management System – the operational database for Juvenile Justice, holding information from police, court and internal sources.

722 I. Nisbet, *Review of the Department of Juvenile Justice Sex Offender Program*, December 2006.

...due to short sentence terms, the number of children and young people on remand, and the potential for detainees be released at any time, it is not appropriate for detainees to start working on issues of child sexual assault while they are in custody.⁷²³

This view is consistent with research showing that therapy for problematic sexualised behaviours and sexual abuse should generally not be initiated unless there is a reasonable prospect that it will be completed.⁷²⁴

The Children's Court sentencing practices – which acknowledge the rehabilitative benefits of offenders' willingness to participate in therapeutic programs by shortening their period in detention and/or under community supervision – can also lead to brief sentence periods. This leaves limited timeframes for specialist programs to deliver effective interventions. One such specialist intervention is Juvenile Justice's Cognitive Self Change (CSC) group therapy program for high-risk juvenile offenders, which can take nine months or more to complete. Young offenders whose period in detention and/or under community supervision totals six months or less, will generally be deemed ineligible for the program. Even if they repeatedly re-offend and are sentenced to further periods of detention and supervision, they will remain ineligible for the therapy unless one of the supervision periods is long enough for them to be referred to the program.

For at least some young offenders, their time in custody provides a rare opportunity to identify and begin to respond to complex issues that have long been neglected or overlooked. ACSAT's *Breaking the Silence* report noted feedback from some Aboriginal community sources arguing that the relative safety and stability of the custodial environment can sometimes provide the space young people need to take stock of their situation and make decisions about their future. These participants:

...suggested that detention centres were often a place that the children and young people felt safe and therefore this was the best place for them to begin addressing the sexual assault issues. It was suggested that these children and young people were often very vulnerable and sometimes lived in unstable families and communities. The removal of the young person from the community could provide a distance for the young person that allowed them to deal more effectively with their issues.⁷²⁵

Juvenile Justice's recent progress in revising and expanding its SOP is a good result. The approach taken by Juvenile Justice recognises the value of providing young people options for accessing specialist treatment and support. The key to its success has been shifting the emphasis from the individual treatment of social and sexual deviance to providing young people and their families help to tackle the underlying causes of abusive behaviours. This has also helped to encourage greater Aboriginal participation.

16.4.2 Providing a continuum of care

Justice Health's recent success in working with other agencies to establish the Community Integration Team⁷²⁶ and the Adolescent Court and Community Team⁷²⁷ initiatives demonstrate that partnerships with other agencies are the key to providing a continuum of care.

In our view, specialist interventions such as the Sex Offender Program would benefit from stronger collaborative links with programs such as the New Street network that successfully provide cost-effective services to young people and their families in community settings. At present, Juvenile Justice provides a 'representative to the management board which oversees New Street' but sees no scope for New Street to assist Juvenile Justice clients, as 'New Street is for young people who have been diverted from prosecution [and]... do not provide a post-release service'. Stronger collaborative ties between Juvenile Justice and community-based services such as the New Street services network, might therefore require the community-based services to expand to accommodate clients who are exiting Juvenile Justice's programs.

723 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.240.

724 L. Laing, J. Mikulsky & C. Kennough's, Evaluation of the New Street Adolescent Service, found that only 1 in 34 young people who completed the program went on to re-offend sexually – see p.5. It is one of a number of clinical studies to indicate that recidivism rates are low where a full program of specialised counselling is completed – W. O'Brien, Australian Crime Commission, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, 2010.

725 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.240.

726 The Community Integration Team coordinates the transition of health care for young people in custody with significant mental health and/or problematic drug and alcohol issues when released from detention. Justice Health & Forensic Mental Health Network Submission to the NSW Ombudsman of the Implementation of the New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, September 2012, p.15.

727 The Adolescent Court and Community Team is a multi-disciplinary team clinically led by the Clinical Director, Adolescent Mental Health (a Consultant Adolescent Forensic Psychiatrist), with operational support provided by the Manager, Adolescent Mental Health and Drug & Alcohol Programs. The overall aim of the service is the early identification of mental health issues for high-risk young people appearing in Children's Courts; and the provision of support to existing Child and Adolescent Mental Health Services and other services in managing the needs of complex mental health clients who present a potential risk to themselves or others. Justice Health & Forensic Mental Health Network Submission to the NSW Ombudsman of the Implementation of the New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, September 2012, p.38.

Aligning Juvenile Justice's specialist interventions with services based in community settings should help increase the likelihood that any progress achieved by young offenders in custody or under supervision in the community continues to be appropriately supported after their time with Juvenile Justice has come to an end. For many SOP participants, an expanded New Street network of services would be well-placed to provide the necessary supports, including successfully engaging families and working with other agencies to coordinate the interventions. For others, a more effective solution might be to connect them with generalist offender programs such as Juvenile Justice's own Intensive Support Program (particularly if the program was to relax its rules against accepting sexual offenders) or to create genuine place-based interagency programs that coordinate and deliver targeted interventions.

16.5 The need for an integrated approach to therapeutic treatment

Our audit has identified an urgent need for NSW to review its current arrangements for providing therapeutic treatment for children and young people who have problematic and abusive sexual behaviours. NSW Health recently advised that its policy 'Responding to Children under Ten who Display Problematic or Harmful Sexual Behaviour (PHSB)' is being developed in line with NSW Kids & Families' state-wide strategic plan, and will focus on improved service responses for children under ten who display PHSB. However, many LHDs are unaware of the current policy position. This has led to a disjointed approach to service provision.

There is also an acute shortage of treatment places for older children. NSW presently has between 60 and 70 specialist treatment places available for young people and their families each year – primarily for young people aged 10-14 years who exhibit seriously abusive behaviours but who are not yet involved with the criminal justice system.⁷²⁸

Those who live outside the Sydney, Newcastle, Tamworth and Dubbo areas where the specialist programs are currently based, have even less chance of receiving the help they need. Although the New Street services can refer some of the high-need families living outside their service areas to sympathetic sexual assault services; child, youth and family counsellors; child and adolescent mental health services; or child protection counselling services; these kinds of ad hoc arrangements are far from satisfactory. The fact that Local Health Districts cannot account for the services they provide to this group is also of particular concern.

Although Juvenile Justice offers important specialist programs and interventions for young people with complex needs – including a revamped Sex Offender Program that recognises recent developments in treatment philosophies – its ability will always be limited in being able to overcome the many challenges of having to respond to a clients' multiple needs within the relatively brief time allowed by a control order or a community supervision plan. However, given that the agency's interventions provide young offenders with at least the potential to break abusive patterns of behaviour, it is vitally important to devise strategies that maximise the chances of these interventions continuing after the young person's time with Juvenile Justice has ended.

In New Street and other specialist health services, Health has demonstrated a significant commitment to establishing and extending effective therapeutic services; however, the piecemeal evolution of treatment services in NSW has left important gaps in the current service system. There is a real danger that a small but potentially high-risk group of young people are falling through these gaps, and receiving no effective agency response to their sexually abusive behaviours. This is bad news for them, their families and their victims. There is a need for all agencies and services with responsibilities in this area to come together to consider creating a cohesive legislative and policy framework that explicitly sets out the respective roles of police, child protection, accommodation providers, and support agencies and treatment services, in supporting effective treatment strategies, including the use of treatment orders.

In Chapter 13, we recommended development of a restorative justice approach for young Aboriginal people who sexually abuse, based on a therapeutic treatment and wraparound family support model. To facilitate this, we also recommended that consideration be given to the youth justice conferencing scheme being extended to include certain sex offences committed by juvenile offenders.

However, the success of such an approach depends heavily on there being a close alignment between the criminal justice system and the health and welfare sectors. There is no real benefit in allowing sex offences committed by young people to be handled differently by police and courts, if the service sector does not have the capacity to provide the necessary therapeutic response. In addition, a therapeutic approach of this type should also involve sufficient levers to divert high-risk young people into treatment.

In considering what else is needed, we reviewed the comprehensive scheme introduced by the Victorian Government in 2007 for identifying and diverting into treatment young people found to be engaging in sexually abusive behaviours. The scheme involved creating a legislative and service response framework for dealing with all reports of sexual abuse by children and young people under 15 years old, including those that would have ordinarily been dealt with via a mainstream criminal justice response.

⁷²⁸ This includes 13 treatment places FACS funds New Street Sydney to provide for highly vulnerable children and young people living in out-of-home care, and the six places in the New Pathways intensive residential service. Only some of the high-need young people referred for assistance are able to secure places in the specialist programs.

Case study 36 – The Victorian Scheme

The scheme was established under the *Children, Youth and Families Act 2005* which provides for police, the criminal division of the Children's Court or any member of the community to report concerns about young people aged 10-14 who exhibit sexually abusive behaviours to Child Protection. When either police or the court makes a report, Child Protection must refer the matter to the Therapeutic Treatment Board for advice about whether there is a need for a therapeutic treatment order (TTO) to require the young person to participate in a treatment program. The board is made up of police, the Office of Public Prosecutions, community services and human services representatives.

The legislative scheme, which includes a fully funded network of treatment services in every region of the state, was introduced in response to the low number of prosecutions of sexual assault by young people under 15 years old, and the lack of incentives for high-risk abusers to seek voluntary treatment.⁷²⁹ There was a concern that young people with some of the riskiest sexually abusive behaviours were among the least motivated to seek voluntary treatment, and that the criminal justice system did not provide a reliable pathway into treatment for this age group.⁷³⁰ A related concern was the reluctance or inability of dysfunctional families or families in crisis to provide the support needed for treatment to succeed.

Although treatment orders are in addition to, not instead of, any criminal charges, one effect of a treatment order is to suspend criminal proceedings while treatment is provided. If the young person cannot live at home, the court may also make a therapeutic treatment placement order (TTPO) requiring the young person to live in accommodation that enables and supports the treatment. Between 1 October 2007 (when the scheme began) and 30 June 2012, there have been 141 referrals to the Therapeutic Treatment Board, resulting in 77 TTOs and eight TTPOs. There were 38 referrals in 2010 and 37 in 2011. In most cases, the board's decision on whether or not to apply to the family division of the Children's Court to impose a treatment order reflects advice provided by Child Protection.⁷³¹

Most requests for Child Protection to assess a young person's suitability for a treatment order are initiated by the criminal division of the Children's Court after the young person has been charged with a sexual offence. If the assessment concludes that the young person should be subject to a TTO and the Therapeutic Treatment Board agrees, the case is referred to the family division of the Children's Court for a determination.

Once a TTO is in place, the criminal division of the court must adjourn the criminal proceedings for the period of the order. Treatment orders are for up to 12 months, but can be extended a further 12 months. If, at the end of the treatment order, the court is satisfied that the young person has attended and participated in the program, it must discharge the young person without any further hearing of the criminal proceedings relating to the sexually abusive behaviours.⁷³² If a young person fails to comply with treatment, the order can be varied or revoked and the young person referred back to the criminal division for the hearing of the criminal charges. Prosecution of any charges that are unrelated to the sexually abusive behaviours are not affected by the scheme.

The scheme aims to ensure that all young people under 15 years who need help to address sexually abusive behaviours can access treatment and are encouraged to do so. It also provides mechanisms to overcome family reluctance to support their child's regular attendance for treatment. While most voluntarily seek treatment, the TTOs provide an alternative pathway into treatment when the child does not voluntarily seek help, without the need to rely on a criminal prosecution.⁷³³

In NSW, and elsewhere, successful prosecutions of juvenile sex offenders are rare. It is not uncommon for investigations to be put on hold or for charges to be dropped, especially if the victim is a sibling, is too young to testify effectively or is reluctant to give evidence. Not all young people who are charged but not convicted for their sexually abusive behaviours will recognise the need to voluntarily seek treatment. In fact, as we have also noted, the gaps in the NSW system relating to young people who are charged but not convicted of offences, provide a small but potentially high-risk group with no effective agency response to their sexually abusive behaviours.

Although section 75 of NSW's *Children and Young Persons (Care and Protection) Act 1998* gives the Children's Court the power to order a child who is younger than 14 years to attend a therapeutic program relating to sexually abusive

729 Victorian Law Reform Commission, from ACC – *Youth justice: challenges to responding to young people with sexually abusive behaviours*, www.crimecommission.gov.au Accessed 13 November 2012.

730 Second Reading Speech, Minister for Aged Care, Mr Gavin Jennings, Legislative Council, 15 November 2005.

731 Advice provided by Senior Program Advisor, Child Protection and Family Services, Therapeutic Treatment Board, Department of Human Services, 20 November 2012.

732 Section 354(4), *Children, Youth and Families Act 2005*.

733 Department of Human Services, 'Children in need of therapeutic treatment' information brochure, September 2007.

behaviours, and to require the parents to support their child's participation, the provision is rarely used. The court can only make an order if it has been presented with a proposed treatment plan.

A strength of the Victorian scheme is that it has created a legislative and policy framework that explicitly sets out the respective roles of police, child protection, accommodation and support agencies and treatment services, in supporting effective treatment strategies – including the use of treatment orders. While the scheme gives priority to therapeutic treatment and emphasises the value of early intervention, parental and family involvement and voluntary participation, it also provides effective sanctions for high-risk individuals and families who don't comply with their treatment plans.⁷³⁴

Victoria now receives almost 40 reports a year requesting court-supervised therapeutic treatment orders for 10-14 year olds with sexually abusive behaviours. These are in addition to voluntary referrals. In 2011-12, more than 700 children and their families accessed one of the 13 sexually abusive behaviour treatment services on a voluntary basis.⁷³⁵ Most voluntary referrals are initiated by Child Protection or by the child's family. However, community welfare organisations, police and schools are also active in identifying young people and families who need help. Although the Victorian framework does not yet include young people aged 15-17 years, there are 40 funded treatment places in three locations for this group. In 2011-12, 68 young people and their families received a treatment service.

NSW, which has a larger population than Victoria, has far fewer treatment services and these are only available in a handful of locations across the state. The marked differences between both states in the number of children and young people who have received treatment, indicate that there is significant scope for NSW to expand its treatment places.

During our audit, clinicians from the New Street network and Juvenile Justice's Sex Offender Program have expressed interest in the Victorian scheme, and believed there was merit in consideration being given to developing a similar framework in NSW. If investments are made at the right points in time for these high-risk young people, and their behaviours are turned around before they reach adulthood, the benefits will flow to the wider community.

Recommendations

65. **That, together with the Department of Attorney General and Justice, Community Services and the NSW Police Force, NSW Health develops and implements an integrated service response framework for children and young people who commit sexually abusive acts. In doing so, consideration should be given to adopting elements of the Victorian scheme outlined in this chapter. The development of the framework should also include how recommendations 66 to 73 below can be implemented.**
66. **Irrespective of whether or not the framework referred to in Recommendation 65 is developed, NSW Health should review both the New Street Adolescent Service and Rural New Street program, from the perspective of examining:**
 - a) **The capacity of the overall program to meet demand across NSW.⁷³⁶**
 - b) **The adequacy of the current level of funding allocated to the existing Rural New Street Western.**
 - c) **The viability of creating additional service 'hubs' in high-need locations in Western NSW: for example, Broken Hill and/or Bourke, and at regional centres in Southern and Northern NSW.**
 - d) **The adequacy of the funds available to evaluate the program's impact in regional and remote settings (including its reach and outcomes for Aboriginal people).**
 - e) **The adequacy of funds allocated to research projects.**
67. **That NSW Health works with the NSW Police Force, Juvenile Justice, Community Services and the Department of Education and Communities, to develop and implement a protocol specifying the responsibilities of all partner agencies in relation to supporting young people and families who are participating in the New Street and Rural New Street programs.**
68. **That in light of the limited awareness by LHDs of Health's policy relating to the right of children under 10 who display sexually abusive behaviours to receive services, regardless of whether they have been a victim of sexual assault, the Ministry of Health clarifies with LHDs its current policy in this area, and thereafter, monitors its implementation.**
69. **That, in consultation with LHDs, the Ministry of Health reviews the current capacity of LHDs to meet the demand for counselling services for children under 10 years who display sexually abusive behaviours.**

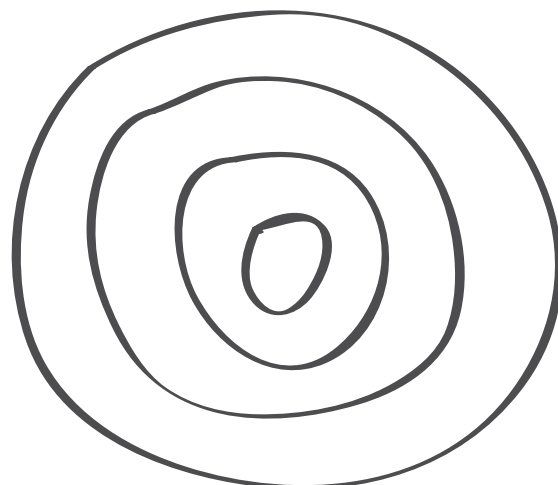
⁷³⁴ Second Reading Speech, Minister for Aged Care, Mr Gavin Jennings, Legislative Council, 15 November 2005.

⁷³⁵ Advice provided by Senior Program Advisor, Child Protection and Family Services, Therapeutic Treatment Board, Department of Human Services, 20 November 2012.

⁷³⁶ The issue of the overall capacity of the program will be impacted by whether or not Recommendation 73 is accepted.

70. That NSW Health ensures that its new database for capturing SAS data includes common data requirements in relation to children under 10 years who are referred to services for counselling in connection with their problematic sexualised behaviours. Furthermore, NSW Health should ensure that the data includes the number of referrals; reasons for each referral; service take-up and service outcomes.
71. That the Ministry of Health develops clear policy on the nature and level of services that each LHD should provide to those children under 10 years who display sexually abusive behaviours.
72. That NSW Health reviews the need to establish additional specialist services for responding to children under 10 who exhibit sexualised behaviours. In conducting this review, NSW Health should have regard to the Hunter New England LHD's Sparks program.
73. That Juvenile Justice works with NSW Health in establishing formal linkages between its sex offender program and the New Street and Rural New Street programs for the purpose of providing a pathway for sex offenders to receive ongoing therapeutic support following their release from juvenile justice detention.

Managing child sex offenders in the community



Chapter 17. Managing child sex offenders in the community

A critical aspect of protecting children and young people from sexual abuse is the management of sex offenders in the community. Effective offender management can address offender behaviour and community safety needs – the aim being to reduce the risk of re-offending. Managing child sex offenders is central to maintaining community confidence in the criminal justice system.

Managing high-risk offenders in the community is a challenging task. It is influenced by the complex social and economic situations of offenders: including drug and alcohol problems; limited education; accommodation issues; unemployment; significant health issues, such as mental illness; and weak family/social links. These issues are often compounded by difficulties in accessing relevant assessments, programs and services, especially for offenders wanting to return to rural and remote communities – this is particularly relevant for Aboriginal offenders.

The primary agencies with responsibilities for managing child sex offenders in the community in NSW are Corrective Services and the NSW Police Force. However, Community Services must work closely with Police and Corrective Services to ensure that critical information holdings are exchanged when child sex offenders form new relationships which present potential significant risks to children. Housing and Health also play crucial roles in providing the services that are needed to contribute to offenders having a more stable life, such as secure housing, access to drug and alcohol programs, and counselling.

Corrective Services provides a range of custodial and community-based correctional services, including monitoring offenders' compliance with parole conditions; conducting risk assessments, and implementing suitable case management plans.

Police are responsible for supervising offenders who are no longer under parole or other supervision by a correctional agency. Upon release into the community, child sex offenders are required to register with the Police and are placed on the Child Protection Register (CPR).

Of the offenders registered on the CPR in 2011, 5% were Aboriginal. This number of registrants is continually growing due to the amount of time that certain offenders must remain on the register; for example, some offenders will remain on the register for their entire life.⁷³⁷

Child sex offenders represent 2% of all active offenders being managed by Corrective Services in the community.⁷³⁸ As at 30 June 2012, there were 348 child sex offenders serving community-based sentences – 27 of these were Aboriginal.

Over the past decade, there have been a number of major developments in NSW that have impacted on the management of child sex offenders in the community, including:

- The establishment of the Child Protection Register in 2001 – creating a scheme for sex offender registration.⁷³⁹
- The introduction of Child Protection Prohibition Orders (CPPOs) in 2004 – these orders prohibit certain offenders who pose a risk to the lives, or sexual safety, of children from engaging in specified conduct.
- The trial of Child Protection Watch Teams (CPWTs) in 2004 which led to an extension of the scheme in 2009 – CPWTs are multi-agency forums responsible for the 'monitoring and risk management of high-risk sexual and violent offenders on the Child Protection Register who have been released into the community'.⁷⁴⁰
- Establishing the Australian National Child Offender Register (ANCOR) in 2004 to enable police across Australia to register, case-manage and share information about offenders.
- The introduction of the *Crimes (Serious Sex Offenders) Act 2006*, which provides for orders to continue to detain, or to extend the intensive supervision of, a small number of offenders where there is an 'unacceptable' risk of a serious sexual offence at the end of an offender's sentence.
- Establishing the Serious Sex Offender Assessment Committee process in 2007.⁷⁴¹
- The creation of the Corrective Services' Community Compliance and Monitoring Group in 2007, which provides additional options for monitoring and case-managing high-risk offenders on parole.
- The introduction of Corrective Services' Community Offender Support Program to provide transitional offender accommodation – with three centres opened in 2007-2008.

737 NSW Police Force response to NSW Ombudsman Requirement for Information, 8 June 2012.

738 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

739 The *Child Protection (Offenders Registration) Act 2000* established the CPR.

740 NSW Police Force *Standard Operating Procedures, Child Protection Watch Team*, April 2009, p.3.

741 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

In just over ten years, these measures have considerably improved the monitoring of these offenders in the community from a system where there were few formalised monitoring arrangements, to one that is firmly regulated.

In its 2009 review of the sentencing and supervisory regime relating to sexual assault offences in NSW, the Sentencing Council concluded 'the current structure for the supervision of sex offenders released into the community appears to be adequate'.⁷⁴²

Our consultations with community members and other stakeholders found that there continues to be significant public concern about the risks associated with the management and supervision of child sex offenders, particularly in more remote Aboriginal communities. Community members repeatedly raised concerns around the safety and protection of victims and their families from retribution and re-offending when convicted sex offenders return to communities. The need for long-term residential accommodation, regular police monitoring and appropriate programs and interventions for offenders to address their offending behaviour, were among the issues raised.

In *Breaking the Silence*, the Aboriginal Child Sexual Assault Taskforce highlighted the perceived limitations of the criminal justice system in responding to Aboriginal child sexual assault, including 'high rates of recidivism' and the 'lack of effectiveness of sex offender programs'.⁷⁴³ The Taskforce identified that many communities lacked an understanding of the processes associated with transitioning offenders from custody to community and were concerned that child sex offenders were being placed back into communities with little or no support, putting more children and young people at risk. They also identified that there was limited data collection on re-offending and little knowledge about the effectiveness of existing programs, systems and services for Aboriginal child sex offenders.⁷⁴⁴

Despite the fact that *Breaking the Silence* identified the need for information on transitioning processes and on the effectiveness of offender management strategies in Aboriginal communities, the Interagency Plan did not include any actions which sought to assess the impact of fundamental elements of the systems for managing child sex offenders in the community; including the Child Protection Watch Teams, the Child Protection Register and the use of Child Protection Prohibition Orders. In fact, the Plan makes no reference to these particular initiatives.

The Plan included two actions that directly relate to offender management in the community: Action 23, which recommends a review by Corrective Services of the effectiveness of the use of non-association or place restriction orders and parole provisions for sex offenders; and Action 24, which recommends Corrective Services gives consideration to the expansion of a trial of enhanced offender monitoring (including home visits, frequent contact and use of global positioning devices).⁷⁴⁵ These actions have been implemented.

In its response to our requirement for information, Corrective Services also advised us of a range of program and governance changes that have occurred since the commencement of the Interagency Plan, which have improved their management of sex offenders in the community, and reflect Corrective Services' increased focus generally on community offender management. In addition to the programs and structures referred to earlier, Corrective Services has also transferred its psychologists and programs from Correctional Centres into the community, and reviewed all of its policies and procedures relating to community-based sex offender management.⁷⁴⁶

Corrective Services also highlighted a number of ongoing challenges it faces in managing child sex offenders; such as the difficulties associated with sourcing appropriate accommodation for offenders – particularly for those offenders who wish to return to more remote communities, and the limitations of current risk assessment tools which are vital for effective case management. It also detailed the challenges associated with supervising a small number of juveniles who are detained in the Kariong Juvenile Correctional Centre – managed by Corrective Services as part of the adult correctional system. Managing a small cohort of children in the context of custodial and community programs and accommodation options designed for high volumes of adult offenders, presents particular challenges to the effective management by Corrective Services of this group.⁷⁴⁷

In our extensive consultations with Police, crime managers from across the state have spoken about the difficulties they face in performing their role in administering the Child Protection Register and in their broader management of sex offenders in the community. They singled out those commands with less resources and high numbers of registered child sex offenders within their boundaries as facing the greatest challenges (particularly in relation to carrying out proactive surveillance work on top of the activities involved in administering the register).

Through our ongoing oversight of the police and child protection systems, we have also identified an important gap in the procedures for, and related guidance given to, frontline staff from Police, Corrective Services and Community

742 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, p.141.

743 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Aboriginal Child Sexual Assault Taskforce, Attorney General's Department NSW 2006, p.277.

744 Attorney General's Department NSW, Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, Aboriginal Child Sexual Assault Taskforce, Attorney General's Department NSW 2006, p.277.

745 NSW Government, *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.13.

746 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

747 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

Services about their roles and responsibilities in relation to applying for Child Protection Prohibition Orders. These orders are an important safeguard that can restrict the activities of registered child sex offenders, including where they reside.

In light of the scarce attention given to the systems and structures for managing child sex offenders in the community by the Interagency Plan, and the limited information available about their effectiveness, we have documented the major steps taken by Corrective Services to change its operations to strengthen its community offender management. We also highlight the ongoing challenges that both Police and Corrective Services face in carrying out this very high-risk and difficult work; and propose a number of ways that the systems and processes currently in place to protect children from sexual abuse can be strengthened.

17.1 Corrective Services’ role in managing offenders in the community

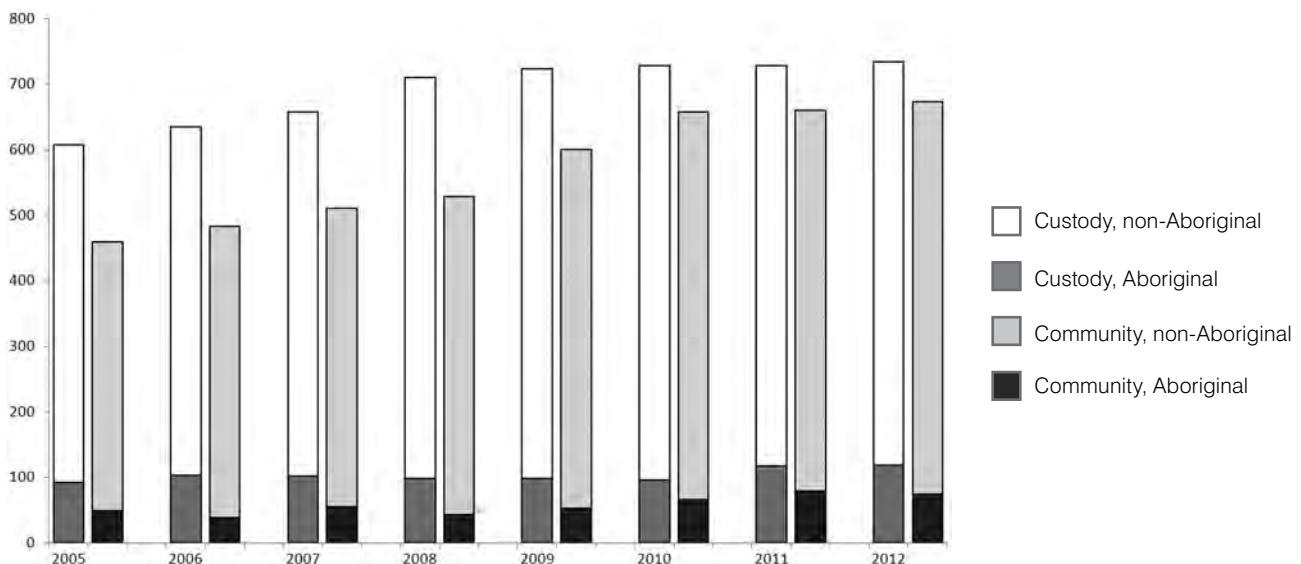
Sex offenders, including those who offend against children, make up a significant proportion of the serious offenders that Corrective Services has responsibility for managing. In 2012, ‘sexual assault and related offences’ was the most serious offence for 10% of the NSW prison population (965 prisoners), and 4% (673) of the 16,632 offenders that Corrective Services supervised in the community.⁷⁴⁸

The information Corrective Services provided for our audit detailed the processes for managing the many risks associated with offenders’ transition from custody to the community and recent major changes to community supervision processes. Corrective Services also explained the specialist therapeutic interventions it provides to sex offenders and other high-risk offenders in custodial settings. These range from its Custody Based Intensive Treatment (CUBIT) program, an intensive residential therapy program designed to reduce sexual recidivism for male offenders who have sexually abused adults and/or children; and CORE, a moderate intensity non-residential group therapy program for low to low-moderate risk sex offenders, through to a number of less intensive options.⁷⁴⁹ In light of the strength of community concerns raised during our audit regarding the management of serious sex offenders following their release from custody, this section will focus on the challenges associated with community supervision.

17.1.1 Sex offenders under community supervision

The figure shows Corrective Services data on the total number of Aboriginal and non-Aboriginal sex offenders in custody in NSW, and those who are serving community-based sentences.⁷⁵⁰

Figure Aboriginal and non-Aboriginal sex offenders in custody or supervised in the community in NSW (2005-2012)



Data on the number of sex offenders serving community-based sentences shows annual increases between 2005 (459 offenders) and 2010 (658 offenders). While this growth appears to have plateaued in recent years, Corrective Services’ workload in managing this group continues to increase with the expanded use of more intensive community supervision strategies to enhance its capacity to monitor and case-manage high-risk sex offenders.

748 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

749 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

750 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

The figure also shows that Aboriginal people make up a significant proportion of the sex offenders under community supervision – 11% (74) of the 673 offenders in 2012.⁷⁵¹

During the period of the Interagency Plan (2007 to 2011), it appears that there was also a significant increase in the number of sex offenders who were sentenced for sexually abusing children. Corrective Services advises that:

While figures compiled in relation to child sex offenders represent a best estimate only, based solely on recorded offences, data indicates that between 2006 and 2010 the number of child sex offenders with orders active at census date (30 June) had increased from 231 to 330.⁷⁵²

As at 30 June 2012, Corrective Services estimated that it was actively supervising 348 child sex offenders in the community. This group makes up just 2.1% of the 16,632 offenders Corrective Services supervises in the community. This figure for 2006 was 1.3% of total offenders under supervision. Although small, the increase poses ongoing challenges for Corrective Services' programming and the overall resources available for community offender management.⁷⁵³

For a small number of sex offenders who present an acute and ongoing risk upon their return to the community, there is now also the option of Extended Supervision Orders (ESOs). Introduced by the *Crimes (Serious Sex Offenders) Act 2006*, these orders enable the state to apply to the Supreme Court to impose a further period of supervision beyond the expiry of the offender's sentence. While just 27 offenders were the subject of these orders as at 1 September 2010, the resources needed to successfully manage this high-risk group over an extended period can be high.⁷⁵⁴ Since this option was first used in 2006, none of the high-risk offenders under this intensive supervision have been convicted of a further sex offence while subject to an order.⁷⁵⁵

As case study 37 shows, the challenges of dealing with a lifetime of recidivist offending behaviour are immense, but the outcomes that can be achieved through sustained supervision can be impressive in some instances.⁷⁵⁶

Case study 37

D, a 41 year old Aboriginal man, was convicted of a range of serious sexual offences in relation to a number of children and women between the years 1980 and 1997. D's criminal history also includes extensive property and violent offences. D has served a number of custodial sentences and due to his reluctance to undertake treatment for his sexual offending behaviour, he has rarely qualified for parole – when he did, his periods of community supervision were brief.

When D was nearing the end of his most recent custodial sentence, consideration was given to applying for an ESO to provide him with a period of supervision after his full sentence had expired. Because of his history of offending, alcohol abuse, mental health problems and other concerns, D was assessed by Corrective Services as posing a high risk. A successful application was made to the NSW Supreme Court for an ESO in 2009 under the *Crimes (Serious Sex Offenders) Act 2006*.

The five year ESO imposed by the Court contained 40 conditions including electronic monitoring, drug and alcohol testing, restrictions on associating with certain persons and at certain places, controls around where he could live, engagement with therapeutic treatment services and intensive case management. Corrective Services' Community Compliance and Monitoring Group (CCMG) was allocated responsibility for implementing the supervision order, managing the risk posed by the offender and assisting his reintegration to the community.

Although he had strong links to a rural area and expressed the desire to return, D was initially required to reside in the city so that he could access a range of services in compliance with his order. An individual risk management plan was created for D reflecting the specific risk factors that were identified as contributors to his sexual offending, in particular, his past abuse of alcohol and episodic mental illness.

The intensive case management conducted by the CCMG involved the use of specialist Aboriginal staff; medical intervention to assist with depression and alcohol abuse; support to gain appropriate employment and reduce social isolation; engagement of therapeutic services; imposition and monitoring of curfews; and drug and alcohol testing and supervision. D was housed at a metropolitan Community Offender Supervision Program residential facility for the first six months of his release, where he was required to pay rent and contribute to household chores. During this time, the CCMG supported him to secure appropriate accommodation through Housing NSW. The CCMG also conducted planned, as well as random, home visits on a weekly basis and vetted any new personal relationships that he formed.

751 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

752 Commissioner Ron Woodham, letter dated 17 February 2011, Corrective Services reference MLU10/04312.

753 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

754 *Review of the Crimes (Serious Sex Offenders) Act 2006*, NSW Department of Attorney General and Justice, November 2010, p.20.

755 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

756 Case study details provided by Corrective Services in its response to NSW Ombudsman Requirement for Information, 30 November 2012.

D's response to supervision was, at times, challenging. While he was compliant with his ESO conditions, his interactions with CCMG officers and other staff were often problematic. He was frequently non-communicative and hostile. D also exhibited poor interpersonal boundaries with staff such as his psychologist. These periods of difficulty were usually associated with fluctuations in his mental wellbeing. Continuing work with a community-based psychologist has enabled D to better recognise his patterns of behaviour and make adjustments. D had noticeably fewer, and less intense, episodes of hostility towards CCMG staff, as he settled into a more stable community life.

In recognition of D's close kinship ties to his home town and the likelihood that he would return there at the expiration of his extended supervision order, the CCMG managed and supported overnight visits by D to his family home on approximately 10 occasions. The CCMG also arranged for the local police to have the details of his case management plan and community elders were also engaged to help support D's visits home. The visits proceeded without incident. Although D's management has not been without its setbacks, his lapses in cooperation and self-regulation were handled well so that the gains he made were not jeopardised by him returning to gaol. The ESO is due to expire in another two years, and at this point, D's level of compliance and engagement with services indicates that no further order will be sought. Corrective Services will continue to ensure that supports are provided to D once his supervision order expires.

17.1.2 Corrective Services' responsibilities under the Interagency Plan

As we noted earlier, Corrective Services had lead agency responsibility for implementing two actions in the Interagency Plan that related to monitoring offenders in the community following a conviction. Action 23 required Corrective Services, in partnership with the Attorney General's Department, to:

Review the effectiveness and use of parole provisions and non-association or place restriction orders, and strengthen requirements on the Parole Authority to apply such orders where a child sex offender may be at risk of re-offending. This may involve the use of electronic monitoring devices to accompany place restrictions.⁷⁵⁷

Corrective Services advised that although it was required to provide quarterly reports to Aboriginal Affairs on the frequency that special parole provisions were used, it said this count was not particularly useful in assessing the effectiveness of the provisions. However, it did act on the intent of Action 23, explaining that it had a number of ongoing quality improvement strategies in place to continually assess and, where necessary, modify its policy and operational procedures relating to methods for supervising offenders in the community:

This approach also applies to individual offenders where interagency collaboration (e.g. Child Protection Watch Teams; exchange of information with NSW Police) provides for assessing dynamic changes in risk factors allowing modification to the offender management strategy which may include changing the way order conditions are applied.⁷⁵⁸

The other action Corrective Services had lead responsibility for was Action 24, which required it to:

...consider expanding the [Corrective Services] trial of enhanced monitoring of offenders, including home visits, frequent contact, and global positioning devices, subject to positive evaluation of the trial.⁷⁵⁹

Soon after the Interagency Plan was released, there were plans for a state-wide roll-out of Corrective Services' Transformation, Resettlement and Community Safety trial, which enabled 'surveillance, comprehensive casework and family support' to continue outside of standard business hours.⁷⁶⁰ However, these plans were superseded by significant changes in the way Corrective Services now manages offenders in the community. The trial subsequently became the basis for Corrective Services establishing its Community Compliance and Monitoring Group (CCMG) in 2007, which provides additional levels of monitoring and case management in relation to offenders assessed as warranting closer supervision. The CCMG uses strategies including unannounced home visits, and depending on the issues being managed, the plan can also include specific techniques such as urinalysis and breath-testing for alcohol.⁷⁶¹ We discuss the work of the CCMG further below.

17.1.3 Supervising sex offenders in the community

In responding to our requirement for information about its implementation of strategies relevant to the Interagency Plan's goal to reduce the incidence of child sexual abuse, Corrective Services provided us with details of recent changes to its systems and processes for supervising sex offenders in the community. It argued that any

⁷⁵⁷ NSW Government, *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.13.

⁷⁵⁸ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁵⁹ NSW Government, *New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.13.

⁷⁶⁰ Corrective Services NSW, Annual Report 2005-2006.

⁷⁶¹ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

assessment of its implementation of its specific responsibilities under the Interagency Plan should take into account these broader improvements.

17.1.3.1 *Recent improvements*

Important changes that, in the view of Corrective Services, are helping to achieve more stable and law abiding behaviour by sex offenders that it supervises in the community include:

- ***The Serious Sex Offender Assessment Committee***

This interagency forum of specialists from Corrective Services, the Attorney General's Division and the NSW Police Force, is responsible for providing advice and guidance on the effective management of sex offenders while in custody and ensuring that appropriate supports are in place when they return to the community. In addition to the usual offender management processes, every child sex offender is discussed at one of the monthly committee meetings 12 months before the expiry of their sentence. The issues discussed typically include the offender's risk assessment, access to and participation in appropriate treatment, planning for a staged release, where the offender will live, referrals to other services for specific post-release supports, and any other steps taken 'to maximise the likelihood of enduring stability after the cessation of supervision'.⁷⁶²

- ***Community Compliance and Monitoring Group***

In addition to parole conditions, offenders in the community might also be subject to other order types, such as good behaviour bonds imposed during their initial sentencing. For a very small number of particularly high-risk sex offenders, the additional monitoring by the Community Compliance and Monitoring Group might be supported by ESOs, which provide a framework for more intensive management of the offender. Conditions imposed by the Supreme Court under these orders can provide a way to address specific risks. For instance, if an offender has a history of sexual offending against strangers late at night and has low supervision compliance, the order might provide for a period of satellite tracking, a monitored curfew and a weekly schedule of movements, as temporary protective measures. With the approval of the State Parole Authority, electronic monitoring can also be applied to parolees.⁷⁶³

- ***Additional options for closer monitoring of higher risk cases***

Many sex offenders are subject to a period of parole following their release from custody. In addition to the standard conditions that will generally apply to offenders on parole, each offender's orders should also include any 'special' conditions to address that individual's particular risks and needs. As previously noted, those who are assessed as being at higher risk of re-offending can now be referred to the CCMG for additional monitoring and more intensive case management, including unannounced home visits and drug and alcohol testing. This closer monitoring of the offender in his or her own environment, including contact with family and employers, is intended to provide for a more dynamic assessment of risk – as evidenced by case study 37.

- ***Psychologists in the community***

Corrective Services said that moving its psychologist resources from correctional centres into the community has significantly enhanced its ability to assess and manage individual sex offenders. The move enables Community Offender Services' psychologists to work closely with probation and parole officers and specialist staff to facilitate the community case management of sex offenders.⁷⁶⁴

- ***Child Protection Watch Teams***

Corrective Services said that in some locations, the development and use of multi-agency Child Protection Watch Teams is beginning to improve the monitoring and risk management of high-risk child sex offenders who are living in the community. It says the teams help offenders to access the health, education, accommodation and other services needed to stabilise their reintegration into the community and to reduce their risks of re-offending. The work of these teams is discussed later in section 17.2.2.⁷⁶⁵

17.1.3.2 *Impediments to effective supervision*

Despite these improvements, Corrective Services conceded that it continues to face a number of ongoing challenges and constraints that can impede its capacity to provide sex offenders in the community with effective supervision. These include:

- chronic shortages in suitable accommodation

⁷⁶² Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁶³ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁶⁴ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁶⁵ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

- managing offenders who wish to return to remote communities, and
- the limitations of accurately predicting risk in a dynamic environment.

In addition to noting impediments, Corrective Services also noted emerging issues that might warrant further development. The first related to its current use of GPS satellite tracking. It said that although obtaining a record of high-risk offenders' movements can assist in some instances, the technology provides no information about what the offender is actually doing. Another issue likely to warrant closer consideration in the near future is the increasing ease with which supervised sex offenders can access the internet, making the practice of denying offenders access to computers or online activities 'anachronistic and difficult to police'.⁷⁶⁶

17.1.3.3 Chronic shortages in suitable accommodation

In responding to our requirement for information, Corrective Services told us that 'finding stable and suitable accommodation for all offenders transitioning back into the community from custody is one of the most difficult challenges for [Corrective Services]. This is particularly true for child sexual offenders.' Its decision to establish its Community Offender Service Program (COSP) was in direct response to this challenge. Beginning with the opening of three centres in 2007-2008, Corrective Services continues to invest heavily in the COSP program.

COSP centres provide three to six months transitional accommodation for offenders on parole or a community-based order, and some case management support to link offenders with program supports (such as substance abuse treatment when they first move into the community). Corrective Services now operates eight COSP centres across NSW.⁷⁶⁷

Corrective Services said its decision to establish these centres has been 'extremely beneficial' in providing an initial period of supported accommodation for high-risk and/or long-term offenders, and for those at risk of homelessness. However, it stressed that accessing housing beyond this period can be difficult for some offenders, especially those with complex needs – such as elderly or frail offenders, or those who have an intellectual disability, acquired brain injury or mental illness. Corrective Services also noted that the 'lack of access to appropriate services and accommodation issues' were the 'predominant' challenges it faced when trying to manage Aboriginal child sex offenders and child sex offenders who return to live in rural or remote locations.⁷⁶⁸

Corrective Services said it is developing partnerships with government and non-government service providers to expand the availability of suitable accommodation for offenders, including child sex offenders. This included using multi-agency Child Protection Watch Teams to help find housing for a small number of higher risk child sex offenders.⁷⁶⁹

On a related note, Corrective Services was also a partner to Actions 20 and 21 of the Interagency Plan, which required the Attorney General's Department as lead agency to:

[Action 20] Develop options for providing alternative accommodation (e.g. bail brokerage) for Aboriginal persons who are granted bail or subject to AVOs or Place Restriction Orders relating to child sexual assault...

[Action 21] Ensure that community treatment services and counselling are linked to alternative accommodation for perpetrators.

In its response to these actions, the Department of Attorney General and Justice undertook research to measure the extent of child sexual assault offending by Aboriginal people in NSW. The research revealed 'that there are very few [Aboriginal] people charged with child sexual offences and even less have bail granted'. It commented that as these actions were targeted to assist 'a small number of people charged [with sexual assault offences] and an even smaller number of people on bail, it is not viable to develop a range of accommodation options for this target group'.⁷⁷⁰

The Department of Attorney General and Justice went on to say that given there are a greater number of people charged with domestic violence offences, alternative accommodation options and related treatment should 'solely focus on this group and not child sexual assault [alleged offenders]'. An options paper was prepared by the Department which suggested consideration be given to the following in relation to Aboriginal people charged with domestic violence related offences:

- Option 1: Aboriginal Client Service Specialists located in various courts through NSW develop localised directories of crisis accommodation service providers and liaise with a defendant's family to identify accommodation options.

⁷⁶⁶ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁶⁷ Corrective Services of NSW, Annual Report 2008-09, p.7.

⁷⁶⁸ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁶⁹ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁷⁰ Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012. The response attached a DAGJ *Research Paper for Actions 20 and 21 of the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, November 2009.

- Option 2: That the DAGJ chair a working group with key stakeholder agencies to comprehensively explore options for defendants who are granted bail for domestic violence.⁷⁷¹

We received advice from Aboriginal Affairs indicating that the options paper has been submitted for consideration to the Human Services and Justice Group CEOs Group in June 2010. It appears that current consideration of this issue is focused on juveniles.⁷⁷²

The provision of appropriate accommodation and treatment options for all violent offenders (on bail or when exiting custody) – whether charged with family violence or sexual assault related offences and whether involving an Aboriginal offender or not – is crucial for community safety.

In light of this, we recommend that transitional accommodation options similar to those provided through Corrective Services' Community Offender Service Program (COSP), which provide case management and links with treatment supports and services, should be considered for this broader group.

17.1.3.4 Managing offenders who intend to return to remote communities

Corrective Services advises that its decision-making processes regarding offenders who intend to reside in remote communities have improved, but the issue remains a challenge. It said each case is considered on its merits: taking into account the level of risk, the intensity of supervision required, the milieu of the particular community, and the imposition on the offender's autonomy.

Corrective Services said that when the offender's current level of risk and needs are low, and a pro-social support network is available, transition to the remote community is viewed favourably. Conversely, when the level of risk is elevated, intensive supervision and treatment are required, and the community is considered a de-stabilising influence (for instance, locations with unsupervised children or affected by high levels of violence), an application to return to that community is unlikely to be supported. When Aboriginal communities raise specific concerns about an offender returning, Corrective Services said it is likely to deem the accommodation or location as unsuitable.⁷⁷³

These are common dilemmas facing Aboriginal child sex offenders from remote communities. Corrective Services said one strategy it uses involves graded exposure, whereby the offender is initially stabilised in a metropolitan community – where intensive supervision and regular therapy are more readily available – as with the situation described in case study 37, until the offender demonstrates stability and compliance. Thereafter trips to the remote community are made, enabling a staged reintroduction to that community before supervision expires.

*This is particularly important in instances where an offender has a firm intention to relocate to the remote community as soon as supervision expires. In short, CSNSW protects against sexual assault in Aboriginal communities by keeping offenders at risk of re-offending out of those communities.*⁷⁷⁴

Although Corrective Services is exploring the potential for technologies such as Skype or VideoLink to enhance the availability of therapeutic services in remote settings, it said that these options are limited by a shortage of necessary facilities or equipment in many locations.⁷⁷⁵

17.1.3.5 The limitations of current risk assessment tools

Not all child sex offenders are high-risk, and even those who are high-risk do not present a risk in all circumstances. Corrective Services noted that, at best, its risk assessment instruments can help identify and provide guidance on the types of issues that may need to be addressed when managing sex offenders in the community, but that assessment tools remain limited by the unpredictability of individual behaviours and the multiplicity of potential environmental influences. Despite the inability of risk assessment tools 'to predict the behaviour of an individual with a high degree of certainty', Corrective Services believes that these processes are vital for good decisions to be made about the allocation of limited resources.

Corrective Services noted that it continues to collect data regarding offender scores on risk assessment instruments, particularly its use of Static-99R, thereby building a body of evidence about the utility of these tools in relation to NSW sex offenders.⁷⁷⁶ In addition, risk assessments used to support applications under the *Crimes (Serious Sex Offenders) Act 2006* for orders relating to particularly high-risk sex offenders, are overseen by the Serious Sex Offender Review

771 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012. The response attached a DAGJ Research Paper for Actions 20 and 21 of the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities, November 2009.

772 Department of Attorney General and Justice response to NSW Ombudsman Requirement for Information, 27 June 2012.

773 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

774 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

775 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

776 The first step in Corrective Services' assessment to develop a case plan for an offender is to complete the Level of Service Inventory – Revised (LSI-R). For sex offenders, Corrective Services uses the Static-99R. The Static-99R is an instrument designed to assist in the prediction of an offender's risk of sexual re-offending. The Static-99R has moderate predictive accuracy, consists of 10 items, and produces estimates of future risk based on a number of risk factors present in any one individual. The total score (obtained by summing all the items) ranges from -3 to 12.

Group and specialist staff from Corrective Services' Sex and Violent Offenders Therapeutic Programs division. These specialists are responsible for making incremental improvements to the instruments to reflect international 'best practice' standards.⁷⁷⁷

The validity of using established risk assessment tools on particular groups of offenders, such as Aboriginal offenders, is subject to ongoing investigation. Corrective Services has commenced a validation study of the Static-99 risk assessment⁷⁷⁸ instrument which will include an analysis of whether the tool is valid and reliable for Aboriginal sex offenders. Due for completion in June 2013, the evaluation will use a large sample of sex offenders who have been released for up to 10 years. Corrective Services is also contributing to a national study looking at the validity and reliability of risk assessment tools for Australian sex offenders, which is due to commence in November 2013.⁷⁷⁹

In addition, Corrective Services noted that an evaluation is soon to be released on the applicability of Static-99 to Western Australian Aboriginal populations. An earlier Australian Criminology Research Council review of risk assessments of male Aboriginal sexual offenders in Western Australia, found that the main predictors of sexual re-offending by this cohort were unrealistic long-term goals, unfeasible release plans, and poor coping skills prior to release.⁷⁸⁰ The study also found that although appropriate supports could be provided in custody or under supervision, offenders returning to communities where substance abuse is rife and there is no employment were at particular risk.⁷⁸¹

While evaluating risk assessment tools is important, Corrective Services warned that a challenge in testing the usefulness of tools on sub-populations of offenders such as Aboriginal sex offenders is that these groups can themselves include important sub-populations – for instance, urban versus rural populations, or violent and non-violent offenders. Corrective Services also acknowledged concerns about the validity of using tools developed for adult offenders to the small number of juveniles it is responsible for managing.⁷⁸² (This issue is discussed further in the next section.)

In its discussion of the risk assessment tools for sex offenders used by Corrective Services, the NSW Sentencing Council noted concerns about accurately determining risk in relation to specific populations, including Aboriginal offenders. While the Sentencing Council noted that Corrective Services' approach to the risk assessment of sex offenders is credible, the Council recommended:

*...ongoing evaluation of the tools Corrective Services employs for risk assessment over an extended timeframe, and with a larger population group, so as to determine their degree of accuracy; and for it to be sensitive to the academic debate concerning sex offender assessment tools with a view to identifying any superior models that may emerge.*⁷⁸³

In response, the NSW Government stated that it supported both these recommendations and described Corrective Services as embracing an approach of continual improvement to the assessment and treatment of sex offenders, but noted that Corrective Services' 'primary focus is on operational requirements, in contrast to a research body, and that risk assessment is a specialised academic field'.⁷⁸⁴

17.1.4 Managing juvenile offenders within an adult system

Since 2004, the Kariong Juvenile Correctional Centre on the Central Coast has been managed by Corrective Services as part of the adult correctional system. Offenders are placed in the 48-bed centre either because they have committed a serious indictable offence, or because of poor behaviour at a Juvenile Justice Centre. In requiring information about Corrective Services' management of adult offenders, we also sought information about how certain policies and practices applied to the small number of juveniles at Kariong, especially in relation to the provision of post-release supports to assist young people to re-integrate into the community.

At the time that Corrective Services responded to our requirement for information on 30 November 2012, it said there were 15 Aboriginal inmates at Kariong, including five who were detained for sexual assault offences. None of the sexual offences were committed against children. Corrective Services did not specify the total number of offenders at Kariong at that time. However, elsewhere in its response, Corrective Services said there were 21 offenders at Kariong as at 30 June 2012. Of these, 10 were Aboriginal (seven sentenced offenders, and three on remand).⁷⁸⁵

777 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

778 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

779 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

780 Allan A & Dawson D, 2002. *Developing a unique risk of violence tool for Australian Indigenous offenders*. CRC 6/00-01 Canberra: Criminology Research Council; Allan A & Dawson D, Assessment of the risk of re-offending by Indigenous male violent and sexual offenders, *Trends and issues in crime and criminal justice*, July 2004.

781 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

782 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

783 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, p.50.

784 Department of Attorney-General and Justice, *Review of the Crimes (Serious Sex Offenders) Act 2006*, November 2010, p.74.

785 Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

Juvenile offenders released from Kariong are subject to the same Corrective Services policies and procedures that apply to adult offenders. In listing the challenges faced by Corrective Services staff in having to use systems and processes designed for high volumes of adult offenders to address the needs of a small group of high-risk juveniles, Corrective Services noted the following issues:

- Its lack of specialist tools to screen juveniles, identify their criminogenic risks and needs, and guide subsequent interventions. For instance, Corrective Services' primary risk assessment tool – the Level of Service of Inventory – Revised (LSI-R) – is unsuitable for juvenile offenders, as its focus is on issues affecting adults.
- Offenders transferred from Juvenile Justice often enter Kariong shortly before their release date, circumventing pre-release planning processes that normally rely on detailed case management histories and adequate timeframes to plan post-release supports.
- Although Juvenile Justice staff are essential for identifying and planning post-release supports and the creation of strategies to supervise the offender in the initial weeks after their release, their role is only advisory.
- Corrective Services' usual processes for identifying suitable accommodation in the community often do not apply to young people, those from remote locations or those who have no family to go to when they are released.
- Responsibility for developing appropriate management strategies and identifying post-release supports often falls upon staff who have little direct experience in planning for the specific educational and other developmental needs of young people.
- Families of offenders sometimes have difficulties in understanding the parole conditions and the expectations of Corrective Services; especially families whose previous experience of community supervision was based on previous involvement with Juvenile Justice.
- The inappropriateness of, and risks associated with, placing vulnerable juvenile or young adult offenders in adult sex offender program groups. The vulnerability of juveniles can also preclude their participation in other adult programs, such as those addressing poor literacy and numeracy skills.⁷⁸⁶

Corrective Services' main strategy for responding to these challenges is to try to manage the young offenders individually and, where appropriate, rely on non-government organisations to provide specialised services and other youth-specific supports. Corrective Services also noted that the many barriers to young people in the adult correctional system being provided with access to juvenile-appropriate programs and services, are unlikely to be resolved soon, as the:

...small numbers of juveniles under its supervision cannot justify the resources necessary to change this situation. This is also true for the programs administered by [Corrective Services] which have been developed for adult offenders; their suitability and effectiveness for juvenile offenders is unknown. This is particularly the case for sex offenders.⁷⁸⁷

17.1.5 Strengthening community offender management

Corrective Services is actively seeking to address many of the difficult challenges associated with the transition of high-risk offenders, including child sex offenders, from custody to the community. Its investment in transitional accommodation and other supports that it provides through its Community Offender Service Program is particularly important in this regard. Five years on from its commencement, the Community Compliance and Management Group, in conjunction with Community Offender Services, appear to be operating effectively and have been active in identifying ways to improve their processes for managing offenders. The progress made by Corrective Services in building a sophisticated program for managing child sex offenders in the community is impressive.

As we discuss later in this chapter, while there is scope for stronger interagency partnerships to be built between staff from Corrective Services, Community Services and Police, particularly around the exchange of critical information relating to the safety and welfare of children, our audit has not identified any specific areas of weakness in relation to Corrective Services' performance. However, we have identified some areas that merit further consideration:

- The expansion of the transitional accommodation program, to increase the accommodation options for offenders who wish to return to rural and remote communities (particularly Aboriginal offenders).
- Specific funding to allow the establishment of research partnerships to assist Corrective Services to refine its suite of risk assessment tools for child sex offenders.

⁷⁸⁶ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

⁷⁸⁷ Corrective Services response to NSW Ombudsman Requirement for Information, 30 November 2012.

- In light of the limited resources available to manage child sex offenders residing in rural and remote areas, the potential for greater use of technologies such as Skype and Video Link to provide therapeutic services (e.g. drug and alcohol services and counselling).

However, in the area of managing juvenile sex offenders in the Kariong facility, Corrective Services has expressed concerns about the ongoing limitations in its ability to effectively manage young people in an adult environment. The young people at Kariong are among the most high-risk offenders in NSW and their offending profile indicates that they also have extremely complex needs. Yet Corrective Services' ability to engage these young offenders and to provide them with access to appropriate programs and services following their release from custody is somewhat limited.

The Vulnerable Teenagers Review (mentioned in Chapter 15) that is currently being led by Family and Community Services would appear to be well placed to consider how best to meet the needs of young people exiting Kariong. In addition, the issues raised in the previous chapter about the need to create much stronger links with community-based treatment services and supports when young people exit juvenile justice centres, are also relevant to Kariong detainees. For this reason, we consider it essential that Corrective Services is appropriately engaged in the Vulnerable Teenagers Review process.

17.2 Monitoring offenders in the community – the NSW Police Force

All police have important responsibilities in protecting children in local communities. In addition to frontline police attached to the NSW Police Force's 80 local area commands, the State Crime Command's Sex Crimes and Child Abuse Squads – which were established to provide specialist investigative responses to adult and child sexual assault – provide a range of specialist advice and services to local police and directly investigate the majority of cases involving child sexual abuse.

Along with Corrective Services, the NSW Police Force plays a key role in the management of child sex offenders in the community, principally through its roles in maintaining and monitoring the Child Protection Register (CPR), coordinating the multi-agency Child Protection Watch Teams and applying for Child Protection Prohibition Orders to restrict the behaviour of offenders on the CPR. These are critical components of the systems in this state to protect children from sexual harm. In recognition of this, we required the NSW Police Force to provide us with information on its current operation.

17.2.1 The Child Protection Register

The *Child Protection (Offenders Registration) Act 2000* establishes the Child Protection Register (CPR), which requires persons convicted of certain offences against children to register with the NSW Police Force on their release into the community.

The Act provides for two classes of offences:

- **Class 1** offences include the murder of a child and sexual intercourse with a child.
- **Class 2** offences include acts of indecency, possession of child pornography, child prostitution, kidnapping of a child, filming a child for indecent purposes, and grooming offences.

A person who is sentenced for a Class 1 or 2 offence is required to register at their local police station within 28 days of sentencing, their release from custody or upon their entry to NSW. They must provide a range of information including their name and any aliases, date of birth, address, employment and vehicle details, offence details and names and ages of any children with whom they reside or have unsupervised contact. Persons on the register must report annually and notify police of any change in their circumstances.

For a single Class 2 offence, a person must report for eight years. For a single Class 1 or two Class 2 offences, the reporting period is 15 years. For multiple offences, the reporting period is for the rest of a person's life. For young people, the reporting period is for a minimum of four years and a maximum of seven and a half years.⁷⁸⁸

The CPR was established in 2001 to improve the accuracy of child sex offender intelligence held by police and to assist the investigation and prosecution of child sex offences committed by recidivist offenders. It was also intended to provide a deterrent to re-offending and to give child abuse victims and their families an increased sense of security.⁷⁸⁹

The CPR is a computer-based register accessed through the NSW Police Force database, COPS. It contains the details of all registrable persons in NSW and case management details. Police advise that the register is a valuable intelligence tool for recording and collating personal details, threat assessments and other intelligence about registrable offenders.

The management of 'registrable' information is coordinated by the State Crime Command. A team of staff attached to the State Crime Command are responsible for monitoring and maintaining the overall register, including the provision of guidance and training to local police commands about managing the register locally and case management. The team coordinates records about child sex offenders and places alerts on the NSW Police Force's COPS database and assesses which extreme/high-risk cases might warrant the direct involvement of the Sex Crimes Squad.⁷⁹⁰ The team is also a key contact point for external agencies. In 2011, the State Crime Command received seven additional CPR staff to administer the register and to provide additional support to commands.

Local police commands are responsible for maintaining their own local registries and monitoring high-risk offenders.⁷⁹¹ Standard Operating Procedures have been developed to provide guidance to officers in their day-to-day use of the CPR. Crime managers have primary responsibility for the management of registered persons living in their local area commands including notification, updating of files, threat assessments, development of case management plans, liaison with the registry staff and other affected local area commands.⁷⁹² The court that sentenced the offender and supervising authorities including Corrective Services and Juvenile Justice, each have responsibilities to advise registrable persons that they must register their details with police.⁷⁹³ The Standard Operating Procedures provide directions to police as to how they should work with other supervising authorities.⁷⁹⁴

Since the introduction of the CPR in NSW, all states and territories in Australia have enacted similar legislation and CrimTrac⁷⁹⁵ has been made responsible for the Australian National Child Offender Register (ANCOR). As at 1 March 2011, there were 12,596 registered child sex offenders across Australia.⁷⁹⁶ The NSW Police Force is frequently required to exchange information with justice agencies in other jurisdictions.⁷⁹⁷

A range of other measures have also enhanced information sharing across relevant agencies and helped to facilitate the effective management of child sex offenders, including: amendments to the *Child Protection (Offenders Registration) Act 2000*; and the introduction of Child Protection Watch Teams. Recently, steps have also been taken to improve information sharing to allow an assessment to be made about the need for a Child Protection Prohibition Order – these issues are discussed in section 17.2.3.1.

In addition, the NSW Police Force has developed policies such as the *NSW Police Force Information Disclosure Policy and Procedures* which sets out the circumstances when information in relation to a registrable person can be shared, including to parents/guardians when they form relationships with offenders and to non-government organisations providing treatment and support.

17.2.1.1 Managing the volume of the CPR

Since its inception in 2001, the CPR has grown continually.⁷⁹⁸ Between 2008 and 2011 there was a 27% increase in the number of child sex offenders registered on the CPR in NSW.⁷⁹⁹ The proportion of Aboriginal registrants increased slightly over the period of the Interagency Plan (2007-2011), from 3.2 to 5%.

788 *Child Protection (Offenders Registration) Act 2000*.

789 Hansard, Legislative Assembly, 1 June 2000, the Hon Paul Whelan, MP, Minister for Police, Second Reading speech, *Child Protection (Offenders Registration) Bill*.

790 NSW Police Force Child Protection Register – Standard Operating Procedures, p.12.

791 NSW Police Force Child Protection Register – Standard Operating Procedures, Sex Crimes Squad, Version: 4.0, May 2010.

792 NSW Police Force Child Protection Register – Standard Operating Procedures, Sex Crimes Squad, Version: 4.0, May 2010, p.13.

793 *Child Protection (Offenders Registration) Regulation*, clause 7.

794 NSW Police Force Child Protection Register – Standard Operating Procedures, p.53.

795 CrimTrac is the national information-sharing service for Australia's police, law enforcement and national security agencies.

796 Crimtrac, Child Protection Services, http://www.crimtrac.gov.au/our_services/ChildProtectionServices.html, Accessed 30 November 2012.

797 NSW Police Force Registrable Persons – Child Protection Registry: Information Disclosure Policies and Procedures, Version 3.2 2006, 3.7.

798 NSW Police Force Response to NSW Ombudsman Requirement for Information, 8 June 2012.

799 The figures provided by the NSW Police Force include all CPR Class 1 and Class 2 offences thus incorporating the small amount of offenders that are on the register for child murder.

For the five-year period of the Interagency Plan, 12% of the registered offenders (as at 2011) were charged with further child sex offences. Of these repeat offenders, 14.8% were Aboriginal.⁸⁰⁰

When an offender is first registered on the CPR, police do a risk assessment to determine their risk category. The level of monitoring and intervention depends on the assessed level of risk. Low/medium risk offenders are not actively monitored beyond their requirement to report annually. High-risk offenders should have contact with police every 30 days. Very high-risk offenders are managed centrally by the State Crime Command, with the assistance of Child Protection Watch Teams.

In 2011, the State Crime Command managed a proportion of high-risk registrants directly as well as a number of registrants during the period before a case is allocated to a command for ongoing monitoring. The majority of registrants are managed on an ongoing basis by local police commands. However, there are significant differences in the number of registrants that individual commands are required to manage.

The NSW Police Force generally allocates greater resourcing to those local area commands with the highest crime volume and populations to manage. Local area commands located in metropolitan areas as well as regional commands with high population concentrations, such as those on the Central Coast, usually have higher staffing levels. A number of commands in regional centres, such as Tamworth and Dubbo, have less resources than many of the metropolitan commands.

It can be particularly difficult for regional commands with relatively high numbers of registrants and limited resourcing to monitor the activities of registrants; particularly when they often have to travel large geographic distances to do so.

A significant number of crime managers that we spoke to in regional locations expressed concern about the difficulties they face in managing the register without any additional, dedicated resources. As this work is high risk, it is the role of the crime manager to directly oversee it. We were advised that a significant amount of their time is taken up administrating the CPR and tasking police to conduct the required compliance checks on registered offenders in accordance with their risk rating. Most crime managers we consulted indicated they were concerned that they did not have sufficient resources, after meeting their frontline response and CPR administration commitments, to plan and carry out the level of proactive policing of these offenders that they think is warranted. This type of proactive work is carried out usually only in response to crime managers having received specific intelligence about a registered person.

On a related note, we also identified certain commands that have developed particular techniques and workflow management strategies to assist them in managing the volume of the CPR in order to maximise their ability to carry out proactive work. In this regard, it would be useful for the State Crime Command's Child Protection Register team to identify and share good practice strategies among all commands, particularly those with large numbers of registered offenders.

What the data told us about volume

In light of the strong views expressed by many crime managers about managing the volume of the CPR, we sought specific details from Police about the number of registrants within each region and local area command. (In our discussion of this information below we have been careful not to present details relating to individual commands.)

As at 2011, the six NSW Police Force region commands across the state were responsible for directly managing the vast majority of registrants (the remainder were being managed by the State Crime Command).

Northern Region, which includes local area commands from Tweed-Byron to the Central Coast, has by far the highest number of registrants at 27%. Of the 10 commands with the highest volume of registrants in NSW, seven are located in the Northern Region. These include the three local area commands in the state with the highest number of registered offenders to manage.

In examining the impact on individual commands in having to manage a high volume of registrants, it is important to take into account factors such as the command level type; the nature and volume of crime generally; the risk rating of registered offenders; and geographic boundaries.

Among those seven commands in the Northern Region that are in the 'top 10' for numbers of CPR registrants, a number have higher levels of resourcing. However, the command ranked sixth in terms of numbers of registrants is a command in the Western Region with a lower resourcing base. This command was singled out by many crime managers, including those from other regions, as being in one of the most difficult positions in relation to managing their CPR workload.

As we noted earlier, an additional factor which needs to be considered in terms of the impact of volume is the actual classification of registrants. Those registrants classified as high-risk require much more intensive monitoring. By way of example, 17% of Northern Region's registrants are high-risk, and by contrast, Central

800 NSW Police Force Response to NSW Ombudsman Requirement for Information, 8 June 2012.

Metropolitan Region – with the lowest number of registrants – has the highest volume of high-risk registrants at 33%. Therefore, assessing actual workload is clearly not a straight-forward exercise.

In 2009, the NSW Sentencing Council in its report *Penalties Relating to Sexual Assault Offences in New South Wales* recommended that consideration should be given 'to the feasibility of extending the registration requirements for sex offenders whose offences have been committed against adults'.⁸⁰¹ In response, the then Government indicated that it supported such an extension but only in relation to sex offenders who were subject to an extended supervision order (ESO) under the *Crimes (Serious Sex Offenders) Act 2006*. It is unclear whether this extension is still being considered. If the registration requirements were extended in this way, it would only apply to a very limited class of offenders (as at September 2010, 27 high-risk offenders were subject to an ESO).⁸⁰² However, if this change was introduced, there would be an additional burden on police: therefore, this would need to be taken into account, particularly given the current challenges for police in managing the CPR.⁸⁰³

We understand that a business case has been submitted to the Police Executive in relation to increasing resourcing for local commands to allow for more effective management of a command's CPR responsibilities. In light of the significant concerns raised during our audit by senior police and the importance of this work, we believe that a thorough review of the current capacity of police local area commands to conduct this work should be undertaken as part of any assessment of the business case.

Finally, there has been no further evaluation of the CPR since our office undertook a review of the initial implementation of the *Child Protection (Offenders Registration) Act 2000* after the scheme commenced in October 2001. Ten years on from the establishment of the register, it would appear to be timely for a comprehensive evaluation of the effectiveness of the CPR to be undertaken. We believe this is particularly significant in light of the growing number of persons on the register, and the impact of this increase on current and future policing resources.

17.2.1.2 Young people on the CPR

As we indicated earlier, young people convicted of a Class 1 or Class 2 offence are also required to be registered on the CPR. The only exceptions to this are where a child has been convicted of a single offence involving an act of indecency or in cases of possession or publication of child pornography.⁸⁰⁴

Juvenile sex offenders are placed on the CPR for between four and seven and a half years. They must also report certain information to police – school principals and other people may be informed.⁸⁰⁵

Studies on the efficacy of registration programs for juvenile sex offenders note that the issues facing young people who commit sex offences are often no different from other juvenile offenders.⁸⁰⁶ The research shows that juvenile sex offenders generally do not go on to commit sex offences as adults, and that the registration of juvenile sex offenders fails to reduce juvenile recidivism.⁸⁰⁷ (See also Chapter 15 for a further discussion relating to juvenile sex offenders.)

When questioned on the CPR in 2010 by the Standing Committee on Law and Justice, Juvenile Justice commented:

*The juvenile justice system aims to balance community safety with the potential for juvenile offenders to be rehabilitated. There is little evidence to support the registration of juvenile sexual offenders as an effective option for achieving either aim. Registration significantly beyond the length of a legal order may in fact delay young people's reintegration into the community...[and make] it more difficult to obtain suitable employment and access to educational and recreational opportunities.*⁸⁰⁸

In its 2009 report on penalties relating to sexual assault offences, the NSW Sentencing Council said that for first-time offenders who are aged under 18, courts should have the discretion to excuse the requirement for registration in less serious cases:

...otherwise the long-term consequence for offenders in this category, who are still in a developmental stage, and whose understanding of sexual mores may be limited, can be disproportionate both for the objective seriousness

801 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, Recommendation 10.

802 The Government response to the Sentencing Council recommendations included in the report of the *Review of the Crimes (Serious Sex Offenders) Act 2006*, NSW Department of Attorney-General and Justice, November 2010, p.20. The *Crimes (Serious Sex Offenders) Act 2006* provides a mechanism for the management of serious sex offenders who have completed their sentence but who remain a serious risk to the community by providing for their extended supervision or continuing detention.

803 *Review of the Crimes (Serious Sex Offenders) Act 2006*, NSW Department of Attorney-General and Justice, November 2010, p.76.

804 These offences are below the sentencing threshold for a child, but not for an adult convicted of a similar offence. Section 3, *Child Protection (Offenders Registration) Act 2000*.

805 *Child Protection (Offenders Registration) Act 2000*.

806 See for example Pittman N and Nguyen Q, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States*, 2011, p.6.

807 Letourneau E and Armstrong K. 'Recidivism rates for registered and nonregistered juvenile sexual offenders', *Sexual Abuse: A Journal of Research and Treatment*, Vol 20, No.4, December 2008, pp.393-408.

808 *Spent convictions for juvenile offenders*, Standing Committee on Law and Justice, Report 42, July 2010, p.104.

*of the offence and the level of risk of re-offending. This can have a real significance for example, for consensual sexual activities between juveniles, where there is an absence of indiscriminate predatory behaviour.*⁸⁰⁹

As previously noted in the chapter on law reform, consensual sexual intercourse between similarly aged young people can sometimes attract a criminal sanction, triggering a requirement that the involved young person be registered on the CPR. In this regard, in the Law Reform Chapter we recommended that the Department of Attorney General and Justice consider undertaking a review of consent provisions with the introduction of a 'similar age' defence in mind. If law reform in this area occurs, this will go some way towards decreasing the number of juvenile registrants.

17.2.2 Child Protection Watch Teams

Child Protection Watch Teams (CPWTs) are multi-agency forums responsible for the 'monitoring and risk management of high-risk sexual and violent offenders on the Child Protection Register who have been released into the community'.⁸¹⁰ The rationale for this formalised interagency scheme is that the timely provision of treatment and support is crucial to minimising an offender's risk of recidivism.⁸¹¹

An initial trial of the program commenced in South-West Sydney in 2004 and after a successful evaluation in 2008, CPWTs were extended to eight locations across the state in 2009.⁸¹²

The 2008 evaluation stressed the importance of developing a Memorandum of Understanding and guidelines for implementing the program which should take into account other relevant programs, such as the Interagency Plan.⁸¹³ It also noted that the trial had assisted agencies in exchanging and utilising valuable information to inform their management of cases and service delivery to high-risk offenders.⁸¹⁴ The evaluation report further noted that the process had strengthened links between the participating agencies, and increased their understanding and appreciation of each others' roles and the complexities involved in managing high-risk child sex offenders.⁸¹⁵

CPWTs comprise three 'core' agencies – the NSW Police Force, Corrective Services and Community Services – with participation and support from other non-core agencies as required, including – Housing, Justice Health, Ageing Disability and Home Care and TAFE.⁸¹⁶ The NSW Police Force has lead responsibility for the scheme.

The teams provide a way for agencies to exchange information about and manage the risks associated with, offenders on the CPR who are transitioning from parole or prison or to an unsupervised situation in the community.⁸¹⁷ Although typically most referrals will come from Police and Corrective Services, all participating agencies may make referrals to the CPWT. Priority is given to offenders deemed by the referring agency as 'high risk' in relation to re-offending against a child, where there is information to indicate current risk, and where the case management strategy is assessed as being insufficient.⁸¹⁸

CPWTs provide a formal structure for agencies to identify and assess any early signs of risk, as well as to collaborate on risk management strategies about an individual's inappropriate behaviours, associations, living arrangements and activities. They also provide a forum that enables agencies to exchange critical information related to the ongoing management of the offender and to assist with the provision of appropriate support and services.

Each agency nominates a senior officer to participate in CPWT branch meetings and provides information as required. Core agencies are required to attend all meetings; non-core agencies which are only responsible for the supervision of a particular registrable person, such as Juvenile Justice, are required to attend meetings relating to that person.

As the lead agency, the NSW Police Force chairs the CPWT Senior Authorising Committee. The Committee is made up of a small group of senior officers from the core agencies that approve initial referrals, determine which cases should be accepted for CPWT management and conduct six monthly reviews.⁸¹⁹ If a referral is approved

809 NSW Sentencing Council, *Penalties Relating to Sexual Assault Offences in New South Wales*, Volume 3, May 2009, p.203.

810 NSW Police Force Standard Operating Procedures, *Child Protection Watch Team*, April 2009, p.3.

811 Memorandum of Understanding, *Interagency Child Protection Watch Team*, 2009.

812 *Evaluation of the Child Protection Watch Team Trial in South Western Sydney: Draft report to the Director-General of the Ministry for Police*, February 2008, pp.55-56.

813 *Evaluation of the Child Protection Watch Team Trial in South Western Sydney: Draft report to the Director-General of the Ministry for Police*, February 2008, p.7.

814 *Evaluation of the Child Protection Watch Team Trial in South Western Sydney: Draft report to the Director-General of the Ministry for Police*, February 2008, pp.5-6.

815 *Evaluation of the Child Protection Watch Team Trial in South Western Sydney: Draft report to the Director-General of the Ministry for Police*, February 2008, pp.5-6.

816 These also include Juvenile Justice, Education, NSW Health, the Office of the Public Guardian and Local Health Districts.

817 NSW Police Force Standard Operating Procedures, *Child Protection Watch Team*, April 2009, p.4.

818 Memorandum of Understanding, *Interagency Child Protection Watch Team*, 2009, p.6. Registered persons who do not meet the selection criteria but whose risk management would enhance community safety, can be referred to the CPWT Senior Authorising Committee for consideration as 'extraordinary referrals'.

819 Memorandum of Understanding, *Interagency Child Protection Watch Team*, 2009.

by the Committee, a detailed risk management plan is developed by the relevant CPWT regional branch. This plan outlines how the police and other agencies will commit appropriate resources to minimise the risk of re-offending by the accepted person – such as helping them to gain access to drug/alcohol counselling, housing or training opportunities. It may also include surveillance, controlled disclosure or a Child Protection Prohibition Order application.⁸²⁰

17.2.2.1 Information about the activity of CPWTs

We asked Police for a range of data on the operation of CPWTs including the source of referrals, characteristics of those referred and the types of services requested.

In 2009-2010, 84% of the registered CPR offenders that were referred to the CPWT were accepted. This represented 2% of the total number of registered persons in NSW. Of those accepted, most (60%) came from a CPWT in greater Sydney, the site of the original trial. Police advised us that the majority of registrants accepted for the program generally had 'high needs' which include 'static' risk factors such as chronic mental illness and/or intellectual disability.

By 2010-2011, the number of registrants that were referred to the CPWT increased by 75%. The geographic spread of referrals in that year was more evenly spread across the eight sites than for the previous year.⁸²¹ The available data does not indicate the Aboriginal status of accepted persons or whether they were convicted of an offence against an Aboriginal child. During our audit consultations, Police advised us that most referrals came from Corrective Services.

One of the key objectives of the CPWT is for agencies to exchange and share relevant information about accepted persons. Section 19BA of the *Child Protection (Offenders Registration) Act 2000* provides certain exemptions from privacy protection legislation. This enables any CPWT agency to collect and use personal information about a registrable person and disclose this information to other scheduled agencies if the collection, use or disclosure is authorised by a senior officer of the agency. Agencies can exchange information about an accepted person, if that information contributes to a more efficient case management plan or to the protection of an individual in the community. Each agency is required to nominate a senior officer to consider these exemptions.⁸²²

During 2009-2010, there were 48 requests for 19BA authorisations sought by senior officers within six different agencies relating to CPWT accepted persons. All were approved. In 2010-2011, there was a significant increase in the volume of 19BA requests, with 539 authorisations sought within nine different agencies and 66% (358) being approved.⁸²³

17.2.2.2 Monitoring CPWT performance

The 2008 evaluation of the CPWTs recommended that the implementation group should develop agreed performance indicators for monitoring and reporting on the program to Human Services and Justice Chief Executive Officers against its three objectives which are to:

- collaboratively enhance the risk management of high risk registrable persons
- effectively utilise mechanisms for interagency information exchange to facilitate risk management of high risk registrable persons, and
- provide an early warning system of inappropriate behaviours, associations, living arrangements and activities.⁸²⁴

The CPWTs are required to provide an annual report to the Justice and Human Services Chief Executive Officers.⁸²⁵ Some of the measures to assess these objectives that are detailed in the CPWT Annual Report include:

- the number of meetings attended by agency representatives when required (with 90% attendance as a benchmark)
- number of accepted persons who were utilising services
- the percentage of objectives met and actions completed in risk management plans
- the number of 19BA authorisations granted
- the number of breaches of CPR reporting requirements detected through CPWTs
- the number of Child Protection Prohibition Orders (CPPOs) applied for and breached

820 NSW Police Force Standard Operating Procedures, *Child Protection Watch Team*, April 2009, p.7.

821 NSW Police Force response to NSW Ombudsman Requirement for Information, 8 June 2012.

822 NSW Police Force Registrable Persons – *Child Protection Registry: Information Disclosure Policies and Procedures, Version 3.2 2006*.

823 NSW Police Force response to NSW Ombudsman Requirement for Information, 8 June 2012.

824 *Memorandum of Understanding, Interagency Child Protection Watch Team*, 2009, p.2.

825 *Memorandum of Understanding, Interagency Child Protection Watch Team*, 2009, p.6.

- the number of children identified by the CPWT as potentially at risk
- the number of accepted persons who re-offended while being monitored by the CPWT.⁸²⁶

Through our audit we had the opportunity to review the most recent Child Protection Watch Team reports provided to the Justice and Human Services Chief Executive Officers for the years 2009-2010 and 2010-2011.⁸²⁷ Although the performance measures developed for reporting are sound and the quantitative data included in these reports is very useful for indicating the levels of activity of CPWTs, there appeared to be scope for these reports to include some qualitative analysis to enable a more comprehensive assessment of the program.

For example, reporting would be enhanced if information was provided on the trends and issues related to agency collaboration; the availability of services, treatment and accommodation for offenders; details of caseload capacity, the costs and resources required to manage the CPWTs; and recurring issues arising in the management of high risk offenders.

In light of this, we recommend that the Justice and Human Services Chief Executive Officers require the CPWT to provide more comprehensive data and information against its performance measures to enable a more meaningful assessment of the effectiveness of the CPWT.

17.2.3 Child Protection Prohibition Orders

The *Child Protection (Offenders Prohibition Orders) Act 2004* gives police responsibility for applying to the court for a Child Protection Prohibition Order (CPPO) in cases where there is reasonable cause to believe that a person poses a risk to the lives or sexual safety of children and that the making of an order will reduce that risk. If the person is under 18, the court must also be satisfied that all other appropriate means of managing the conduct have been considered.⁸²⁸

The Act allows the Commissioner of Police to direct other government agencies to provide information relevant to assessing the risk posed by the registrable person when determining whether to apply for an order. Police are able to put before the court relevant information, that would not normally be admitted at a full criminal hearing, such as the person's criminal history and intelligence holdings. This information can be important when police are attempting to show a pattern of behaviour.⁸²⁹

Although CPPOs may differ slightly, there are standard prohibitions imposed on a registered person: including restrictions on where they reside, who they reside with, who they can approach or associate with; where they can undertake work; where they can travel to; or where they cannot loiter.⁸³⁰ Orders can be made for a period of not more than five years for an adult and not more than two years for a juvenile. Breaching an order is an offence, and police can arrest a person, without warrant, if they reasonably suspect the person has breached an order.⁸³¹ Given the degree to which CPPOs restrict the behaviour of offenders, close consideration must be given to the appropriateness of seeking a CPPO.

Local area commands are responsible for applying for CPPOs against registrable persons who are under their management. The State Crime Command will also identify possible candidates for a CPPO and provide advice and assistance to local commands.⁸³² (CPWTs also identify possible candidates for CPPOs.)

Our consultations across the state revealed a degree of confusion among police and community services staff about the circumstances surrounding when applications for Child Protection Prohibition Orders should be made. For example, a number of police were unaware that they had the authority to apply for such an order in the absence of Community Services having conducted an assessment of the risk posed to child(ren).

Against this background, we required Police to provide us with a range of information relating to CPPOs for the period of the Interagency Plan; this included:

- the number of applications made by police
- the local command responsible for applying for the application
- whether another agency requested police to make the application, and if so, which agency
- whether the CPPO was granted, and
- the number of breaches of CPPOs prosecuted and which command detected the breach and the outcome of the prosecution.

⁸²⁶ 2010-2011 Annual Report to Cabinet: Child Protection Watch Team.

⁸²⁷ Memorandum of Understanding, Interagency Child Protection Watch Team, 2009, p.6.

⁸²⁸ Child Protection (Offenders Prohibition Orders) Act 2004.

⁸²⁹ Child Protection (Offenders Prohibition Orders) Act 2004.

⁸³⁰ NSW Police Force response to NSW Ombudsman Requirement for Information, 8 June 2012.

⁸³¹ Child Protection (Offenders Prohibition Orders) Act 2004.

⁸³² Child Protection Prohibition Orders: Standard Operating Procedures, State Crime Command, June 2005.

In response, Police advised us that while details are recorded on the COPS system about the application for a CPPO in 'case notes and events', there is no specific data field to record that an application for a CPPO has been made – therefore, data was not readily available. As a consequence, we were unable to determine how many applications for CPPOs had been made by police. However, there is a specific field in COPS which records whether a CPPO was issued by a court. Police were able to provide us with this information.

For the period 1 January 2007 to 23 May 2012, only 71 CPPOs were issued by courts. In relation to these 71 CPPOs, the number of CPPOs sought by CPWTs is recorded in the annual reports to the Human Services and Justice CEOs group – these reports indicate that CPWTs were responsible for the applications of seven CPPOs in 2009-2010 and a further six in 2010-2011.

While not all applications for CPPOs are granted, the number issued is a reasonably good indicator of the number of applications local police are bringing forward. The data suggests that the use of these orders is extremely low with only about one CPPO on average being issued per month across NSW (including the 13 applications that were sought by CPWTs). The data is consistent with the reasonably low level of awareness of CPPOs that we identified during our consultations. It is also consistent with a low level of awareness among other agencies, such as Community Services, whose staff would be most likely to identify the need for such orders to be sought.

Of the 71 CPPOs issued, South West Metropolitan and Western regions had the highest amount (18 and 17 respectively). Despite the fact that the Northern Region has by far the highest number of registered offenders within its boundaries, only eight CPPOs were issued by Courts in this region. Western Region had more than twice this number of orders issued, despite having the second lowest number of registered offenders.

As at May 2012, 26 offenders were charged with 42 breaches of CPPOs since the implementation of the Interagency Plan in January 2007. The State Crime Command and 21 separate local police commands were responsible for detecting these breaches. Nine offenders account for almost 60% of the 42 breaches – including five for just one offender.

Terms of imprisonment were imposed for 76% of all breaches (32 of 42), with more than half of these being for 12 months or longer. The sentencing results of the remaining 24% (10 of 42) breaches vary from a Section 10A conviction to a Section 9 bond.⁸³³

In light of the importance of CPPOs as a mechanism to regulate the activities of child sex offenders, it is crucial that police seek to examine both the awareness of frontline police in relation to the availability of CPPOs and the strategies to collect better information about their use. As we discuss below, it is also crucial for frontline staff from partner agencies such as Corrective Services and Community Services, to be aware that they can approach police about making a CPPO application.

17.2.3.1 Enhancing interagency collaboration and communication

Interagency cooperation is crucial to the effective management of child sex offenders in the community and for the protection of children. In addition to the roles played by Corrective Services and police in managing child sex offenders, Community Services plays a vital role in assessing the risk posed to children when they come into contact with known child sex offenders – this generally occurs when parents or carers form relationships with registered offenders.

While Corrective Services assesses the suitability of an offender's living arrangements while they are on parole or on some other community-based supervision order, this is not the case once such orders have come to an end. Therefore, it is critical that agencies like Community Services and Police are actively sharing information about, and fully assessing the risks posed by, registered offenders who form relationships that pose a risk to children. In fact, when Corrective Services has ceased its involvement in managing a particular child sex offender, this can be a time of great risk. In these situations it is, therefore, critical that police and child protection workers are vigilant in pursuing known risks. In this regard, an investigation we conducted into a sexual assault of a young Aboriginal girl in 2010 highlighted both the confusion around the processes for applying for a CPPO and a lack of proper guidance for frontline staff about the roles of each agency.

Case study 38

In 2010, we investigated a matter involving an offender on the CPR. A girl disclosed that the person, who was her mother's partner, had sexually abused her for the previous three years. He was subsequently arrested, charged with a number of offences, and has since been convicted.

When examining the earlier history of this case we found that the offender had been on the CPR since 2004, having been convicted of a previous sexual offence against a child. As required under the *Child Protection (Offenders Registration) Act 2000*, he had sought approval from Community Offender Services (COS) and Police to move in with the woman and her daughter in 2007.

⁸³³ NSW Police Force response to NSW Ombudsman Requirement for Information, 8 June 2012.

Around that time, both Police and Corrective Services informed Community Services about this arrangement, and asked it to undertake an assessment of the child's safety and provide them with advice. The police in particular, expressed strong concern about the potential risk posed to the young girl. However, Community Services interviewed the mother and determined that she knew about her partner's offending history and was capable of protecting her daughter from harm. It informed COS and police of its assessment and advised that it would take no further action.

We found that Community Services had failed to adequately assess the risk to the child and to initiate appropriate protective action when it was told about the domestic relationship. In turn, this impacted on the way COS and police perceived the level of risk posed to the girl by her mother's partner (on the basis of Community Services' advice, COS had approved the new living arrangements and the police had taken no further action). In response to our investigation, Community Services conducted a review of its handling of this case, and identified among other things, that its staff were unaware that they could have asked police to make an application for a CPPO even in circumstances where they had not been able to conduct a comprehensive assessment.

As is well illustrated by the above case, it is essential for agencies to have a clear understanding of their respective roles and responsibilities in such a critical area and how they can escalate their concerns when they do not believe that adequate action has been taken to protect children.

17.2.3.2 The outcomes of our 2011 agency roundtable – progress made

Following on from our 2010 investigation, in 2011 we convened a roundtable discussion with Community Services, Police and Corrective Services to discuss ways to strengthen interagency cooperation in relation to responding to child protection concerns involving registered offenders.

As a result of the roundtable, the three agencies agreed to set out their respective roles, responsibilities, powers and limitations in a single document to make it easier for frontline staff from each agency to know how they should respond to child protection risks involving registered offenders in the future. A range of other initiatives were agreed to that were aimed at improving information exchange between the three agencies about registered child sex offenders. Community Services agreed to take the lead in ensuring that the outcomes from the roundtable were implemented. Although a number of actions have been implemented since the roundtable (which we discuss below), the roles and responsibilities document is yet to be completed some 18 months after the roundtable.

We have raised concerns with Community Services on a number of occasions about the length of time it has taken for this document to be completed and it has acknowledged that this important work should have been progressed more quickly. We have recently been advised by Community Services that the roles and responsibilities document is due to be completed in early 2013. Among other guidance, the document will clarify escalation procedures for dealing with situations where local agency staff can't reach an agreement about whether a CPPO should be applied for.

Community Services has also advised us that in addition to working together on the document, the three agencies have taken a range of immediate steps to improve practice on the ground, including attempting to ensure that Community Service Centres are aware of the need to consult internally to ensure better decisions are made around risk.

Also as a result of the roundtable, Community Services and Police have since developed a template for the provision of information under section 248 of the *Children and Young Persons (Care and Protection) Act 1998*. From September 2011, Community Services started to actively seek information from the Police Child Protection Register Unit on the same day that a ROSH report involving a registrable person is received. The information is then forwarded to the relevant Community Service Centre which is provided with immediate confirmation – this is an important practical step forward.

The enhanced collaboration between the three agencies has assisted them to work through a number of complex matters. For example, Community Services worked with the Police to put preparations in place to seek a CPPO when information was received that a registrable person may have been intending to return to Australia from overseas, and was planning to take up residence in a household with vulnerable children.

Corrective Services and Community Services are now working together to develop a standard information exchange request form which mirrors the template currently used by Community Services to obtain information from the Police Child Protection Register Unit. The information in these templates will aim to ensure that Community Service Centres will receive an immediate and comprehensive set of facts about the person in question.

The three agencies are also working together to routinely exchange information between:

- Community Services and Corrective Services before a sex offender is released into the community, and

- Community Services and Police to support an application for a CPPO, if the risks posed to a child are considered to be unacceptable.

As only a limited number of ROSH reports involving a registrable person will be handled by Community Service Centres each year, Community Services has decided to establish specialists within its Community Services Clinical Issues Unit (CIU) to provide advice to Community Service Centres when they are assessing ROSH reports that involve a registrable person. Corrective Services and Police have also agreed to participate in supporting this initiative.

Community Services has further advised that they have provided specialised sex offender training for clinical consultants within the CIU; including briefings from NSW Police Child Protection Register Unit, Corrective Services NSW and NSW Health. A mandatory consultation service is also being developed. This service will require CSCs to contact the CIU consultants on receipt of a ROSH report involving a registrable person. The CIU will then provide them with procedural guidance and advice on assessing risk of sexual harm posed to children by known sex offenders. Mandatory consultation will begin early in 2013.⁸³⁴

Although there has been a delay in developing the roles and responsibilities document, a number of productive outcomes have resulted from the work of the three agencies as a result of the 2011 roundtable. In light of these policy and procedural developments, it will be important to monitor the use of CPPOs to measure the impact of these changes – enhanced systems for collecting data about the use of CPPOs will facilitate this.

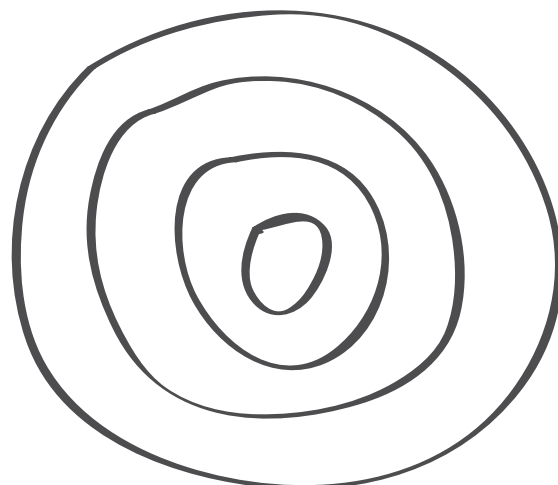
Finally, there would be merit in all three agencies developing a brief educational session to complement the release of the roles and responsibilities document as a way of increasing awareness of CPPOs as a valuable tool for protecting children from sexual abuse.

Recommendations

74. That the Department of Attorney General and Justice submits a business case to the NSW Government for its consideration in relation to the following:
 - a) Expanding Corrective Services' transitional accommodation program, including increasing the options for returning offenders (particularly Aboriginal offenders) to rural and remote communities.
 - b) Establishing research partnerships to assist Corrective Services to refine its suite of risk assessment tools for child sex offenders.
 - c) Expanding the use of technologies such as Skype and Video Link to provide therapeutic services (e.g. drug and alcohol services and counselling) to support the safe management of child sex offenders residing in rural and remote areas.
75. That Corrective Services should refer its concerns about the need to establish much stronger links with community-based treatment services and supports for young people exiting custody via the adult correction system, to Family and Community Services for consideration as part of its Vulnerable Teenagers Review.
76. That the NSW Police Force conducts a review of the current capacity of individual local area commands to effectively manage their responsibilities in administering the Child Protection Register.
77. That the NSW Police Force identifies best practice by local area commands in managing the Child Protection Register and develops a process for sharing information about successful initiatives across commands.
78. That the Human Services Chief Executive Officers require the Child Protection Watch Team to provide more comprehensive data and information against its performance measures to enable a meaningful assessment of the effectiveness of the program.
79. That the NSW Police Force makes enhancements to the COPS system to enable information regarding applications for Child Protection Prohibition Orders to be systematically recorded, and for statistical reports to be generated on the use of these orders on a regular basis.
80. That Community Services provides this office for review and comment a copy of the Working Group paper setting out the respective roles, responsibilities, powers and limitations relating to information exchange and collaboration when a child may be at risk of significant harm due to contact with a person on the Child Protection Register.
81. That the NSW Police Force, Corrective Services and Community Services develop a brief educational session to complement the release of the interagency guideline on the roles and responsibilities of agencies in responding to child protection concerns involving registered child sex offenders.

⁸³⁴ Community Services response to NSW Ombudsman Requirement for Information, 22 December 2012. Initial advice on this issue was received from Community Services on 30 November 2012 – a further update was provided on 22 December 2012.

Investing in education and employment



Chapter 18. Building economic capacity in Aboriginal communities

Breaking the Silence identified that social and economic disadvantage was a significant factor in the incidence of child sexual assault in Aboriginal communities.⁸³⁵

The link between building the economic capacity of Aboriginal communities, and improving social wellbeing more broadly, has since been identified repeatedly. For example, in our October 2011 report to Parliament on addressing Aboriginal disadvantage, we noted that improving the economic prosperity of Aboriginal people in NSW is directly relevant to achieving gains in other areas such as health, education and child protection.

In June 2011, the Minister for Aboriginal Affairs announced a review of the existing Aboriginal employment and economic development programs, as part of a 'focus on working with Aboriginal people to achieve better educational and employment outcomes'.⁸³⁶ The resulting report, released by the Allen Consulting Group in December 2011 (the Allen report), noted that 'economic participation... is linked to financial security and prosperity, which in turn bring substantial ancillary social and economic benefits for the individual, their families and communities'.⁸³⁷

Improving employment outcomes for Aboriginal people in NSW was one of three Terms of Reference which the Ministerial Taskforce on Aboriginal Affairs was directed to address (along with improving educational outcomes, and improving service delivery and accountability in Aboriginal affairs across NSW).⁸³⁸ The Government acknowledged that effective reform in education and employment 'is central to addressing Aboriginal disadvantage as a whole'.⁸³⁹ In the extensive community consultations undertaken by the Ministerial Taskforce between December 2011 and August 2012, 'the need to empower and educate Aboriginal people to exercise and retain control of long-term economic benefits in local communities' was identified as a central issue.⁸⁴⁰

In its 2011 report *The Interagency Plan 2007-2011: What comes next?* Aboriginal Affairs concluded that 'without considerable improvements in employment outcomes for Aboriginal people, substantive improvements in areas such as life expectancy and education are likely to remain unreachable'.⁸⁴¹ The report identified that:

*...there is a need to address the social and economic disadvantage... that is closely associated with increased risk of sexual assault and a cycle of abuse... It is becoming increasingly clear that these are issues that need to be addressed strategically and holistically in the context of entrenched disadvantage rather than through ad-hoc single issue programs and initiatives.*⁸⁴²

The 'high level goals' of the Interagency Plan recognise that child sexual assault must be addressed together with broader issues of disadvantage. These goals are to:

- reduce the incidence of child sexual abuse in Aboriginal communities
- reduce disadvantage and dysfunction in Aboriginal communities, and
- build up Aboriginal leadership and increase family and community safety and wellbeing.

Despite acknowledging the link between disadvantage and the incidence of child sexual abuse, the Actions included in the Plan were overwhelmingly focused on addressing the specific issue of child sexual assault. As identified by Aboriginal Affairs in its *What's next?* report, the Interagency Plan's focus on sexual abuse in isolation of the underlying causes of disadvantage was one of the fundamental flaws impacting on the success of the Plan.⁸⁴³

Whilst there were a number of actions relating to Aboriginal employment, which we discuss further in Chapter 20, these actions were largely directed at individual agencies, and were focused on employing Aboriginal people in specific agency roles relevant to child sexual abuse. There were no actions in the Interagency Plan which were directed more broadly at increasing the economic capacity of Aboriginal communities. As we noted in our report on addressing Aboriginal disadvantage, while increasing job opportunities for Aboriginal people is important, achieving sustainable improvements to Aboriginal economic capacity requires a focus on wealth creation as well as

835 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal communities in NSW*, 2006, p.59.

836 Honourable Victor Dominello MP, Minister for Citizenship and Communities, Minister for Aboriginal Affairs, *Minister for Aboriginal Affairs announces review of jobs programs*, Media release, 27 June 2011.

837 Allen Consulting Group, *NSW Government Employment and Economic Development Programs for Aboriginal People - Review of programs and broader considerations*, Report to the Minister for Aboriginal Affairs, December 2011, p.vi.

838 Ministerial Taskforce on Aboriginal Affairs, *Background and Terms of Reference*, 2011, Aboriginal Affairs.

839 Ministerial Taskforce on Aboriginal Affairs, *Background and Terms of Reference*, 2011, Aboriginal Affairs.

840 Ministerial Taskforce on Aboriginal Affairs, *Community Consultation Report*, 2012, Aboriginal Affairs, p.31.

841 Aboriginal Affairs, *The Interagency Plan 2007-2011: What comes next*, 2011.

842 Aboriginal Affairs, *The Interagency Plan 2007-2011: What comes next*, 2011.

843 Aboriginal Affairs, *The Interagency Plan 2007-2011: What comes next*, 2011.

employment – including facilitating opportunities for Aboriginal people to participate in small business enterprises, and opportunities for Aboriginal entities such as the NSW Aboriginal Land Council to partner with ‘big business’.

While outside of the Interagency Plan there has been significant investment in a multitude of initiatives and programs to increase the economic participation and capacity of Aboriginal people, the effectiveness of these initiatives has been limited by the absence of an overarching state-wide strategy to build the economic capacity and wealth of Aboriginal people in this state. Such a plan must specifically address the barriers experienced by different Aboriginal people, communities and entities to achieving economic advancement.

As we identified in our 2011 report, policy to address Aboriginal disadvantage in NSW has been characterised by a number of plans and related initiatives, often developed in isolation and without a clear articulation of how they fit together. Given the interconnectedness of different policy areas – in particular early childhood, education, and employment – this disparate and unconnected policy landscape has contributed to the consistently high unemployment rate for Aboriginal people, and the lack of progress in increasing economic prosperity for Aboriginal people.⁸⁴⁴

As acknowledged in the Allen report, addressing employment and economic development requires a ‘life course approach’, which encompasses support at various life stages, such as early childhood, in school, in transition from school to work, and throughout professional life.⁸⁴⁵ In this regard, as discussed in Chapters 19 and 21, we welcome the development of the *Connected Communities* strategy for this reason, as it extends the influence of the school leadership ‘to play a role in the delivery of key services and in supporting children and young people from birth through school into further training, study and employment’.⁸⁴⁶ We also welcome the Opportunity Hubs initiative proposed by the Ministerial Taskforce, which is aimed at ‘coordinating and supporting pathways from education to training and employment opportunities for young Aboriginal people’.⁸⁴⁷ We note, however, that *Connected Communities* is limited to 15 schools in 11 communities, and the extent of the Opportunity Hubs is not yet clear. As a result, in the absence of an overarching state-wide strategy for increasing the economic capacity and wealth of Aboriginal people, it is unlikely that these initiatives alone will have the substantial impact required.

18.1 Key developments in addressing Aboriginal disadvantage

18.1.1 The review of the Aboriginal Lands Rights Act

Our report highlighted that the NSW Aboriginal Land Council and the network of Local Aboriginal Land Councils (LALCs) have a key role to play in creating economic opportunities for Aboriginal people, although the outcomes achieved to date vary significantly between different LALCs.

It was therefore encouraging to see that the Government has taken the opportunity, as part of the statutory review of the *Aboriginal Land Rights Act 1983*, to take a broad approach to the review’s terms of reference and has also ensured that a range of Aboriginal stakeholders have been fully involved in the review process. Notably, the working group assigned to undertake the review in December 2011 included representatives from the Aboriginal Land Council network, and the review has included significant consultation with the Aboriginal community.

In addition, in our 2011 report we noted the lack of focus by the Department of Trade and Investment on Aboriginal employment and economic development. The inclusion of the Director General of Primary Industries (one of the operational divisions of the Department of Trade and Investment) in the working group is a promising acknowledgement of the critical role which must be played by the Department in this area.

The working group’s report was tabled in Parliament in November 2012, and includes 47 recommendations that will be considered through public consultation. The report states that:

*One of the greatest opportunities available to the NSW Government is in providing incentives to the Land Council network through the implementation of reforms that increase their capacity, efficiency and opportunities for participation in the NSW economy.*⁸⁴⁸

844 In 2005, the unemployment rate for Aboriginal people in NSW was 14.7%. This increased to 20.9% in 2009, and in 2011 was 14.6%. Australian Bureau of Statistics, 2012, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2011*, cat. no. 6287.0

845 Allen Consulting Group, *NSW Government Employment and Economic Development Programs for Aboriginal People – Review of programs and broader considerations*, Report to the Minister for Aboriginal Affairs, December 2011, p.80.

846 Department of Education and Communities, *Connected Communities Strategy*, December 2011.

847 Ministerial Taskforce on Aboriginal Affairs, *Getting it right – The findings of the Round Two Consultations for the NSW Ministerial Taskforce on Aboriginal Affairs*, 2012, Aboriginal Affairs, p.6.

848 Aboriginal Land Rights Act Review 2012 Working Group, *Aboriginal Land Rights Act Review 2012: Report of Findings and Recommendations of the Working Group*, October 2012.

As acknowledged by the Minister for Aboriginal Affairs, if implemented 'the recommendations could lead to a more sustainable land council network that drives greater economic outcomes for Aboriginal people across NSW.'⁸⁴⁹

18.1.2 Opportunity Hubs

In August 2012, the Ministerial Taskforce on Aboriginal Affairs released a progress report outlining a number of proposed initiatives and directions aimed at strengthening:

- the connection between education, training and employment
- support for language and culture
- accountability, and
- the capacity of communities and service delivery.

One of the first proposed initiatives discussed by the Ministerial Taskforce in its second round of consultations was the establishment of Opportunity Hubs. The Ministerial Taskforce proposed that:

*...an 'Opportunity Hub' be developed, trialled and evaluated initially in targeted locations to coordinate employment and training opportunities for Aboriginal young people. Opportunity Hubs would broker partnerships with local businesses, industry leaders, NGOs and local government to coordinate training and employment opportunities to create career pathways for young Aboriginal people.*⁸⁵⁰

Prior to releasing its August 2012 report, the Ministerial Taskforce sought feedback on this proposal through a number of community forums and workshops, and through the distribution of a survey. There was strong support for the Opportunity Hubs – 80% of survey participants thought the initiative was 'a really good idea' and a further 17% thought it was 'worth a go'. There was also strong support expressed through the forums and workshops.⁸⁵¹ While we are yet to see the details of the proposal, we welcome this initiative.

The Allen report similarly identified that:

*Industry employment opportunities could be capitalised through effective strategies to engage the private sector, and through incentives and supports for the recruitment and retention of Aboriginal people.*⁸⁵²

In the same way that Infrastructure NSW was established to facilitate access to private sector expertise in delivering major infrastructure projects, in our Addressing Aboriginal disadvantage report we made the point that there would be merit in a strategic body being established to enable the private sector to partner with government and Aboriginal communities.

On a separate note, the Business Precincts and Opportunity Hubs which have been developed as part of the Cape York Welfare Reform have an overarching aim to foster positive behaviour at the local community level, through the carrying out of everyday responsibilities such as paying bills, banking and general money management. Support services, such as financial mentoring and assistance with obtaining personal and business loans, are also available.⁸⁵³

During our visit to the Cape with Aboriginal leaders from the Bourke community⁸⁵⁴ in 2011, we saw first-hand the results that can be achieved when the ideas of Aboriginal leaders are backed by government and major business enterprises. Central to the success in getting many of the Cape's economic development initiatives off the ground are the robust and high-level governance arrangements which drive the implementation of the broader Cape York Welfare Reform agenda.

These arrangements are underpinned by a 'pentagon' agreement between the Federal and State Governments, Cape York Partnerships – led by Noel Pearson and regional Aboriginal organisations, and are complemented by the Cape York Partnerships business model. This model is founded on partnerships with government, major corporate bodies such as Jawun – which provides up to 25 one month secondments each year from corporations such as Boston Consulting, KPMG and Westpac to assist Aboriginal people to establish and implement a range of customised initiatives in their communities – together with financial support from philanthropic organisations.⁸⁵⁵

849 Honourable Victor Dominello MP, Minister for Citizenship and Communities, Minister for Aboriginal Affairs, *Aboriginal Land Rights Act Review*, Media release, 22 November 2012.

850 Ministerial Taskforce on Aboriginal Affairs, *Ministerial Taskforce on Aboriginal Affairs: Progress Report*, August 2012, p.4.

851 Ministerial Taskforce on Aboriginal Affairs, *Getting it right – The findings of the Round Two Consultations for the NSW Ministerial Taskforce on Aboriginal Affairs*, 2012, p.8.

852 Allen Consulting Group, *NSW Government Employment and Economic Development Programs for Aboriginal People - Review of programs and broader considerations*, Report to the Minister for Aboriginal Affairs, December 2011, p.89.

853 Department of Families, Housing, Community Services and Indigenous Affairs, Cape York Welfare Reform Fact Sheets, *Economic Opportunity – Employment*, 2009.

854 NSW Ombudsman, *Addressing Aboriginal disadvantage: The need to do things differently*. A special report to Parliament under section 31 of the Ombudsman Act 1974, October 2011, Appendix 1.

855 For example the Vincent Fairfax Family Foundation. Cape York Partnerships, *About Cape York Partnerships*. www.capeyorkpartnerships.com. Accessed 15 September 2011.

We therefore echo the comments made at the forums convened by the Ministerial Taskforce that it will be fundamental to the success of the Opportunity Hubs for 'local business and industry, as well as local and state government agencies who are major employers in remote and rural areas' to be involved in the program.⁸⁵⁶ As we highlighted previously, the Government has a critical role to play in facilitating stronger relationships between Aboriginal communities and the private sector.

18.2 The need for a state-wide strategy

In our October 2011 report to Parliament on addressing Aboriginal disadvantage, we noted that despite government commitment to, and investment in, improving the economic capacity of Aboriginal people, it is not clear how many of the initiatives implemented to date have delivered substantial results. In this regard, we highlighted the need for a coherent, overall plan for building Aboriginal economic capacity across the state.

In December 2011, the Allen report observed that the development of Aboriginal economic development and employment programs has been 'opportunistic and uncoordinated', and similarly noted the absence of an overarching strategic framework to link individual initiatives with 'clearly communicated needs of Aboriginal people, obvious gaps in service delivery, or overarching Commonwealth or state policy frameworks'.⁸⁵⁷

Accordingly, the report recommended that:

...it will be important to develop an overarching framework - or master plan - aimed at enhancing Aboriginal economic development and employment in NSW.

Initially, this master plan would focus on a better coordination of NSW Government initiatives. Having a thorough strategic framework would enable the NSW Government to reduce duplication and overlap between programs and provide a more integrated and cohesive service offer. A strategic framework should also ensure that lines of accountability, responsibility and communication are agreed and effective where programs are delivered across more than one NSW Government agency.

*The longer-term goal should be to expand this master plan to reflect a joined-up approach to service delivery by both the NSW and Commonwealth Governments...Linkages and collaboration between education and employment initiatives, offered both by NSW Government and the Commonwealth Government, are a key success factor for future programs.*⁸⁵⁸

The community consultations which were undertaken by the Ministerial Taskforce also identified that in order to build economic capacity, there is a need for an 'overarching plan for economic participation'.⁸⁵⁹

Whilst it is promising that economic capacity is clearly on the agenda as part of the government's reform of Aboriginal policy, we note, however, that without an overarching state-wide strategy, there is the potential for the Opportunity Hubs, as well as the opportunities created by reform to the Aboriginal Land Rights Act, to become simply another component of the kind of uncoordinated response referred to in the Allen report.⁸⁶⁰

For a number of years now, we have been advocating for the development of a 'whole of community' approach to the planning, funding and delivery of services, in conjunction with education and economic strategies. Aboriginal Affairs' *What's next?* report also highlighted that disadvantage can become concentrated in particular places, and that the impact of multiple forms of disadvantage (such as unemployment, poor health and high crime rates) can have a compounding effect. As a result, place-based approaches are required which build on the individual strengths of communities, and address social and economic disadvantage in specific locations.⁸⁶¹

In our report on addressing Aboriginal disadvantage, we noted that a state-wide strategy to build the economic capacity and wealth of Aboriginal communities needs to be developed, with particular attention to the challenges in enhancing economic capacity in disadvantaged and rural and remote locations. It is clear that Aboriginal economic disadvantage has different features in different communities in NSW. There are a range of different barriers which prevent entry into employment and broader long-term wealth creation, and there are a range of opportunities and related challenges relating to accessing various industries – thus requiring different training and education responses.

856 Ministerial Taskforce on Aboriginal Affairs, *Getting it right – The findings of the Round Two Consultations for the NSW Ministerial Taskforce on Aboriginal Affairs*. 2012, p.8.

857 Allen Consulting Group, *NSW Government Employment and Economic Development Programs for Aboriginal People - Review of programs and broader considerations*, Report to the Minister for Aboriginal Affairs, December 2011, p.vi.

858 Allen Consulting Group, *NSW Government Employment and Economic Development Programs for Aboriginal People - Review of programs and broader considerations*, Report to the Minister for Aboriginal Affairs, December 2011, p.90.

859 Ministerial Taskforce on Aboriginal Affairs, *Community Consultation Report*, 2012, Aboriginal Affairs, p.32.

860 Allen Consulting Group, *NSW Government Employment and Economic Development Programs for Aboriginal People - Review of programs and broader considerations*, Report to the Minister for Aboriginal Affairs, December 2011, p.vi.

861 Aboriginal Affairs, *The Interagency Plan 2007-2011: What comes next*, 2011.

For example, we note that in some rural and remote communities, local councils are often one of the largest employers, and are a critical part of local economies. As a result, there is a strong relationship in these parts of the state between the financial sustainability of local councils, and the ability to increase the economic capacity of Aboriginal people.

In November 2012, the recently established Independent Local Government Review Panel in its discussion paper, *Better, Stronger Local Government: The Case for Sustainable Change* noted that, particularly in Western NSW, remote councils have 'poor prospects of long-term financial sustainability and limited ability to attract and retain skilled and experienced staff'.⁸⁶² The paper noted that 'simply amalgamating councils is not a realistic approach', as people and resources are spread too thinly over distances too great. Instead, it proposed a joint local-state government authority and/or a regionalised local government structure with local councils that still provide place-based representation.

For a state-wide strategy to be successful in building the long-term economic capacity of Aboriginal communities, it needs to be developed and implemented in close partnership with local government, and with consideration to the specific and varied circumstances of individual locations around NSW. In our view, a 'joined up' government approach that is combined with the type of a regionalised local government structure which has been canvassed in the discussion paper not only brings with it the potential to enhance service delivery, it also provides a much stronger platform for governments at all levels to develop regionalised approaches to building an Aboriginal workforce and promote economic opportunities in Western NSW.⁸⁶³

Recommendations

82. That the NSW Government establish a body with overall responsibility for improving Aboriginal employment outcomes and enhancing Aboriginal economic capacity through identifying and facilitating partnerships between the private sector, government and Aboriginal entities to create successful commercial enterprises.
83. That the NSW Government review the existing range of federal and state employment and economic development initiatives as part of developing an integrated, state-wide strategy to build the economic capacity and wealth of Aboriginal people in NSW. In developing a state-wide strategy, particular attention should be given to:
 - a) the specific challenges associated with enhancing economic capacity and employment opportunities in disadvantaged and/or rural and remote locations
 - b) identifying and expanding vocational education, job training and mobility/relocation assistance programs that are achieving real employment outcomes for Aboriginal people, and
 - c) exploring opportunities for further partnering with Aboriginal job service providers in relation to the above.

⁸⁶² Independent Local Government Review Panel, *Better, Stronger Local Government: The Case for Sustainable Change*, November 2012, p.26.

⁸⁶³ Independent Local Government Review Panel, *Better, Stronger Local Government: The Case for Sustainable Change*, November 2012, p.27.

Chapter 19. Engaging Aboriginal children in school

Substantial investments have been made by the federal and state governments to improve educational outcomes for Aboriginal children in NSW. There is acknowledgement that sustained change will not happen overnight. From our consultations with Aboriginal communities and the educators who work within them, it is clear that there are many committed people seeking to equip Aboriginal children and young people with a solid educational foundation. Yet more needs to be done in relation to improving school attendance and engaging Aboriginal children more effectively in the education system. This is particularly important in high-need locations with significant Aboriginal populations.

In recognition that school attendance is an important protective factor in relation to child sexual assault, the Interagency Plan included a range of actions aimed at improving Aboriginal children's school attendance.

The Department of Education and Communities had lead responsibility for three actions⁸⁶⁴ under the Interagency Plan, which included:

- Action 60 – monitoring the implementation of the Schools in Partnership Program and ensure these programs are available to Focus Communities.
- Action 61 – implement a truancy reduction strategy in relevant priority locations, encompassing measures to enforce school attendance such as door knocking, and funding for individual schools to offer incentives to students such as recreational awards for school attendance. This action was to include an evaluation of the Dubbo truancy reduction strategy.
- Action 62 – work with communities to develop and enhance school holiday activities, sport and recreational facilities and transport assistance. Link these initiatives as incentives to truancy reduction outcomes. This action also included incorporating existing services where possible; for example, PCYC programs.

All of these actions were completed as well as actions for which Education had shared responsibility. However, as Education itself has acknowledged, these actions have not addressed the core issues that continue to inhibit Aboriginal children's engagement in school, and as a result, the majority of Education's work to improve school attendance (and the educational outcomes of Aboriginal children) has occurred outside of the Interagency Plan process.

Similarly, the performance framework established to measure the success of the Plan's implementation included several indicators relating to the school performance of Aboriginal students, such as state-wide numeracy and literacy rates, and apparent retention rates.⁸⁶⁵ While these are important measures, it is unclear why the framework did not seek to measure school attendance or suspension rates, and what can be done to improve performance in these areas; particularly where problems are most significant.

In the Social Policy Research Centre's 2011 review of the Interagency Plan's reporting framework, it recommended that school attendance rates be considered as a future indicator in assessing the overall wellbeing of Aboriginal children, because numeracy and literacy results for Aboriginal children are unlikely to be sensitive to early intervention and prevention efforts in the short term.⁸⁶⁶

Since the release of the Interagency Plan, habitual non-attendance at school was introduced as a specific statutory ground for reporting concerns to Community Services as part of the 2010 *Keep Them Safe* reforms.⁸⁶⁷ A child may be at risk of educational neglect if they are not enrolled in school, or if they are habitually absent from school; and there are other risk factors in play.⁸⁶⁸

The Ministerial Taskforce on Aboriginal Affairs which was established in August 2011 also has a specific focus on improving educational outcomes for Aboriginal children and young people and strengthening the pathways between education, training and employment.

Due to the importance of education, during our audit we closely examined strategies for improving Aboriginal children's school attendance and ways to better engage socially marginalised Aboriginal children in the school

864 It also had shared responsibility for five other actions: 35, 36, 49, 50 and 51.

865 The apparent retention rate measures the sustained enrolment of a child through the school years. Rates are apparent because they do not include students who repeat a year of school, students who move interstate, the impact of international student movement, or students who complete senior studies in a non-school setting such as TAFE. (Data dictionary in *Tier 1 and 2 data for the Program Performance Framework, Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, November 2011 Reporting Cycle, undated.)

866 Social Policy Research Centre, *Review of the Performance Framework for the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, Final Report, November 2011, p.ii.

867 Prior to *Keep Them Safe*, habitual non-attendance was not specified in the *Children and Young Persons (Care and Protection) Act 1998* as a specific ground for reporting to Community Services. Our submission to the Wood Special Commission of Inquiry recommended that this be considered and the Inquiry recommended legislative amendment, which was subsequently enacted.

868 *NSW Mandatory Reporter Guide*, May 2012, pp.66–72.

environment. In doing so, our views were informed by our close work with the Department of Education and Communities' Aboriginal Education and Student Welfare directorates, and with regional directors and school principals, to explore the types of strategies that appear to have a positive impact on school attendance in Aboriginal communities and the existing obstacles to progress. Education has also sought to use our audit as an opportunity to consider how it can improve its performance in providing Aboriginal children with improved educational prospects.

In our 2011 report, *Addressing Aboriginal disadvantage*, we comprehensively documented the progress made by the Department in improving educational outcomes for Aboriginal students and profiled some of the excellent work being done by individual schools. We also profiled the innovative teaching and school attendance strategies being used in four communities in Cape York, Queensland, as well as the work of Chris Sarra, through the Stronger Smarter Schools leadership initiative – which has been embraced by Education in NSW.

In this chapter, we report on the progress made by Education against the areas that we identified as requiring change in our last report, and highlight the findings from our analysis of state-wide, regional and school-based attendance, suspension and expulsion data for Aboriginal children. We took the decision to present this information in detail to illustrate the importance of capturing local level information as part of assessing whether progress is being made, particularly in highly disadvantaged Aboriginal communities. In this regard, we were strongly influenced by the views of Aboriginal leaders and local community people, who have repeatedly singled out poor school attendance and high suspension rates as a significant challenge that must be addressed. A key concern that has been expressed by Aboriginal leaders is the lack of publicly available information about school attendance and suspension rates relating to Aboriginal children.

In June 2011, the Australian House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs released the findings and recommendations of its inquiry into Indigenous youth in the criminal justice system. The committee specifically recommended that the Federal Minister for Education 'immediately conduct a review into how daily school attendance and retention rates are measured to ensure that data collected can accurately inform strategies to increase attendance and retention rates and monitor progress in these areas'.⁸⁶⁹

The National *Aboriginal and Torres Strait Islander Education Action Plan* requires focus schools to develop an evidence-based attendance strategy in consultation with parents and the community, and to publish, monitor and evaluate the strategy and report annually on progress towards meeting their targets. It will therefore be important that the annual reporting in NSW includes a range of data relating to school attendance that contains a level of specificity beyond what is currently published.⁸⁷⁰

As we discuss in several parts of this report, the recently released *Connected Communities* strategy is a very promising initiative which, among other things, seeks to improve problematic attendance and suspension patterns in highly disadvantaged Aboriginal communities. The strategy is founded on schools building genuine partnerships with local Aboriginal communities and agency partners, to design a school environment that reflects the broader social fabric of each distinct community. Another important element of *Connected Communities* is its emphasis on the importance of school leaders working in high-need communities being given the recognition and support necessary to do what is a very difficult job. By establishing 'executive' principal positions and paying them a salary that better reflects the complexity of the work, including the brief to make schools 'integrated service hubs', is precisely the approach required if the underlying causes of disengagement with vulnerable families and other children, and poor school attendance and behavioural problems are to be addressed.

However, *Connected Communities* is initially (and understandably) only being rolled out in 15 schools across 10 communities. As will be clear from the school attendance data that we present later in this chapter, there are many more schools that would benefit from a *Connected Communities*-type approach. Therefore, the challenge for Education will not only be rolling out an innovative schooling model in the 15 trial sites, but also making sure that greater attention is paid to all schools with high rates of non-attendance for Aboriginal children and poor educational outcomes.

As we outlined in our 2011 report, in the short term this will require much stronger internal governance arrangements to track the performance of individual schools on an ongoing basis in relation to Aboriginal student attendance and performance. And, while we welcome the flexibility of another recent Education initiative, *Local Schools, Local Decisions*, in terms of the opportunities it creates for school leaders to be innovative, providing schools with greater discretion in relation to decision-making, it must be coupled with a strong accountability framework.

869 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, June 2011, Recommendation 17.

870 Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA) as part of the Council of Australian Governments (COAGs), *Aboriginal and Torres Strait Islander Education Plan 2010-2014*, June 2011, p.18.

19.1 Significant progress made since our Aboriginal disadvantage report

As previously discussed in our 2011 report, *Addressing Aboriginal disadvantage*, we examined a range of measures aimed at improving Aboriginal school attendance in NSW. However, we highlighted that there was further scope to explore innovative approaches to getting Aboriginal children and young people engaged in school. In particular, we drew attention to the compelling case for a more targeted and intensive attendance case management model to address habitual school non-attendance. To this end, we highlighted the work being done to promote school attendance in Cape York, in particular, the role played by attendance case managers in high-need communities. In addition, we outlined the capacity constraints of the Home School Liaison Program and recommended that consideration be given to reviewing its capacity.

Our report also highlighted that 'hard to reach' adolescents who are subject to multiple suspensions are vulnerable to becoming victims or perpetrators of crime. We highlighted the need to review exclusionary suspension practices, and brought to light the New England Region's 'Mooki Murriss' mentor program, which was effective in drawing troubled young boys back into the school system. In our more recent review of 48 school-aged children from two Western NSW towns, which was submitted to Education, Community Services and Police on a confidential basis as part of this audit in mid-2012, we found clear links between suspensions and unexplained absences, as well as suspensions and frequent offending. We also found a high correlation between the children identified as being at risk due to school absences and/or suspensions and those identified as being 'high-risk' by police.

Perhaps most importantly, we highlighted the need for strong leadership in schools operating in highly disadvantaged communities and the importance of giving school leaders authority to make decisions that allow them to tailor educational responses to their local community. As we said earlier, the introduction in 2012 of the *Local Schools, Local Decisions* reform – which brings with it greater flexibility around the application of funding and other decisions – has the potential to go some way towards achieving schools that can better meet the distinct needs of each community. However, in order to attract quality staff to high-need locations, we argued that there was scope to create better incentives by designating particular schools in these locations with a 'special classification' status in recognition of the particular skill set required to lead these schools.⁸⁷¹ This status could attract additional incentives tied to specific performance measures.

In response, Education released its innovative *Connected Communities* strategy in March 2012. The strategy will operate in 15 schools across 10 communities, and give school executive principals unprecedented authority to tailor education responses to the needs of community. *Connected Communities* schools are intended to serve as an integrated service hub by providing support to Aboriginal children and families from birth, through school, and on to training and employment.

Underpinning the philosophy of *Connected Communities* is the acceptance of the central role that universal services must play early on in the lives of vulnerable Aboriginal families, to ensure that they are connected with supports before children reach school age.

The establishment of systems to identify the schools where student academic performance is significantly better or worse than schools with a similar profile has also been a priority for Education. The Rural Outcomes of Schooling Research project profiled 14 rural schools that were performing well relative to other schools with a similar profile (in terms of their remoteness and socio-economic status). Eight of the 14 case study schools had substantial Aboriginal populations.⁸⁷² Education has taken steps to ensure that positive practices developed by other schools (and other examples of good practice) are highlighted at a range of forums – including, for example, the Smarter Schools conference in 2012.

We also note Education's ongoing efforts to improve access to early childhood education, in line with the *Closing the Gap* target to ensure all Aboriginal four year olds in remote communities have access to early childhood education by 2013. From 2009 to 2010 alone, there was a 17.1% increase in the number of Aboriginal children enrolled and participating in a preschool program.⁸⁷³

In our 2011 report *Keep Them Safe?*, we highlighted data obtained from Community Services which indicated that almost half of all reports about 'educational neglect' across NSW were assessed as not meeting the risk of significant harm threshold. Of those reports that were assessed as meeting the threshold, around 50% were closed on the basis of 'competing priorities'. Furthermore, fewer than 10% of all education neglect reports (compared with 21% of reports overall) that were assessed as meeting the risk of significant harm reporting threshold, resulted in a comprehensive assessment involving face-to-face contact.⁸⁷⁴

871 We understand that there is a precedent for this in that the Conservatorium of Music has a 'special classification'.

872 NSW Department of Education and Training, August 2010, Rural Outcomes of Schooling Research Project Report, <http://www.schools.nsw.edu.au/learning/emsad/index.php>. Accessed 30 November 2012.

873 NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012.

874 NSW Ombudsman, *Keep Them Safe?*, Special report to Parliament, August 2011, p.16.

After we conducted a further investigation into this issue, Community Services and Education responded by developing a pilot of an intensive family case management approach aimed at facilitating early intervention in cases where a child is habitually absent from school and at risk of educational neglect but is not regarded as being at risk of significant harm.⁸⁷⁵ The pilot will run for 12 months, involving 30 families in two high-need locations.⁸⁷⁶ A similar pilot is being developed for children who are habitually absent from school and regarded as being at risk of significant harm. Both pilots were due to be launched in late 2012. We will monitor their progress closely.

In recognition of its shared role in child protection, Education will be adjusting its head office support mechanisms in 2013 in relation to the areas of school attendance, behaviour and child protection. The new 'Student Engagement and Interagency Programs' unit will comprise four teams – three of which will have key roles in addressing student attendance – the Child Protection team, the Social Inclusion team and the Student Health and Wellbeing team.⁸⁷⁷

The progress made by Education over the past 12 months in committing to 'doing things differently' in Aboriginal communities and in response to children at risk generally, is impressive. A major challenge will be ensuring that these commitments are well executed and truly integrated with the related initiatives of partner agencies; for example, those we discussed in Chapter 15. Increasingly, there will be a need to look outside of the traditional educational environment to find solutions for dealing with high-risk adolescents. In this regard, Education's active participation in Family and Community Services' current Vulnerable Teenagers Review will be essential.

19.2 Why it's difficult to get a clear picture of school attendance

In our Addressing Aboriginal disadvantage report, we highlighted the need for much more meaningful data to be collected on school attendance and suspensions, as well as the need to strengthen internal accountability and governance mechanisms for tracking the progress of individual schools and regions against these indicators.

We noted that despite Aboriginal people holding significant concerns about school attendance and suspension, little can be gleaned from the publicly available data about Aboriginal students because of the way that attendance data is recorded and presented. For example, in 2010, the overall attendance rate for Aboriginal students enrolled in government schools in NSW was almost 85% – approximately 7% lower than for non-Aboriginal students.

When attendance rates for Aboriginal children are disaggregated on a school by school basis, the rates in certain locations are much worse. However, neither Education's nor the Australian Curriculum Assessment and Reporting Authority's National My School websites report on Aboriginal student attendance rates for individual schools. From an accountability and performance measurement perspective this is unacceptable.

The main reasons why it is difficult to get a clear picture from publicly available information about the actual rate of school attendance by Aboriginal students is because:

- attendance rates for Aboriginal students are not published at school level, and
- very poor school attendance by a few students may distort overall attendance figures at particular schools.⁸⁷⁸

During its consultations with our office, Education has acknowledged that more needs to be done to improve its data collection in relation to school attendance and suspension rates generally; as well as ensuring a specific focus on Aboriginal students. One of the major obstacles facing Education at present is that many school records are still paper-based, making it difficult for regions and head office to centrally track school performance on an ongoing basis. Although Education is moving toward the implementation of a central database known as the Learning Management and Business Reform (LMBR), which is intended to improve the quality of student data, the LMBR is not due to be implemented at all schools until the end of 2014.⁸⁷⁹

Education's Access and Equity area was responsible for collating the information we required for our audit. The area indicated that while the exercise was time-consuming due to the lack of an automated system, it found the exercise highly useful for informing its consideration of the type of data that it should be seeking from school regions about the performance of schools.⁸⁸⁰

875 Education advised that the pilot was expected to commence in Term 4, 2012. NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012.

876 NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012. This pilot is being run under the auspices of the Keep Them Safe Senior Officers Working Group on Educational Neglect.

877 NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012.

878 The attendance rate is calculated by first multiplying the number of students enrolled by the number of school days, to give the total number of possible school days. Then, the number of students who are marked as being at school each day of the year is divided by the number of possible school days, to produce an attendance rate. A student may not be present for a range of reasons, including illness or because they were suspended. Or, parents may not provide a reason for the absence.

879 NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012.

880 The exercise will also help inform the development of the LMBR database – Education has indicated that it is keen to engage in further discussions with our office in 2013 for this purpose. The launch of the Centre for Education Statistics and Evaluation in late 2012, whose role is to focus on developing business intelligence tools and managing a series of strategic evaluation projects, also has the potential to provide valuable advice about the development of the new database and associated reporting tools for school and regional managers.

19.3 What our review of school data showed

An essential component of place-based planning and service delivery is knowing how many and which children are missing substantial amounts of school, and where they are enrolled. This data is essential for identifying those children who are at risk of educational neglect, and can also provide a window into broader abuse and neglect issues. Poor school attendance and repeat suspensions should act as triggers for schools to seek and share other risk-related information about the involved children and their families. Often, addressing the underlying causes of educational neglect is not something that can be done by schools alone; instead it may require an integrated interagency response.

As part of our audit, we examined enrolment, attendance, suspension and expulsion information relating to Aboriginal students from 61 public schools located in the 12 target communities.⁸⁸¹ We then compared this data to state-wide and regional data. Our related analysis showed that there are a significant number of Aboriginal students missing large amounts of school each year due to non-attendance and suspension from a substantial number of the 61 schools, particularly in the Western and New England region where most Aboriginal children are enrolled. It also shows the value of examining data on a school-by-school and individual student basis.

19.3.1 The link between sexual abuse and school attendance

Aboriginal people that we consulted throughout our audit repeatedly highlighted that children who have been sexually abused find it difficult to remain engaged in school. For this reason, we separately reviewed the school attendance and suspension records for 46 school-aged children from the 12 target communities, who were reported to police as victims of sexual abuse during the period of the Interagency Plan.⁸⁸²

The records for these 46 children showed that 28 had missed 30 or more days of school in the six months *before* the reported sexual abuse incident (61%); and of these, 10 children had missed 60 days or more of school. We also found that seven of the 46 children had been suspended at least once in the six months prior to the reported sexual assault incident (15%).

In the six months *following* the reported sexual abuse incident, records were available for an additional two students who by that time were old enough to start school. The records showed that 32 of those 48 children (67%) had missed 30 or more days of school; and of these, 17 children had missed 60 or more days. Over the same period, we found that 18 of the 48 children (38%) had been suspended at least once.

A number of children in our case review were the subject of more than one reported incident of sexual abuse. These children were more likely to have missed substantial amounts of school overall. We also found that the attendance histories for these children got worse after each additional report of sexual abuse.

Those children who had lengthy absences from school both before and following the reported incident of sexual abuse, also had substantial child protection histories.

In Chapter 6, we highlighted the positive work being carried out by Education in delivering a range of personal safety and protective behaviours programs. However, it is critical for schools in delivering these programs to ensure that children who have been identified as being at risk of sexual harm or other abuse, are specifically targeted for participation in these and other support programs, particularly when their school participation tends to be poor. Obviously, this is going to be difficult to achieve if the child is not regularly attending school.

19.3.2 Enrolments

Table 16 shows the number of Aboriginal and non-Aboriginal students enrolled each year across the state in public schools and the number of Aboriginal students as a proportion of all students, broken down by grade.

881 The 12 target communities for the purposes of the audit were the nine focus communities identified by Aboriginal Affairs through its Focus Communities program, as well as three additional communities we selected to ensure that our observations took geographic differences into account, as well as positive initiatives being driven by communities in relation to child sexual assault.

882 Of the 60 children who formed part of our victim case review, only 55 were of school age at the time of the sexual assault report. Education was not able to provide any information for seven of these children because: two had attended non-government schools; one had been in juvenile detention; and four were enrolled at schools that did not centrally record the relevant information. The information on the remaining children was sometimes incomplete or unreliable. Two of the 48 children were reportedly abused just prior to school age, so there was no record of their attendance in the six months prior.

Table 16. State-wide enrolment data by school stage and Aboriginality

School stage ^	2007			2008			2009			2010			2011		
	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students
K-6	23,486	408,132	5.4%	23,857	406,200	5.5%	24,620	406,197	5.7%	25,613	406,447	5.9%	26,602	409,147	6.1%
Yr 7-10	12,421	214,756	5.5%	13,091	213,066	5.8%	13,432	210,854	6.0%	14,341	210,592	6.4%	15,227	207,641	6.8%
Yr 11-12	2,167	78,918	2.7%	2,354	78,119	2.9%	2,616	79,830	3.2%	2,961	83,063	3.4%	3,425	84,265	3.9%
All grades	38,074	701,806	5.1%	39,302	697,385	5.3%	40,668	696,881	5.5%	42,915	700,102	5.8%	45,254	701,053	6.1%

Source: Statistics Unit, Centre for Education Statistics and Evaluation, Department of Education and Communities. Data extracted from National Schools Statistics Collections (NSSC) 2007-2011, based on census conducted on first Friday in August.

^ Primary ungraded students are included in K-6, while secondary ungraded students are included in 7-10.

^^ Students with Aboriginality 'unknown/not provided' are included in Non-Aboriginal Students.

Across the state, Aboriginal students increased both in number, and as a proportion of all students enrolled; from 38,074 in 2007 (5.1% of all students) to 45,254 in 2011 (6.1%). Over the same period, the number of non-Aboriginal student enrolments remained relatively stable.

Table 17. Regional enrolment data by Aboriginality of student

Region	2007			2008			2009			2010			2011		
	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students	Aboriginal students	Non-Aboriginal students ^	Aboriginal students as a % of all students
Hunter/Central Coast	5,652	102,584	5.2%	6,167	100,706	5.8%	6,534	99,772	6.1%	7,100	99,765	6.6%	7,533	99,300	7.1%
Illawarra and South East	3,855	66,269	5.5%	3,932	65,422	5.7%	4,065	64,925	5.9%	4,389	64,811	6.3%	4,722	64,033	6.9%
New England	3,918	18,506	17.5%	3,954	17,998	18.0%	4,143	17,614	19.0%	4,263	17,568	19.5%	4,490	17,502	20.4%
North Coast	6,095	62,129	8.9%	6,368	60,786	9.5%	6,529	59,855	9.8%	6,950	59,231	10.5%	7,348	58,346	11.2%
Northern Sydney	257	81,525	0.3%	267	82,777	0.3%	291	84,416	0.3%	298	86,368	0.3%	352	88,047	0.4%
Riverina	2,579	31,249	7.6%	2,626	30,489	7.9%	2,680	30,010	8.2%	2,767	29,797	8.5%	2,865	29,335	8.9%
South Western Sydney	2,938	125,955	2.3%	2,986	125,712	2.3%	3,077	125,841	2.4%	3,238	126,382	2.5%	3,498	126,799	2.7%
Sydney	1,716	84,112	2.0%	1,668	84,829	1.9%	1,668	86,028	1.9%	1,732	86,969	2.0%	1,790	87,711	2.0%
Western NSW	6,999	32,972	17.5%	7,152	32,026	18.3%	7,331	31,285	19.0%	7,622	30,874	19.8%	7,879	30,561	20.5%
Western Sydney	4,065	96,505	4.0%	4,182	96,640	4.1%	4,350	97,135	4.3%	4,556	98,337	4.4%	4,777	99,419	4.6%
All regions	38,074	701,806	5.1%	39,302	697,385	5.3%	40,668	696,881	5.5%	42,915	700,102	5.8%	45,254	701,053	6.1%

Source: Statistics Unit, Centre for Education Statistics and Evaluation, Department of Education and Communities. Data extracted from National Schools Statistics Collections (NSSC) 2007-2011, based on census conducted on first Friday in August.

^ Students with Aboriginality 'unknown/not provided' are included in Non-Aboriginal Students.

Table 17 shows that Western NSW and New England had the highest proportion of Aboriginal students enrolled. Aboriginal students consistently represented between 18-20% of the total student population in these regions. Together, these two regions also accounted for just over a third of all Aboriginal student enrolments in NSW.

While the Hunter/Central Coast region had a similar number of Aboriginal students enrolled as the Western NSW and New England regions, Aboriginal students represented a much lower proportion of *all* students enrolled in this region (at between 5-7%).

The proportion of Aboriginal enrolments in the North Coast (11.2%) and Riverina (8.9%) regions was also consistently higher than the state-wide rate. Of all the regions in metropolitan Sydney, Western Sydney had the highest proportion of Aboriginal enrolments (4.6%).

Table 18 shows the number of Aboriginal and non-Aboriginal students enrolled at the 61 schools we examined in the 12 target communities.

Table 18. Target communities, student enrolments in 2011

Target community	Aboriginal students	Non-Aboriginal students [^]	Total students	% Aboriginal
1.	542	2,740	3,282	16.5%
2.	1,291	7,024	8,316	15.5%
3.	470	2,298	2,768	17.0%
4.	741	773	1,514	48.9%
5.	117	2	119	98.3%
6.	184	9	193	95.3%
7.	245	123	368	66.6%
8.	209	17	226	92.5%
9.	155	227	382	40.6%
10.	200	691	891	22.4%
11.	139	867	1,006	13.8%
12.	203	1,830	2,033	10.0%
Total	4,496	16,601	21,097	21.3%

Source: Department of Education and Communities.

[^] Students with Aboriginality 'unknown/not provided' are included in Non-Aboriginal Students.

Altogether, there were 21,097 students enrolled at the 61 schools in the target communities. Of the students enrolled, 4,496 or 21% of students were Aboriginal. The highest proportion of Aboriginal students in a community was 98% and the lowest was 10%.

19.3.3 Attendance rates

Attendance rates are reported at a school level. Students are marked on the roll as 'not attending' for legitimate reasons when they are sick or on specially approved leave. Students are marked as 'not attending' when they miss school for an unjustified reason such as truanting or an unexplained absence.

Table 19. Attendance rates by region and Aboriginality of students between 2008–2011

Region	2008 [^]			2009			2010			2011		
	Aboriginal attendance rate	Non-Aboriginal attendance rate	All students	Aboriginal attendance rate	Non-Aboriginal attendance rate	All students	Aboriginal attendance rate	Non-Aboriginal attendance rate	All students	Aboriginal attendance rate	Non-Aboriginal attendance rate	All students
Hunter/Central Coast	87%	91%	91%	87%	91%	91%	87%	91%	91%	87%	91%	91%
Illawarra and South East	86%	91%	91%	87%	91%	91%	86%	91%	91%	85%	91%	90%
New England	83%	91%	90%	82%	91%	89%	82%	91%	89%	83%	91%	89%
North Coast	84%	90%	90%	84%	90%	90%	85%	91%	90%	83%	90%	89%
Northern Sydney	89%	94%	94%	90%	94%	94%	90%	94%	94%	90%	94%	94%
Riverina	84%	91%	91%	84%	91%	91%	84%	91%	91%	83%	91%	90%
South Western Sydney	87%	92%	92%	87%	92%	92%	87%	93%	92%	87%	92%	92%
Sydney	84%	93%	93%	86%	94%	93%	85%	94%	93%	86%	94%	93%
Western NSW	84%	91%	89%	83%	91%	89%	83%	91%	89%	83%	90%	89%
Western Sydney	86%	92%	92%	86%	92%	92%	86%	92%	92%	85%	92%	92%
All regions	85%	92%	92%	85%	92%	92%	85%	92%	92%	84%	92%	91%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.

The average attendance rate for Aboriginal students across regions was consistently around 84–85% for the period. For non-Aboriginal students the average rate was consistently at 92%. The attendance rate for Aboriginal children in each region was consistently lower than the rate for all students across all regions. The regional attendance rates have changed very little between 2008 and 2011.⁸⁸³

The attendance rate for Aboriginal students was poorest in the two regions with the highest Aboriginal enrolment rate – Western NSW and New England. The region with the highest Aboriginal attendance rate was the region with the lowest Aboriginal enrolment rate – Northern Sydney.

Table 20 shows the differences in Aboriginal and non-Aboriginal attendance rates between primary and high school students.

Table 20. State-wide attendance rates for Aboriginal and non-Aboriginal students

Primary school	2008 [^]	2009	2010	2011
Aboriginal attendance rate	88.21%	88.51%	89.01%	89.03%
Non-Aboriginal attendance rate	93.55%	93.76%	94.00%	93.91%
High school	2008 [^]	2009	2010	2011
Aboriginal attendance rate	79.91%	79.61%	78.72%	77.62%
Non-Aboriginal attendance rate	89.63%	89.72%	89.69%	89.16%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.

The region and state-wide Aboriginal attendance rates for all students stayed relatively stable between 2008 and 2011.

For all 61 schools in the target communities, we compared the 10 schools which had the lowest overall school attendance rates with the schools that had the 10 lowest Aboriginal school attendance rates.

883 Education did not provide attendance rates by region for 2007.

Table 21. Ten schools with the lowest overall attendance rate in the 12 target communities in 2011

School	Aboriginal attendance rate	Non-Aboriginal attendance rate	Overall school attendance rate	Total school enrolments	Aboriginal students as a % of total enrolments
School 60	59.60%	80.10%	60.30%	119.4	98.3%
School 4	64.60%	74.40%	65.50%	139.6	91.4%
School 33	55.70%	78.40%	68.70%	230.2	39.7%
School 55	70.50%	81.10%	71.40%	116.0	93.1%
School 12	64.70%	77.30%	74.20%	335.0	23.6%
School 7	75.80%	83.50%	76.20%	192.6	95.3%
School 53	76.40%	NA	76.40%	66.0	100.0%
School 5	69.80%	86.70%	76.70%	158.0	58.2%
School 31	75.20%	87.80%	76.70%	121.0	88.4%
School 34	70.40%	85.00%	77.60%	285.0	48.8%

Source: Department of Education and Communities.

The information in Table 21 needs to be considered in the context of the demographics of the school population. For example, Table 21 shows that six of the schools with the worst overall school attendance rate had significant Aboriginal school populations. Also, the non-Aboriginal attendance rates at schools with very high Aboriginal school populations represent a very small number of non-Aboriginal students. For example, the 80% attendance rate for non-Aboriginal students at School 60 relates to only two students.

Table 22. Ten schools with the lowest Aboriginal attendance rates in the 12 target communities in 2011

School	Aboriginal attendance rate	Non-Aboriginal attendance rate	Overall school attendance rate	Total school population	Aboriginal enrolment rate
School 33	55.70%	78.40%	68.70%	230.2	39.7%
School 60	59.60%	80.10%	60.30%	119.4	98.3%
School 4	64.60%	74.40%	65.50%	139.6	91.4%
School 12	64.70%	77.30%	74.20%	335.0	23.6%
School 9 [^]	64.90%	82.20%	78.30%	714.8	21.7%
School 35 [^]	66.20%	86.50%	83.90%	469.0	11.3%
School 47 [^]	68.20%	80.40%	77.90%	764.6	20.7%
School 11 [^]	69.40%	80.70%	79.40%	615.0	11.3%
School 50 [^]	69.50%	87.10%	85.30%	971.0	9.3%
School 5	69.80%	86.70%	76.70%	158.0	58.2%

Source: Department of Education and Communities.

[^] These schools did not appear in the 10 schools with the worst attendance rate when the data was ranked by the overall school rate.

When examining the schools with the lowest attendance rate for Aboriginal children, this included five schools that did not appear in Table 21 (that is, these schools were not among the 10 schools with the worst overall attendance rate). Table 22 shows that only three of the schools among the 10 with the lowest Aboriginal student attendance rates had Aboriginal student populations of over 50% – School 60 (98.3%) and School 4 (91.4%) schools, and School 5 (58.2%). Therefore, low attendance rates for Aboriginal students can be concealed if the size of the cohort of Aboriginal students within a school is not particularly high.

19.3.3.1 Individual students who missed more than 30 days of school due to non-attendance

We examined information on the number of students enrolled in the schools from the 12 target communities who missed more than 30 days or more of school in 2011 (we did not include students who had missed school for a legitimate reason – for example, students who did not attend because they were unwell or students who were suspended). We chose '30 days' as a benchmark as the *Mandatory Reporting Guide* indicates that if a child misses 30 days of school in the last 100 days, this should be a trigger for considering whether a child might be at risk of

significant harm. However, the Guide stresses that this is an indicator only and must be considered in conjunction with other risk factors for the child.⁸⁸⁴

Table 23 shows the number of students who missed 30 days or more of school for only unjustified or unexplained reasons (excluding any days missed due to suspension). There were 3,314 students in the target communities who met this criteria, of these, 1,439 (43%) were Aboriginal.

Table 23. Students missing 30 days or more in 2011 per target community

Target community	Aboriginal students		Non-Aboriginal students		Ratio of Aboriginal student rate to non-Aboriginal student rate
	Missed more than 30 days	% of Aboriginal students enrolled	Missed more than 30 days	% of non-Aboriginal students enrolled	
1.	136	25.1%	276	10.1%	2.49
2.	309	23.9%	1,067	15.2%	1.58
3.	139	29.6%	259	11.3%	2.63
4.	381	51.4%	87	11.3%	4.57
5.	100	85.2%	2	100.0%	0.85
6.	95	51.7%	3	33.3%	1.55
7.	81	33.1%	4	3.3%	10.00
8.	103	49.3%	6	35.3%	1.40
9.	8	5.2%	9	4.0%	1.30
10.	25	12.5%	60	8.7%	1.44
11.	24	17.3%	26	3.0%	5.76
12.	38	18.7%	76	4.2%	4.51
Total	1,439	32.0%	1,875	11.3%	2.83

Source: Department of Education and Communities.

It is of significant concern that the 1,439 Aboriginal students who missed 30 days or more of school represent 32% of all Aboriginal students who are enrolled in schools in the target communities; and the 1,875 non-Aboriginal students who missed 30 days or more represent 11% of all non-Aboriginal students enrolled in schools in these communities.⁸⁸⁵

Of the 1,439 Aboriginal students who missed 30 days or more, 241 (17%) missed 100 days or more – or half a school year. By comparison, of the 1,875 non-Aboriginal students, 177 (9%) missed 100 days or more.

Table 24, over the page, gives a breakdown of the relevant data for each of the schools located in the target communities (data was unable to be provided within the required timeframe for four of the 61 schools).

⁸⁸⁴ The guidelines suggest that the benchmark of '30 days missed in the last 100 days' should be used as an indicator only, and stipulate that contextual factors must also be considered, including Aboriginality (*NSW Mandatory Reporter Guide*, May 2012, p.69).

⁸⁸⁵ Education provided us with the number of 'equivalent full-time' students. If two students enrolled in two separate halves of the year, they would be counted as one equivalent full-time student. This means that the actual number of students in the school year includes those enrolled for only part of the year, and may be higher than the full-time equivalent figure.

Table 24. Students missing 30 days or more of school for unjustified/unexplained reasons in 2011

School	Aboriginal students		Non-Aboriginal students		Ratio of Aboriginal to non-Aboriginal rate
	Missed more than 30 days	% of Aboriginal students enrolled	Missed more than 30 days	% of non-Aboriginal students enrolled	
1.	1	3.23%	0	0.00%	NA
2.	20	25.00%	42	12.65%	1.98
3.	3	5.88%	4	1.73%	3.40
4.	107	83.86%	3	25.00%	3.35
5.	48	52.17%	4	6.06%	8.61
6.	33	21.57%	0	NA	NA
7.	95	51.74%	3	33.33%	1.55
8.^	NA	NA	NA	NA	NA
9.	62	40.00%	106	18.94%	2.11
10.	6	10.00%	10	3.75%	2.67
11.	42	60.52%	208	38.12%	1.59
12.	46	58.23%	124	48.44%	1.20
13.	30	35.71%	174	31.46%	1.14
14.	22	40.74%	101	22.93%	1.78
15.	16	17.02%	64	20.58%	0.83
16.^	NA	NA	NA	NA	NA
17.	5	10.87%	4	2.30%	4.73
18.	1	2.86%	4	1.29%	2.21
19.	7	22.58%	16	8.47%	2.67
20.	6	6.52%	6	1.20%	5.45
21.	12	35.29%	2	18.18%	1.94
22.	13	19.40%	17	5.40%	3.60
23.	8	5.17%	9	3.97%	1.30
24.	7	14.89%	13	5.26%	2.83
25.	0	NA	1	0.43%	NA
26.	0	NA	0	NA	NA
27.	19	26.39%	5	5.75%	4.59
28.^	NA	NA	NA	NA	NA
29.	0	NA	2	0.36%	NA
30.	22	22.04%	20	11.01%	2.00
31.	12	11.21%	1	7.14%	1.57
32.	66	31.73%	17	3.80%	8.34
33.	74	80.96%	20	14.41%	5.62
34.	84	60.43%	46	31.51%	1.92
35.	17	32.08%	25	6.01%	5.34
36.	6	10.91%	1	0.32%	33.93
37.	2	6.67%	6	2.74%	2.43
38.	5	9.43%	26	9.00%	1.05
39.	16	13.33%	7	4.12%	3.24
40.	10	14.29%	49	5.14%	2.78
41.	2	50.00%	0	NA	NA
42.	6	5.26%	7	1.36%	3.86
43.	17	24.29%	153	16.06%	1.51
44.^ ^	21	29.17%	56	16.84%	1.73
45.	1	1.32%	3	1.09%	1.20
46.	10	13.51%	26	8.05%	1.68
47.	95	60.13%	203	33.47%	1.80
48.	4	13.79%	51	7.29%	1.89
49.	7	10.14%	16	4.75%	2.14
50.	47	51.88%	131	14.88%	3.49
51.	3	10.71%	2	5.13%	2.09
52.	2	3.13%	5	1.08%	2.91
53.	38	57.58%	0	NA	NA
54.	24	28.92%	42	14.48%	2.00
55.	62	57.41%	5	62.50%	0.92
56.	41	40.59%	1	11.11%	3.65
57.^	NA	NA	NA	NA	NA
58.	3	9.38%	1	1.19%	7.88
59.	19	28.79%	24	9.06%	3.18
60.	100	85.18%	2	100.00%	0.85
61.	14	28.57%	7	4.55%	6.29
All students	1,439	32.01%	1,875	11.29%	2.83

Source: Department of Education and Communities.

^ Data on the number of students who missed more than 30 days was not provided for these schools.

^^ Education advised that as a result of new software being used at this school, some of the absences recorded are likely to be part day absences only.

Table 24 shows that:

- Aboriginal students at School 27 were more than four times as likely to miss 30 days of school or more compared to non-Aboriginal students.
- At School 5, Aboriginal students were more than eight times as likely as non-Aboriginal students to miss 30 days or more of school.
- For 13 of the 57 schools where Education provided data, 50% or more of the Aboriginal student population had missed more than 30 days of school in 2011.
- There were three schools where the vast majority of Aboriginal students missed 30 days or more of school.
 - At School 60, there were 117 Aboriginal students enrolled, and 85% had missed 30 days or more of school. Of these, 34 Aboriginal students missed 100 days or more.
 - At School 4, there were 128 Aboriginal students enrolled, and 84% of them had missed 30 days or more of school. Of these, 21 had missed 100 days or more.
 - At School 33, there were 91 Aboriginal students enrolled, and 81% missed 30 days or more of school. Of these, 18 had missed 100 days or more of school.

As is evident from the data presented, examining information relating to individual Aboriginal students is critical for identifying children at risk of significant harm for educational neglect. It is for this reason that mandatory reporting rates for individual schools also need to be examined at a school level to ascertain whether attendance data for individual children matches rates of child protection reporting.

Table 25. Students missing 30 days or more in 2011 in target community schools – school grade

Year [^]	Aboriginal students		Non-Aboriginal students		Ratio of Aboriginal to non-Aboriginal rate
	Missed more than 30 days	% of Aboriginal students enrolled	Missed more than 30 days	% of non-Aboriginal students enrolled	
K-6	535	21.1%	319	3.9%	5.40
7-12	904	52.8%	1,556	20.0%	2.63
Ungraded ⁸⁸⁵	-	NA	-	NA	NA
Total	1,439	32.0%	1,875	11.3%	2.83

Source: Department of Education and Communities.

[^]Although Education provided enrolment data which separated ungraded students from other students at target community schools, such students were not distinguished in this data.

Table 25 shows a breakdown for the years K-6 and 7-12 for the number of students who missed 30 days or more of school. Although there were fewer students in primary school who missed 30 days or more of school without justification or explanation than high school, Aboriginal children in this category were more over-represented at the primary school stage. Aboriginal students at primary school were 5.4 times as likely as non-Aboriginal students to miss 30 days or more of school, as compared to Aboriginal high school students, who were 2.6 times as likely.

19.3.4 Suspensions and expulsions

Our consultations with Aboriginal communities revealed significant concern about the high number of Aboriginal children being suspended from school. The authority to suspend a student rests with the principal, and under the Education Act, suspension means the student is suspended from attending school.

Principals are guided by a policy which outlines the measures that should be taken before a suspension is considered, including the development of a behaviour management plan.⁸⁸⁷ If these measures are unsuccessful, the principal can impose a short suspension of up to four days. If short suspensions have not resolved the issue, or the behaviour is very serious, the principal can impose a long suspension of up to 20 days. If the matter has not been resolved after two long suspensions, other strategies must be considered; including alternative educational placements, expulsion or a recommendation to the Minister that the student not be re-admitted to all or any government school.

Certain students who have been the subject of long suspensions can be referred to one of 22 suspension centres across NSW. Referrals are made if the student is assessed as likely to benefit from the kind of structured program which these centres provide – the goal is to return the student to their school as soon as possible.⁸⁸⁸

886 Ungraded students are students in special education support classes.

887 NSW Education, *Suspension and Expulsion of School Students – Procedures*, Student Welfare Directorate, 2011.

888 NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012.

It is important to note that although a long suspension may be issued for a certain number of days, it can be resolved earlier without being corrected in the data. That is, it may be recorded as a long suspension, when in fact it may have only lasted for up to four days.⁸⁸⁹

Each year, Education publishes a report on suspensions and expulsions.⁸⁹⁰ The report contains data on long suspensions; and very limited information on short suspensions and expulsions. According to the report, in 2011 there were a total of 16,814 long suspensions issued across NSW, involving a total of 12,054 students, of which 21.5% were Aboriginal. Of the total students receiving long suspensions, 72.5% were suspended only once, and 27.5% were suspended more than once – there is no further breakdown of the data by region or Aboriginality.

Based on this published data, the Uniting Church has recently conducted further research which found that Aboriginal students were over-represented in the number of children placed on long suspensions.⁸⁹¹

In examining this issue, we asked Education for state-wide, regional and target community suspension data (all of the data was broken down to include Aboriginality and different age bands). In addition, we also sought Aboriginal and non-Aboriginal student expulsion data.

Table 26. Number of short suspensions issued per school stage, state-wide

School stage	2008 [^]					2009					2010					2011				
	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment
K-6	3,799	10,316	14,115	26.9%	5.5%	4,097	10,398	14,495	28.3%	5.7%	3,833	9,633	13,466	28.5%	5.9%	3,559	8,673	12,232	29.1%	6.1%
7-10	6,116	31,429	37,545	16.3%	5.8%	6,666	31,167	37,833	17.6%	6.0%	7,307	34,547	41,854	17.5%	6.4%	7,515	31,533	39,048	19.2%	6.8%
11-12	218	2,634	2,852	7.6%	2.9%	291	3,031	3,322	8.8%	3.2%	413	3,579	3,992	10.3%	3.4%	426	3,800	4,226	10.1%	3.9%
Ungraded ^{^^}	89	243	332	26.8%	NA	92	198	290	31.7%	NA	83	113	196	42.3%	NA	78	134	212	36.8%	NA
Total	10,222	44,622	54,844	18.6%	5.3%	11,146	44,794	55,940	19.9%	5.5%	11,636	47,872	59,508	19.6%	5.8%	11,578	44,140	55,718	20.8%	6.1%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.

^{^^} Education did not provide enrolment data for ungraded students.

Table 27. Number of long suspensions issued per school stage, state-wide

School stage	2008 [^]					2009					2010					2011				
	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment
K-6	1,020	1,915	2,935	34.8%	5.5%	1,023	1,968	2,991	34.2%	5.7%	904	1,883	2,787	32.4%	5.9%	831	1,644	2,475	33.6%	6.1%
7-10	2,092	8,638	10,730	19.5%	5.8%	2,188	8,867	11,055	19.8%	6.0%	2,686	10,787	13,473	19.9%	6.4%	2,813	10,170	12,983	21.7%	6.8%
11-12	53	598	651	8.1%	2.9%	79	668	747	10.6%	3.2%	117	961	1,078	10.9%	3.4%	149	1,133	1,282	11.6%	3.9%
Ungraded ^{^^}	36	55	91	39.6%	NA	23	71	94	24.5%	NA	23	36	59	39.0%	NA	25	49	74	33.8%	NA
Total	3,201	11,206	14,407	22.2%	5.3%	3,313	11,574	14,887	22.3%	5.5%	3,730	13,667	17,397	21.4%	5.8%	3,818	12,996	16,814	22.7%	6.1%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.

^{^^} Education did not provide enrolment data for ungraded students.

889 It is also important to note that an individual student may receive multiple suspensions in any one year.

890 See for example, Suspensions and Expulsions 2011, <https://www.det.nsw.edu.au>.

891 Uniting Care Media Release, 5 December 2012, <http://www.childrenyoungpeopleandfamilies.org.au>. Accessed 5 December 2012.

Table 28. Number of short suspensions issued per region

Region	2008 [^]					2009					2010					2011				
	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment
Hunter Central Coast Region	1,213	7,874	9,087	13.3%	5.8%	1,370	8,328	9,698	14.1%	6.1%	1,578	8,537	10,115	15.6%	6.6%	1,459	8,186	9,645	15.1%	7.1%
Illawarra and South East Region	827	4,769	5,596	14.8%	5.7%	912	4,926	5,838	15.6%	5.9%	1,086	5,570	6,656	16.3%	6.3%	1,238	5,274	6,512	19.0%	6.9%
New England Region	1,148	1,543	2,691	42.7%	18.0%	1,158	1,466	2,624	44.1%	19.0%	1,186	1,684	2,870	41.3%	19.5%	1,125	1,591	2,716	41.4%	20.4%
North Coast Region	1,647	5,077	6,724	24.5%	9.5%	1,742	5,125	6,867	25.4%	9.8%	1,912	5,489	7,401	25.8%	10.5%	1,998	5,094	7,092	28.2%	11.2%
Northern Sydney Region	27	1,398	1,425	1.9%	0.3%	14	1,360	1,374	1.0%	0.3%	23	1,372	1,395	1.6%	0.3%	29	1,137	1,166	2.5%	0.4%
Riverina Region	795	2,284	3,079	25.8%	7.9%	850	2,451	3,301	25.7%	8.2%	791	2,683	3,474	22.8%	8.5%	900	2,802	3,702	24.3%	8.9%
South Western Sydney Region	568	8,816	9,384	6.1%	2.3%	634	8,237	8,871	7.1%	2.4%	718	8,872	9,590	7.5%	2.5%	763	7,728	8,491	9.0%	2.7%
Sydney Region	369	3,040	3,409	10.8%	1.9%	299	2,960	3,259	9.2%	1.9%	317	3,215	3,532	9.0%	2.0%	307	2,690	2,997	10.2%	2.0%
Western NSW Region	2,552	3,191	5,743	44.4%	18.3%	2,922	3,520	6,442	45.4%	19.0%	2,780	3,563	6,343	43.8%	19.8%	2,667	3,298	5,965	44.7%	20.5%
Western Sydney Region	1,076	6,630	7,706	14.0%	4.1%	1,245	6,421	7,666	16.2%	4.3%	1,245	6,887	8,132	15.3%	4.4%	1,092	6,340	7,432	14.7%	4.6%
All regions	10,222	44,622	54,844	18.6%	5.3%	11,146	44,794	55,940	19.9%	5.5%	11,636	47,872	59,508	19.6%	5.8%	11,578	44,140	55,718	20.8%	6.1%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.

Table 29. Number of long suspensions issued per region

Region	2008 [^]					2009					2010					2011				
	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment	Suspensions issued to Aboriginal students	Suspensions issued to other students	All suspensions issued	Suspensions issued to Aboriginal students as a % of all suspensions issued	% Aboriginal enrolment
Hunter Central Coast Region	407	2,404	2,811	14.5%	5.8%	450	2,648	3,098	14.5%	6.1%	581	3,031	3,612	16.1%	6.6%	614	3,169	3,783	16.2%	7.1%
Illawarra and South East Region	269	1,095	1,364	19.7%	5.7%	248	1,242	1,490	16.6%	5.9%	355	1,540	1,895	18.7%	6.3%	337	1,222	1,559	21.6%	6.9%
New England Region	407	432	839	48.5%	18.0%	402	375	777	51.7%	19.0%	421	458	879	47.9%	19.5%	392	463	855	45.8%	20.4%
North Coast Region	499	1,222	1,721	29.0%	9.5%	547	1,211	1,758	31.1%	9.8%	635	1,622	2,257	28.1%	10.5%	738	1,584	2,322	31.8%	11.2%
Northern Sydney Region	15	398	413	3.6%	0.3%	11	437	448	2.5%	0.3%	15	380	395	3.8%	0.3%	8	389	397	2.0%	0.4%
Riverina Region	257	520	777	33.1%	7.9%	271	575	846	32.0%	8.2%	283	653	936	30.2%	8.5%	331	733	1,064	31.1%	8.9%
South Western Sydney Region	195	2,298	2,493	7.8%	2.3%	208	2,297	2,505	8.3%	2.4%	258	2,649	2,907	8.9%	2.5%	284	2,392	2,676	10.6%	2.7%
Sydney Region	152	692	844	18.0%	1.9%	125	626	751	16.6%	1.9%	133	848	981	13.6%	2.0%	103	755	858	12.0%	2.0%
Western NSW Region	719	627	1,346	53.4%	18.3%	782	686	1,468	53.3%	19.0%	743	815	1,558	47.7%	19.8%	722	776	1,498	48.2%	20.5%
Western Sydney Region	281	1,518	1,799	15.6%	4.1%	269	1,477	1,746	15.4%	4.3%	306	1,671	1,977	15.5%	4.4%	289	1,513	1,802	16.0%	4.6%
Total	3,201	11,206	14,407	22.2%	5.3%	3,313	11,574	14,887	22.3%	5.5%	3,730	13,667	17,397	21.4%	5.8%	3,818	12,996	16,814	22.7%	6.1%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.**Table 30. Repeat student suspensions in target community schools in 2011**

Number of suspensions	Aboriginal students suspended	Aboriginal students suspended as a % of Aboriginal students enrolled	Non-Aboriginal students suspended	Non-Aboriginal students suspended as a % of non-Aboriginal students enrolled	All students suspended	All students suspended as a % of all students enrolled	Ratio of Aboriginal rate to non-Aboriginal rate
Suspended at least once	972	21.6%	1,636	9.9%	2,608	12.4%	2.2
Suspended at least three times	258	5.7%	349	2.1%	607	23.3%	2.7
Suspended more than three times	159	3.5%	184	1.1%	343	56.5%	3.2

Source: Department of Education and Communities.

Table 31. Students suspended at least once in 2011 by target community

Target community	Aboriginal students suspended	Aboriginal students suspended as a % of Aboriginal students enrolled	Non-Aboriginal students suspended	Non-Aboriginal students suspended as a % of non-Aboriginal students enrolled	All students suspended	All students suspended as a % of all students enrolled	Ratio of Aboriginal rate to non-Aboriginal rate
1.	105	19.4%	248	9.1%	353	10.8%	2.1
2.	244	18.9%	822	11.7%	1,066	12.8%	1.6
3.	108	23.0%	218	9.5%	326	11.8%	2.4
4.	161	21.7%	70	9.1%	231	15.3%	2.4
5.	11	9.4%	-	0.0%	11	9.3%	NA
6.	27	14.7%	-	0.0%	27	14.1%	NA
7.	67	27.3%	3	2.4%	70	19.1%	11.2
8.	83	39.7%	-	0.0%	83	36.9%	NA
9.	24	15.5%	28	12.3%	52	13.7%	1.3
10.	49	24.5%	100	14.5%	149	16.8%	1.7
11.	46	33.1%	59	6.8%	105	10.5%	4.9
12.	47	23.2%	88	4.8%	135	6.7%	4.8
Total	972	21.6%	1,636	9.9%	2,608	12.4%	2.2

Source: Department of Education and Communities.

Table 32. Student-based suspensions in target community schools in 2011

Year ^	Aboriginal students suspended	Aboriginal students suspended as a % of Aboriginal students enrolled	Non-Aboriginal students suspended	Non-Aboriginal students suspended as a % of non-Aboriginal students enrolled	All students suspended	All students suspended as a % of all students enrolled	Ratio of Aboriginal rate to non-Aboriginal rate
K-6	348	13.7%	350	4.3%	698	6.5%	3.2
7-10	582	41.1%	1,125	20.4%	1,707	24.7%	2.0
11-12	42	14.1%	161	7.1%	203	7.9%	2.0
Total	972	21.6%	1,636	9.9%	2,608	12.4%	2.2

Source: Department of Education and Communities.

^ Although Education provided enrolment data which separated ungraded students from other students at target community schools, such students were not distinguished in the suspension data.

Table 33. Number of expulsions per school stage and Aboriginality

Year	2008 ^				2009				2010				2011			
	Aboriginal students expelled	Other students expelled	All students expelled	Aboriginal students expelled as a % of all students expelled	Aboriginal students expelled	Other students expelled	All students expelled	Aboriginal students expelled as a % of all students expelled	Aboriginal students expelled	Other students expelled	All students expelled	Aboriginal students expelled as a % of all students expelled	Aboriginal students expelled	Other students expelled	All students expelled	Aboriginal students expelled as a % of all students expelled
K-6	3	8	11	27.27%	6	6	12	50.00%	2	6	8	25.00%	1	3	4	25.00%
7-10	36	194	230	15.65%	40	233	273	14.65%	47	210	257	18.29%	60	211	271	22.14%
11-12	4	78	82	4.88%	5	53	58	8.62%	4	41	45	8.89%	13	75	88	14.77%
Total	43	280	323	13.31%	51	292	343	14.87%	53	257	310	17.10%	74	289	363	20.39%

Source: Department of Education and Communities.

^ Education did not provide data for 2007.

Table 34. Number of students expelled by reasons for expulsion and Aboriginality

Reason for expulsion	2008 [^]				2009				2010				2011			
	Aboriginal	Other	Total	% Aboriginal	Aboriginal	Other	Total	% Aboriginal	Aboriginal	Other	Total	% Aboriginal	Aboriginal	Other	Total	% Aboriginal
Misbehaviour	36	178	214	16.8%	39	200	239	16.3%	50	230	280	17.9%	64	233	297	21.5%
Unsatisfactory participation	7	102	109	6.4%	12	92	104	11.5%	3	27	30	10.0%	10	56	66	15.2%
Total	43	280	323	13.3%	51	292	343	14.9%	53	257	310	17.1%	74	289	363	20.4%

Source: Department of Education and Communities.

[^] Education did not provide data for 2007.

19.3.4.1 Observations on suspension and expulsion data

It is clear from the tables presented above that there are a number of trends that warrant further analysis. However, the following issues clearly emerge from the data:

- The data demonstrates that for each year and across the age bands, Aboriginal students were over-represented in the rate of short and long suspensions.
- Of the proportion of primary school students who were suspended, Aboriginal students were even more highly represented within this cohort.
- The data indicates marked differences between regions in relation to overall suspension rates; including the rate of suspensions of Aboriginal students.
- Aboriginal students from the target communities were suspended at a higher rate than non-Aboriginal students and received suspensions on multiple occasions at a higher rate than non-Aboriginal students from the same communities. For example, for years K-6 Aboriginal students in target community schools were three times more likely to be suspended compared to non-Aboriginal students. For years 7-10, Aboriginal students were twice as likely to be suspended.
- Aboriginal students are over-represented in the number of student expulsions overall.

19.4 Building stronger accountability and public reporting against progress

As is evident from the significant number of initiatives outlined in this chapter – many of which have only recently been implemented – a strong commitment has been made by Education to providing Aboriginal children with a good quality education. However, at this stage, the success of many of these initiatives, and their impact on ‘closing the gap’ is yet to be established. Therefore, it is essential that a robust process is put in place for monitoring and reporting on whether these initiatives lead to solid outcomes.

As we noted in our Addressing Aboriginal disadvantage report, there are already governance arrangements in place which have the potential to drive improved performance and accountability in relation to Aboriginal education outcomes. Most notably, the Director General of the Department of Education and Communities chairs the Director General’s Aboriginal Education Advisory Group, which was established several years ago. The Advisory Group includes the Aboriginal Education Consultative Group (AECG).

We understand that the Advisory Group will be monitoring the work currently being undertaken by Education in partnership with the AECG as part of NSW’s responsibility to lead National Collaborative Action 22 – relating to school attendance – in the national *Aboriginal and Torres Strait Islander Education Action Plan*.

In addition to the Director General’s Aboriginal Education Advisory Group, every school region in NSW has one or more regional AECG groups consisting of members from local AECGs. It is this network of local and regional groups which makes the AECG one of the strongest Aboriginal community governance structures in NSW. It is also one of the few Aboriginal specific governance structures that have been established to drive progress in relation to an identified priority area. Regional and school staff members are entitled to be members of local and regional AECGs as either full or associate members. These groups provide an excellent forum for discussion about local issues, and for the monitoring of key data about Aboriginal educational outcomes. Through the state-wide AECG, they also provide an effective conduit between local communities and the Director General’s Aboriginal Education Advisory Group.

However, we believe that there would be benefit in seeking to further enhance the effectiveness of the Director General's Aboriginal Education Advisory Group and the AECG network. This could be achieved through better data being made available to both these groups – this would enhance the capacity of these groups to give informed advice and to assist in helping to drive Education's overall strategic direction for Aboriginal students.⁸⁹²

In addition, in light of the troubling trends identified through this audit in relation to the high rate at which Aboriginal students are suspended (and otherwise disengaged from the education system), we believe the Director General's Aboriginal Education Advisory Group could also play an important role in considering more innovative solutions for working with hard-to-reach adolescent students, including those who face suspension.

In our Addressing Aboriginal disadvantage report we highlighted that when suspended from school, young people usually either stay at home or, for students on long suspensions, attend a 'suspension centre', where available. Both methods of suspension involve exclusion from the student's regular school environment.

From our work with Aboriginal communities over many years, we are aware of numerous examples of Aboriginal young people, deliberately being suspended because they see it as a bonus. Suspensions which simply exclude students from school for a period of time are also seen by many community leaders and educators as negative in that they remove the potential protective factor a school can offer, placing vulnerable young people at risk of either engaging in, or becoming the victims of, criminal behaviour. Against this background, it is worth noting that a number of principals and education regional directors have indicated to us their preference for a more systematic use of 'in-school' suspensions – exercising the use of exclusionary suspensions only in situations where very serious risks are evident.

In response to a requirement for information, Education advised us that the authority to suspend a student rests with the principal, and under the Education Act, suspension means that the student is suspended from attending school. Therefore, Education does not use in-school suspension as a strategy and has no policy on the area.⁸⁹³ However, given the significant number of Aboriginal students being suspended from high-need communities, further consideration needs to be given to what type of alternative arrangements could be put in place to avoid 'suspensions', thus enabling students with challenging behaviours to remain within the school environment.

Through the Schools as Community Centres Program, Education has formed partnerships with other government agencies and non-government organisations which are aimed at providing welfare and support services to vulnerable children, from birth to eight years of age.⁸⁹⁴ We believe there is scope to consider the extent to which these services could be expanded and embedded within local school environments. In this regard, we believe that the rollout of *Connected Communities* provides an ideal opportunity to trial a range of innovative approaches for the purpose of working with these young people, as their vulnerability and related behaviour make it very difficult for them to be supported within their local schools.

However, as we said at the outset of this chapter, finding solutions for better supporting high-risk adolescents should not be seen as solely Education's responsibility. This is an area that requires the development of a genuinely integrated plan and related response by Human Services and Justice agencies. Clearly, the current Vulnerable Teenager Review being conducted by Family and Community Services is also relevant in attempts to make progress in better including – rather than excluding – children and young people who engage in problematic behaviour from universal and other service support.

In addition, while this report focused on the public school system, throughout our audit we visited a number of non-government schools which were carrying out innovative work with vulnerable Aboriginal students. Any process undertaken by Education and partner agencies to identify good practices in engaging Aboriginal children in school should therefore include the non-government school sector.

19.4.1 Strengthening internal accountability mechanisms

The national *Aboriginal and Torres Strait Islander Education Action Plan* commits state and territory education providers to report data that is more specific to jurisdictional priorities. Through placing a spotlight on identified priority schools, it also aims to facilitate the reporting of more localised data. In this way, it provides a much improved framework for the collection and reporting of data in NSW.

However, in order to deliver effectively on this objective, the requirements on NSW regional directors to report against indicators relating to Aboriginal students need to be improved. For example, we understand that there are currently no requirements for regional directors to regularly report on initiatives and outcomes relating to Aboriginal students in areas such as school non-attendance; literacy and numeracy; as well as significant endeavours to improve the

⁸⁹² This type of improved data collection and monitoring, could assist Education to track outcomes for other vulnerable groups.

⁸⁹³ NSW Department of Education and Communities response to NSW Ombudsman Requirement for Information, 1 November 2012.

⁸⁹⁴ An example is the Reconnect program, which is targeted at young people who are homeless or at-risk of homelessness, and aims to stabilise their living situation and improve their level of engagement with family, work, education, training and their local community.

engagement of Aboriginal children and families within each school.⁸⁹⁵ Furthermore, as the Department of Education and Communities has acknowledged, the emphasis in reporting 'is often on how resources were used, rather than on the outcomes that were achieved'.⁸⁹⁶ In this regard, existing performance monitoring mechanisms such as regional directors' performance agreements, regional and individual school plans, could be strengthened through requiring more regular reporting on, and analysis of, specific data about agreed priority areas, including:

- Aboriginal student attendance and suspensions
- Aboriginal student literacy and numeracy attainment
- Aboriginal student retention and pathways to post-school employment and training
- use of Education Act interventions and related outcomes, and
- involvement of local Aboriginal people in providing support to students and schools.

It is only through committing to the collection, monitoring and reporting of better data, that a proper assessment can be made about whether various commitments and initiatives are achieving the desired results in the area of Aboriginal education.

Finally, in the interests of transparency and the public's right to information about 'return on investments', it is critical that this type of data is not only internally collected and monitored but in the future, the outcomes are also made public. In this regard, although we decided not to name the relevant schools in Table 24 in order to avoid identifying the 12 target communities, we believe that, in future, this type of location-specific school-level reporting should be made public.

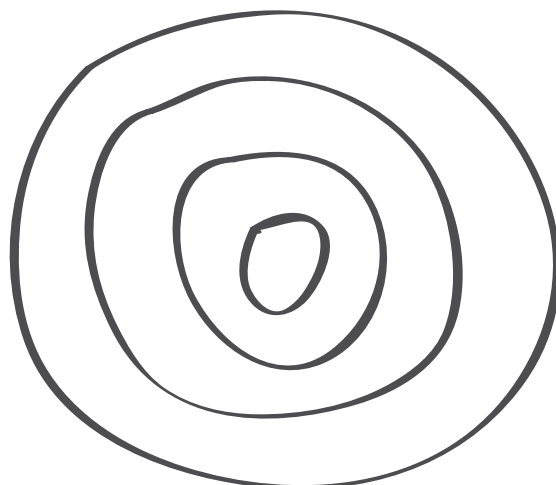
Recommendations

84. In consultation with the Director General's Aboriginal Education Advisory Group, Education should develop a new report for regular publication that includes, at a minimum, data which shows:
 - a) literacy and numeracy attainment by Aboriginality, grade, region and school
 - b) retention rates by Aboriginality, grade, region and school
 - c) enrolment numbers and rates by Aboriginality, grade, region and school
 - d) attendance rates by Aboriginality, grade, region and school
 - e) suspension rates by Aboriginality, grade, region and school
 - f) the number of students who have been suspended, and the number of suspensions for each student, during each year by Aboriginality, grade, region and school, and
 - g) the number of students who missed 30 or more days of school each year, together with a breakdown of the reasons for their absence, by Aboriginality, grade, region and school.
85. That Education requires regional directors to regularly report against the indicators for Aboriginal students outlined in Recommendation 84.
86. That Education reviews the capacity of the Home School Liaison Program, particularly in disadvantaged communities with high levels of school non-attendance, with the view to trialling an intensive attendance case management model such as the approach outlined in our 2011 Addressing Aboriginal disadvantage report.
87. That, in consultation with the Director General's Aboriginal Education Advisory Group, Education should work with the Departments of Family and Community Services and Attorney General and Justice to develop innovative approaches which aim to keep 'hard to reach' Aboriginal young people engaged in education, including: initiatives that involve funding non-government organisations to provide services to such young people within the school environment as an alternative to suspension.

⁸⁹⁵ Apart from data collected annually by the Aboriginal Education Directorate.

⁸⁹⁶ NSW Department of Education and Communities, *Local Schools, Local Decisions*, Discussion Paper, September 2011, p.9.

Place-based service delivery



Chapter 20. Getting the right staff in the right places

For many years now, we have been drawing attention to the fact that addressing rural and remote recruitment and retention, creating a strong Aboriginal workforce, and ensuring the cultural competence of service providers, are all critical to delivering services to Aboriginal communities. Not surprisingly, our audit has identified that addressing these issues is fundamental to the success of any attempt to address child sexual assault in Aboriginal communities.

Ensuring that there are skilled and experienced staff in the locations where they are needed underpins the issues which we discuss throughout this report, from preventing child sexual abuse and building strong families and communities, to responding to victims and offenders when a report is made. In the following chapter, we discuss the need for a shift in policy and service delivery for Aboriginal communities to an approach which is genuinely place-based. The ability to achieve improvements in the government's response to child sexual abuse, and the implementation of a new model of service delivery for Aboriginal communities, will simply not be possible if service providers are not able to consistently attract high quality staff to the locations where they are most needed.

Action 63 of the Interagency Plan was directed to the Department of Premier and Cabinet, Health, Education, Housing, and Community Services and required these agencies to:

Develop and implement incentive packages to attract experienced staff to service agencies in rural and remote areas. Implement measures to address staff burn out and stress.

The Interagency Plan also includes another 13 Actions which are broadly relevant to attracting staff to rural and remote areas – these are: employing additional Aboriginal staff (six Actions),⁸⁹⁷ and improving cultural competency (seven Actions).⁸⁹⁸ There have been a number of positive outcomes from these Actions, many of which we have discussed throughout the relevant sections of this report. However, as identified by the Ministerial Advisory Panel on Aboriginal Child Sexual Assault, 'a key obstacle in the implementation of the Interagency Plan appears to have been created by difficulties recruiting and retaining staff. The Interagency Plan had insufficient focus on workforce development, particularly rural and remote areas'.⁸⁹⁹

Many agencies continue to report difficulty in attracting and retaining staff to rural and remote parts of the state. As noted in the Commission of Audit's 2012 *Interim Report: Public Sector Management* (the Commission of Audit's interim report), without significant action to address these challenges, 'these shortages will continue to be acute, particularly in the far south and far west'.⁹⁰⁰

In November 2011, the government established the Public Service Commission. The Commission's primary objectives include strengthening the NSW public sector workforce capacity, development and performance. Responsibility at a state-wide level for the issues discussed in this chapter now sits with the Commission and, as such, the establishment of the Commission provides a unique opportunity for a renewed focus on resolving these issues.

In this chapter we outline the type of whole-of-government response which is required if service delivery to Aboriginal people in NSW is to be improved, both in relation to child sexual assault and more broadly. There is a clear need for a comprehensive strategy to be developed and implemented across three key areas – rural and remote recruitment and retention; building a strong Aboriginal workforce; and developing the cultural competence of the workforce.

20.1 Addressing rural and remote recruitment and retention

Aboriginal people are more likely than non-Aboriginal people to reside in high-need rural locations, where service provision is often stretched, and skills shortages are common. As was noted in the report by the Wood Special Commission of Inquiry:

*The availability of sufficient services is not a new issue and it is not one which can be solved alone by the injection of further funding. Attracting and retaining staff in rural and remote areas is a significant barrier to getting enough universal and targeted services throughout NSW.*⁹⁰¹

We have been drawing attention to the need for human services and justice agencies to address workforce issues in rural and remote locations, and in particular in Western NSW, throughout the life of the Interagency Plan.

⁸⁹⁷ Actions 15, 19, 30, 49, 66, and 70.

⁸⁹⁸ Actions 13, 14, 18, 44, 50, 51, and 85.

⁸⁹⁹ Ministerial Advisory Panel on Aboriginal Child Sexual Assault, *Report to Minister on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, February 2012.

⁹⁰⁰ NSW Commission of Audit, *Interim Report: Public Sector Management*, January 2012, p.99.

⁹⁰¹ *Report of the Special Commission of Inquiry into Child Protection Services in NSW – Volume 1*, November 2008, p.240.

In our submission to the Wood Special Commission of Inquiry in 2008, we highlighted that the delivery of policing, health, welfare, housing and other essential services in high-need areas is often hampered by skills shortages and high staff turnover, and that successfully addressing these issues is critical if agencies are to prioritise Aboriginal access to mainstream services.⁹⁰²

Our 2010 report on service delivery to the Bourke and Brewarrina communities recommended that the Department of Premier and Cabinet (DPC), together with human services and justice agencies, develop an action plan for responding to critical service delivery challenges in rural and remote communities, as well as a more comprehensive staff recruitment and retention strategy for disadvantaged rural and remote locations, to include clear targets, and a rigorous monitoring and reporting framework.⁹⁰³

In 2011, our report on *Keep Them Safe* recommended that by February 2012, DPC, together with the Department of Family and Community Services and other human services and justice agencies, should make public the action proposed in relation to the critical staffing shortages that exist in Western NSW, as well as the action proposed in relation to the need to develop efficient interagency practice and shared responsibility.⁹⁰⁴

In our 2011 report on addressing Aboriginal disadvantage, we again reiterated the acute workforce capacity issues in rural and remote communities, and the need for this to be addressed as a key precursor to providing a genuinely integrated service system in these high-need areas.⁹⁰⁵

Improving service delivery in rural and remote areas through workforce strategies, and by building agency capacity, was a focus of the Wood Special Commission of Inquiry, and accordingly was a priority area for *Keep Them Safe*.

Keep Them Safe included as an action for government to:

Strengthen the service delivery and workforce capacity in regional and remote communities.

- *The NSW Government will work with its own agencies, other government and non-government employers, unions, peaks, and professional associations to attract and retain more staff to work in regional and remote areas.*
- *Develop new ways of structuring work, incentives, and infrastructure to make it easier for communities to access coordinated services...*⁹⁰⁶

In October 2006, DPC established a three year *Remote Areas Attraction and Retention* pilot in Bourke, Brewarrina, Walgett and Wilcannia. The pilot included offering staff a \$5,000 bonus for each complete year of service, as well as five days paid learning and development leave. It was apparent from our 2010 inquiry into service provision in the Bourke and Brewarrina communities, however, that this pilot had limited effectiveness in addressing the chronic staffing and skills shortages in these communities, in part because the incentives which were included as part of the pilot were not sufficient to attract the required staff.

In November 2010, the *Keep Them Safe* Workforce and NGO Capacity Building Plan was released, which 'integrates strategies to build the capacity of the NGO sector and develop the *Keep Them Safe* workforce across the government and non-government sectors'.⁹⁰⁷ However, as we have noted in previous reports, the Plan, to be implemented over five years, is generally limited to non-government organisations involved in the delivery of services and supports to children and their families. Whilst building the capacity of the non-government sector is increasingly important in the context of ongoing outsourcing of service delivery by the government, as we have identified throughout this report, the significant workforce challenges faced by the public sector in rural and remote communities must also be addressed for improvements in service delivery to be achieved.

In December 2010, DPC issued guidelines to agencies for the implementation of the *Rural and Remote Incentive Scheme*. This scheme allows Chief Executives in human services and justice agencies the discretion to offer incentives to assist with attraction and retention of employees in relation to hard-to-fill positions in rural and remote locations.

As we acknowledged in our submission to the Wood Special Commission of Inquiry in 2008:

The use of incentives to fill vacancies in rural and remote locations is often the fastest and most effective way for frontline agencies to attract suitably qualified staff and address service deficiencies in those areas. The law enforcement and education sectors have had proven success in attracting staff to remote locations, largely through incentives such as providing their remote area staff with:

902 NSW Ombudsman *Submission to the Special Commission of Inquiry into Child Protection Services in NSW. Part 9: Responding to issues of serious neglect in Aboriginal communities*, June 2008, p.2.

903 NSW Ombudsman, *Inquiry into service provision to the Bourke and Brewarrina communities*. A special report to Parliament under section 31 of the Ombudsman Act 1974, December 2010, p.56.

904 NSW Ombudsman, *Keep Them Safe? A special report to Parliament under section 31 of the Ombudsman Act 1974*, August 2011, p.20.

905 NSW Ombudsman, *Addressing Aboriginal disadvantage: The need to do things differently*. A special report to Parliament under section 31 of the Ombudsman Act 1974, October 2011, p.24.

906 NSW Government, *Keep Them Safe: A shared approach to child wellbeing 2009-2014*, March 2009, p.46.

907 *Keep Them Safe Annual Report*.

- *preferential placement at other locations after serving a set period in remote communities*
- *higher remuneration and other allowances for additional costs associated with living in outlying locations*
- *longer annual leave and other special leave entitlements*
- *purpose-built accommodation, and*
- *training opportunities and experience to enhance their promotion prospects.*⁹⁰⁸

It is apparent, however, that there was both insufficient investment in the DPC scheme, and that the scheme failed to build on the past experience of different agencies in implementing employment strategies to varying effect. As such, the incentives provided for in the scheme were largely ineffective in encouraging staff to relocate to high-need areas and positions. In July 2012, DPC advised us that 'Informal advice suggests that take up of the [*Rural and Remote Incentive Scheme*] has been minimal.'⁹⁰⁹ NSW Health also advised us that there has been limited uptake of the Scheme in that agency.⁹¹⁰

Responsibility for the *Rural and Remote Incentive Scheme*, as well as for the issue of rural and remote employment more broadly, now sits with the Public Service Commission.

20.1.1 The need for a whole-of-government approach

The capacity of different agencies to attract and retain suitably qualified staff to rural and remote areas varies significantly. In auditing the implementation of Action 63 of the Interagency Plan, as well as the various relevant Actions directed at individual agencies, we required information from a number of agencies regarding both the staff vacancy rates, and the incentive programs which are in place for rural and remote areas.

As we have identified in previous reports, both the NSW Police Force and Education have established comprehensive schemes to attract suitably qualified staff to high-need areas, and have historically had considerable success in maintaining low vacancy and staff turnover rates as a result. The information which was provided to us by these agencies in the course of our audit indicates that they have maintained strong staffing levels in rural and remote areas over the life of the Interagency Plan.

It is well documented that Community Services has had considerably less success in filling caseworker positions in rural and remote areas. We have examined the challenges experienced by Community Services closely in the past, and will continue to monitor the progress made as part of our ongoing work in relation to monitoring the delivery of community services. Our audit has also identified that a shortage of staff in key positions within NSW Health has had a significant limiting impact on their capacity to provide a response to victims of child sexual assault in rural and remote parts of NSW. The Commission of Audit's interim report similarly identified that Health had 25 positions vacant in rural and remote towns for more than six months to June 2011.⁹¹¹ In addition, smaller agencies such as the Office of the Director of Public Prosecutions (and in particular the Witness Assistance Service) lack the leverage required to develop the comprehensive strategies required to attract and retain suitably qualified staff where they are most needed.

It stands to reason that whilst police and Education are central to service delivery in rural and remote communities, and accordingly play a critical role in any strategy to tackle child sexual assault, the effectiveness of these agencies is limited in communities where other service providers are suffering from acute staff shortages. This has been apparent throughout our audit. In particular, our review of the experience of individual children who were the subject of a reported child sexual abuse incident over the life of the Interagency Plan highlighted that staff shortages in any one agency have a significant impact on the capacity of the system as a whole to provide an appropriate response to reports of sexual abuse.

The Commission of Audit's interim report identified the key barriers to rural and remote recruitment as:

- *ineffective training and professional development of existing or prospective staff already in such locations, to be able to undertake higher level jobs*
- *service delivery models which are not integrated across government agencies*
- *inconsistent and inflexible salary incentives*
- *inadequate accommodation for employees in such locations.*⁹¹²

908 NSW Ombudsman Submission to the Special Commission of Inquiry into Child Protection Services in NSW. Part 9: Responding to issues of serious neglect in Aboriginal communities, June 2008, pp.34-35.

909 Correspondence from the Department of Premier and Cabinet, 25 July 2012.

910 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

911 NSW Commission of Audit, Interim Report: Public Sector Management, January 2012, p.99.

912 NSW Commission of Audit, Interim Report: Public Sector Management, January 2012, p.99.

It is simply not practical or efficient for these barriers to be tackled at an agency or department level. Given the need to provide a genuinely integrated service system in high-need rural and remote locations, in our 2011 report on addressing Aboriginal disadvantage, we noted the critical need for a whole-of-government workforce strategy to be finalised for the service system.⁹¹³ The success of such a strategy in rural and remote communities will require the training and recruitment of local community people, as well as an incentive scheme sufficient to attract high quality staff who are capable of delivering culturally competent services, as well as mentoring and supporting local staff to develop the required skills. As we discuss in section 20.2, building a strong Aboriginal workforce is fundamental to addressing skills shortages in rural and remote areas.

20.1.2 The need for location specific solutions

The *Rural and Remote Incentive Scheme* developed by DPC applies to any positions within the participating agencies which have:

- remained vacant, despite being advertised externally on at least two occasions within a six month period, or
- an established history of being hard-to-fill or high in turnover, an urgent need to ensure service delivery or other similar imperative.

The Scheme applies uniformly to all areas which qualify for payment of the Remote Area Allowance under clause 39.2 of the *Crown Employees (Public Service Conditions of Employment) Award 2009*. Whilst the Scheme allows some tailoring in the type of incentives available, there is only limited flexibility in its application.

It is simply not practical to apply a 'one size fits all' approach to all rural and remote communities in the state. At a practical level, there needs to be recognition of the significantly higher cost of living in some communities. In the very remote parts of the state where the cost of living is highest, financial incentives play a far greater role in encouraging recruitment and retention. Similarly, in communities where for various reasons the lifestyle is poorer or the work stress higher, there may be a need for higher financial incentives and/or additional annual leave entitlements to minimise burn out and subsequent high turnover of staff. There are also a range of different barriers to the recruitment and retention of staff, which vary in their importance in different communities, including the availability of appropriate housing, or access to supervision and career development.

As is the case with solutions for service delivery, solutions to address recruitment and retention issues in rural and remote parts of the state need to be relevant to the unique characteristics of different communities, and need to have enough flexibility that they can be applied differently in different communities.

20.1.3 Monitoring and reporting

In our 2011 report to Parliament about *Keep Them Safe*, we noted, in relation to the Western region of NSW, that:

*...despite various plans to address staffing shortages, substantial numbers of positions remain unfilled. For this reason, it will be important to ascertain whether the current initiatives to address staffing shortages in many of the most disadvantaged parts of the state are able to achieve real results.*⁹¹⁴

We recommended that the Department of Family and Community Services should provide public advice on:

- its proposals for ongoing and meaningful reporting of the numbers of filled positions against the agency's staffing establishment. This should also include regional breakdowns and the counting rules which underpin these reports.*
- its ability to successfully retain staff (and the related performance measures).*⁹¹⁵

While Community Services has committed to this public reporting, it has not yet occurred. There is currently a very limited knowledge base as to what types of incentive programs work, how this varies between different agencies or between different locations, or how this varies between different types or levels of position. There is also only limited public reporting on staff vacancy and turnover rates across human services and justice agencies in NSW. Without this information, it is difficult to develop effective and efficient strategies for improving service delivery to high-need communities.

It is critical that strategies to address recruitment and retention across government include processes for continually monitoring and assessing their impact, and that these processes are built around clear targets. This monitoring needs to be meaningful, outcome-focused, and publicly reported on.

913 NSW Ombudsman, *Addressing Aboriginal disadvantage: The need to do things differently*. A special report to Parliament under section 31 of the Ombudsman Act 1974, October 2011, p.24.

914 NSW Ombudsman, *Keep Them Safe?* A special report to Parliament under section 31 of the Ombudsman Act 1974, August 2011, p.11.

915 NSW Ombudsman, *Keep Them Safe?* A special report to Parliament under section 31 of the Ombudsman Act 1974, August 2011, p.19.

20.2 Building a strong Aboriginal workforce

In Chapter 18, we discussed the need for a focus on increasing employment opportunities for Aboriginal people as part of a broader goal to increase the economic capacity of Aboriginal communities. The government has acknowledged that improving educational and employment outcomes need to be the cornerstones of future government policy to address Aboriginal disadvantage.⁹¹⁶

At a community level, particularly in rural and remote communities, genuine and consistent efforts by an agency to recruit and retain Aboriginal staff can increase access to that agency's services by Aboriginal community members; provide an avenue for community education and engagement activities; and can also have wide-reaching implications for how that agency is perceived by the Aboriginal community – providing an indicator for community members of the willingness of that agency to work together with Aboriginal people. As was identified by community members in the consultations held by the Ministerial Taskforce on Aboriginal Affairs, 'government needs to demonstrate commitment to making visible improvement in Aboriginal communities to improve the public sector's general reputation'.⁹¹⁷

The Interagency Plan included five Actions which related to increasing the number of Aboriginal staff in individual agencies, or in the Joint Investigation Response Team.⁹¹⁸ In addition, Action 49 directed 'Government agencies to review and enhance strategies to support, mentor and recruit Aboriginal staff, and enhance workforce development where necessary'.⁹¹⁹ We discussed the implementation of these Actions, as well as some specific outcomes and challenges in recruiting Aboriginal staff, in chapters 10 and 12.

In 2007 and 2008, the Council of Australian Governments (COAG) set six targets for closing the disadvantage gap between Aboriginal and non-Aboriginal people, one of which was to halve the gap in employment outcomes within 10 years. As part of the COAG agreement, the NSW Government committed to meeting a target of 2.6% Aboriginal employment within the public sector by 2015.⁹²⁰

In December 2009, *Making it Our Business: The NSW Aboriginal Employment Action Plan – 2009-2012* was launched. The plan was developed in order to meet the COAG target, and also fulfilled Action 49 of the Interagency Plan. All government agencies were also required to develop an Aboriginal Employment Strategy by June 2010.

It is clear that Aboriginal employment has increasingly been an area of focus by agencies over the life of the Interagency Plan, and as indicated in the case study below, a number of agencies have had considerable success as a result. However, the outcomes achieved to date by different agencies have been mixed, and in many instances the attempts by individual agencies to increase their Aboriginal workforce, both in response to the Interagency Plan and more broadly, have had limited success due to difficulties in filling positions.

Case study 39 – Juvenile Justice's hands-on approach in Bourke⁹²¹

Attracting skilled staff in regional NSW is a challenge for all agencies. Juvenile Justice has an Aboriginal Recruitment and Retention Strategy that has helped to consistently attract and retain Aboriginal staffing levels at more than 10% for a number of years.

Management and staff in the Western Region have taken the strategy a step further, making use of local networks to proactively attract prospective Aboriginal team members.

The recruitment strategy for the Bourke Juvenile Justice Community Service (JJCS) office includes a unique hands-on approach to identifying candidates, recruitment and training. This provides the foundation for a staff mentoring system that means everyone is involved in training and building the team's skills.

How did it work?

The local Aboriginal Project Officer (APO) based in Dubbo made use of professional networks to identify people in the community with the skills and potential to work in Juvenile Justice. The APO effectively worked as a recruiter might, identifying talent and matching people with the right skills to the job.

By directly approaching people and taking the time to talk through the role, potential staff had the chance to ask questions and learn more about the role before committing to the nerve-racking job application process.

These conversations also helped set aside fears people may have had about being overlooked because of old driving offences or charges. The criminal history checks were demystified and genuine applicants were

916 Ministerial Taskforce on Aboriginal Affairs, *Background and Terms of Reference*, 2011, Aboriginal Affairs.

917 Ministerial Taskforce on Aboriginal Affairs, *Community Consultation Report*, 2012, Aboriginal Affairs, p.28.

918 Actions 15, 19, 20, 44, and 66.

919 NSW Government, *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, January 2007, p.21.

920 Department of Premier and Cabinet, *Making it Our Business: The NSW Aboriginal Employment Action Plan – 2009-2012*, 2009.

921 This case study was provided to us by Juvenile Justice as part of its response to our Requirement to Provide Information, September 2012.

encouraged to apply. The APO, who worked independent to the interview panel, supported people through the application and interview process.

Successful applicants were then given practical on the job training. The training was delivered locally, so that staff working in isolation in the regions had a chance to meet their counterparts in other offices to create an extended team.

Experienced staff from the Western Region office took the lead in induction training that extended beyond standard orientation to ongoing mentoring. The mentors and extended team became the resource to quickly answer questions or provide guidance on tricky policy and legislative issues. As staff became established and knowledgeable, they in turn took on the role of mentoring and training new staff.

Fostering a culture of approachable management, mentors and supportive colleagues makes Bourke JJCS a good example of how a simple and effective strategy can attract and retain Aboriginal staff.

While the type of recruitment and mentoring approach adopted by Juvenile Justice is critical for reaching agency targets of Aboriginal employment rates, for many of the key Aboriginal identified frontline positions, the primary barrier to agencies achieving progress over the course of the Interagency Plan has been the difficulty in finding Aboriginal people with the appropriate skills. The types of positions which were referenced in the Interagency Plan as requiring additional Aboriginal staff, for example, counsellors or Witness Assistance Officers, are highly skilled positions which require specific qualifications.

As we discussed in Chapter 10, NSW Health funded a number of Aboriginal sexual assault counsellor positions under Action 44 of the Interagency Plan. Where these positions were filled, they appear to have led to a substantial increase in the number of Aboriginal children who have received sexual assault counselling. However, Health has had ongoing difficulty recruiting to these positions, and as a result, the impact of these positions has been limited. As the case study below demonstrates, Health has acknowledged the skills shortage in this area, and is actively seeking to build a qualified Aboriginal workforce.

Case study 40 – ECAV’s development and mentoring of Aboriginal staff

The NSW Health Education Centre Against Violence (ECAV) is a state-wide unit responsible for providing training programs in the areas of adult and child sexual assault, domestic and family violence, and abuse and neglect of children. These programs are available to NSW Health, as well as other government and non-government employees.

ECAV includes an Aboriginal Program Area, which has been delivering programs to Aboriginal workers and communities for more than 20 years. The Aboriginal team at ECAV is currently made up of four permanent full-time staff, 18 Aboriginal contract educators, and 15 Aboriginal Communities Matter Advisory Group members. There are 17 separate courses delivered by the Aboriginal Program Area, including community development programs, courses for non-Aboriginal service providers, and programs for Aboriginal workers and community members.⁹²²

Since 2001, ECAV has been providing a Certificate IV course in Aboriginal Family Health (Family Violence, Sexual Assault and Child Protection), ‘a central component in preparing Aboriginal Family Health Workers... for their role in supporting communities to develop strategies that promote safe families and communities’.⁹²³ To date, 124 Aboriginal workers have completed the course, and of these 111 have graduated with the Certificate IV qualification. There are an additional 18 workers currently completing the course.⁹²⁴

To address the shortage of skilled Aboriginal sexual assault counsellors, ECAV is in the process of developing a workforce development pathway, which leads to and builds on the Certificate IV. The pathway, which leads to four separate qualifications, is available for Aboriginal workers employed by NSW Health, and is particularly aimed at Aboriginal Family Health workers:

Tier 1: Certificate III in Aboriginal Cultural Leadership (currently in development).

Tier 2: Certificate IV in Aboriginal Family Health (Family Violence, Sexual Assault and Child Protection).

Tier 3: NSW Advanced Diploma of Aboriginal Specialist Trauma Counselling (piloted in 2011, with 10 workers graduating).

Tier 4: Graduate Certificate at the University of Sydney (delivery will commence in 2013 and will provide access into the two year Masters of Social Work program).

922 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

923 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

924 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

As identified by NSW Health in its recent position paper on child sexual assault in Aboriginal communities, it is clear that, at both an agency level and at a whole-of-government level, 'workforce strategies for Aboriginal workers should have entry-level options for training and development (e.g. traineeships) and an established developmental pathway'.⁹²⁵ In this regard, we note that the Ministerial Taskforce on Aboriginal Affairs has 'requested that the Public Service Commission incorporate a focus on strengthening Aboriginal employment at both entry level and through supported progression to senior positions'.⁹²⁶

It will be important for these strategies to be clearly targeted at those areas where current and future skills shortages have been identified, and at those positions where Aboriginal staff have the potential to make the most impact on service delivery.

20.3 Developing the cultural competency of the workforce

A practice paper developed in 2012 by ECAV recognises that there is 'evidence of systemic racism towards Aboriginal people in education, welfare, public housing, and the criminal justice system', and a 'lack of confidence in mainstream services held by Aboriginal communities'.⁹²⁷ Building a culturally competent workforce is not only necessary to combat these issues, it is also a fundamental requirement if agencies are to build and support an Aboriginal workforce. In the consultations held by the Ministerial Taskforce on Aboriginal Affairs, 'the need to create a culturally competent, appropriate and safe workplace and workforce... was frequently expressed'.⁹²⁸

The challenge of making services responsive to and accessible by local Aboriginal people was recognised in the Interagency Plan, with four Actions designed to facilitate increased cultural awareness among government agencies,⁹²⁹ as well as three Actions which more broadly related to improving cultural competence within certain services.⁹³⁰

Actions 13 and 14 specifically directed the Attorney General's Division to roll out and expand the provision of cultural competency training for Witness Assistance Service officers, prosecutors, and judicial officers across the state. Action 50, led by Education, was to make available the Aboriginal Cultural Education Program (TAFE Certificate IV) to all NSW Government agencies to enhance cultural awareness training and build staff cultural competency; and Action 51 directed agencies, where necessary, to consult and work with ECAV to tailor cultural awareness training to the needs of Aboriginal clients.

The Office of the Director of Public Prosecutions (ODPP) has since completed a number of training workshops for Witness Assistance Service officers and solicitors. 190 ODPP staff have participated in relevant workshops or training sessions over the life of the Interagency Plan. In addition, the Judicial Commission has developed an annual *Cultural Awareness Education Plan* to provide cultural awareness training to judicial officers, which has included seminars, conferences, and publications.

Actions 50 and 51 were the subject of an Aboriginal Child Sexual Assault Senior Officers Group Workshop in June 2010. All agencies which led actions under the Interagency Plan were asked to provide an update on the status of their agency's cultural awareness training to meet the needs of their Aboriginal clients. It was determined that 'all service delivery agencies provide cultural awareness training internally', and that 'this training is often specifically tailored to meet the agency's need as well as to ensure that their staff are trained to meet the needs of their Aboriginal clients'. As a result, no further steps were taken to implement these two Actions.

It is encouraging that there has been increasing recognition that agencies and staff need to be culturally competent, and that considerable effort has accordingly gone in to providing staff with training on cultural awareness. Through our consultations with Aboriginal community members, agency personnel, and other stakeholders, it is apparent, however, that the outcomes of this training, in terms of actual improvements in the provision of services to Aboriginal communities, have been mixed. A review in 2010 of NSW Health's counselling services (including the Sexual Assault Services), for example, 'identified many of the same gaps and barriers to services for Aboriginal people identified in *Breaking the Silence...*',⁹³¹ and found that access to the services by Aboriginal people remains low, with 'two-thirds (69%) of survey respondents believing their service was not adequately accessed by Aboriginal communities'.⁹³²

925 NSW Health, *Position Paper – Child Sexual Assault in Aboriginal Communities*.

926 Ministerial Taskforce on Aboriginal Affairs, *Ministerial Taskforce on Aboriginal Affairs: Progress Report*, August 2012, p.5.

927 Herring S, Spangaro J, Lauw M, McNamara L, 'The Intersection of Trauma, Racism, and Cultural Competence in Effective Work with Aboriginal People: Waiting for Trust', *Australian Social Work*, 16 October 2012, p.2. <http://dx.doi.org/10.1080/0312407X.2012.697566>.

928 Ministerial Taskforce on Aboriginal Affairs, *Community Consultation Report*, 2012, Aboriginal Affairs, p.29.

929 Actions 13, 14, 50, and 51.

930 Actions 18, 44, and 85.

931 ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence services mapping. Final Report to NSW Department of Health*, February 2011, p.xi.

932 ARTD Consultants, *Review of NSW Health Counselling Services: Child Protection Counselling Services, Sexual Assault Services, Child Protection Units, Domestic and Family Violence services mapping. Final Report to NSW Department of Health*, February 2011, p.78.

While providing cultural awareness training to agency staff has no doubt resulted in an increased level of knowledge and understanding of Aboriginal communities among agency staff, there is little evidence that cultural awareness training as it is currently delivered changes the way that service providers respond to Aboriginal people.⁹³³ It is apparent that there is a need for government agencies to develop comprehensive strategic plans to deliver culturally competent services to Aboriginal people, which move beyond the provision of cultural awareness training. We note that the recent practice paper published by ECAV provides a model for developing a cultural competency framework.⁹³⁴

20.3.1 An enhanced role for the Education Centre for Violence – implementing Action 51

Action 51 directed agencies, where necessary, to consult and work with ECAV to tailor cultural awareness training to the needs of Aboriginal clients. As noted above, advice was provided to us by Aboriginal Affairs that all relevant agencies provided some form of cultural awareness training and, as a result, it was determined in 2010 that reporting was no longer required against Action 51 since the outcome sought had been completed.⁹³⁵

During our consultations, we received very positive feedback about ECAV's courses and programs. ECAV has delivered its Aboriginal cultural competency course 16 times over the last three years in rural and metropolitan areas, with 228 workers trained. As we have discussed both in this chapter and in Chapter 6, ECAV has had considerable success in delivering training in this area over many years, as well as extensive experience in the field of sexual assault. Building on this experience, ECAV has developed a comprehensive 'Culturally Safe Practice Model' which aims to facilitate 'secure and safe workplaces for Aboriginal and Torres Strait Islander people both in their professional and personal capacities, as workers and as service users'.⁹³⁶

Particularly for smaller agencies, and for those agencies and staff who provide services to victims of sexual assault, there is scope for ECAV to play a much greater role in developing cultural competency, either through the direct provision of training, or through the provision of support in developing training strategies. In this regard, it seems that the lack of engagement with ECAV in implementing Action 51 has been a significant missed opportunity for agencies to improve the outcomes gained by providing staff with cultural awareness training. We note, however, that ECAV does not currently have the capacity to provide an enhanced role of this sort. ECAV advises that the Aboriginal Program Area currently accounts for 40% of the organisation's work, and that:

The increasing demand and complexity of this program area requires detailed oversight, which is already beyond the time available within the current ECAV management structure. For expansion of the Culturally Safe Practice Model and the Four Tiered Workforce Development Pathway, oversight of this program area would greatly benefit from employment of an Aboriginal manager skilled in trauma informed responses and cultural safety.

*Targeted permanent funding to the ECAV Aboriginal portfolio would enable expansion without compromising quality.*⁹³⁷

The training which is provided by ECAV has added significantly over the life of the Interagency Plan to the understanding of, and effective response to, child sexual assault in Aboriginal communities. Ensuring that ECAV has the capacity to maintain, and build upon, its current service delivery will be critical to the ongoing government response, both to this issue, and to addressing Aboriginal disadvantage more broadly.

20.3.2 The need for location specific training

In 2005, we completed an audit of the implementation of the NSW Police *Aboriginal Strategic Direction (2003-2006)*. In the subsequent report to Parliament, we noted that 'while a general induction for police at the College on Aboriginal issues is no doubt helpful, this approach is too generic and fails to take into account the different historical and cultural issues in individual areas and that every community is different'.⁹³⁸ Since this report, the NSW Police Force has made significant inroads in delivering cultural awareness training at a local level, with the engagement of many local Aboriginal community members, as well as enhancing its foundational course delivered by the College.

In 2011, the Department of Education and Communities launched *Connecting to Country*; a comprehensive location specific program for teachers, which is funded by the Australian Government. *Connecting to Country* is a five day program, which combines three days of intensive, in-the-field cultural immersion focusing on local Aboriginal culture,

933 Herring S, Spangaro J, Lauw M, McNamara L, 'The Intersection of Trauma, Racism, and Cultural Competence in Effective Work with Aboriginal People: Waiting for Trust', *Australian Social Work*, 16 October 2012, p.4. <http://dx.doi.org/10.1080/0312407X.2012.697566>.

934 Herring S, Spangaro J, Lauw M, McNamara L, 'The Intersection of Trauma, Racism, and Cultural Competence in Effective Work with Aboriginal People: Waiting for Trust', *Australian Social Work*, 16 October 2012, pp.8-11. <http://dx.doi.org/10.1080/0312407X.2012.697566>.

935 Aboriginal Affairs response to NSW Ombudsman Requirement for Information, 6 December 2012.

936 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

937 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

938 NSW Ombudsman, *Working with Local Aboriginal Communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)*. A special report to Parliament under s 31 of the Ombudsman Act 1974, April 2005, p.8.

followed by two days of professional learning. The program was developed and implemented together with the Aboriginal Education and Consultative Group (AECG), with the AECG responsible for developing and delivering the cultural immersion component. The program is being rolled out to 143 schools, including the 88 'focus schools' listed in the current National Aboriginal and Torres Strait Islander Education Action Plan.

Local content of this type is not routinely included in cultural awareness training for all agencies, and particularly for smaller agencies it may not be practical for this type of training to be implemented. Our consultations with Aboriginal communities have highlighted that there needs to be a mechanism for agency staff, particularly staff who are new to an area, to be provided with local cultural competency training, and to meet with local Aboriginal community members. While there is a need for individual agencies to provide cultural competency training which is specific and relevant to the role of the organisation, there is the potential for periodic cross-agency inductions in Aboriginal communities to provide staff who are new to the area with an avenue for gaining an understanding of the issues which are relevant to that community. This would allow people from different agencies to meet with significant local Aboriginal community members in an efficient way, without unnecessary burden to the agencies, or to the community members who are currently called on to provide this service for agencies.

Recommendations

88. Against the background of the recommendations made in our reports to Parliament on Service delivery to Bourke and Brewarrina and *Keep Them Safe*, that the Public Service Commission considers the observations made in this report in developing and implementing a whole-of-government recruitment and retention strategy. In doing so, the Commission should pay particular attention to:
- a) The nature of any public reporting that should occur in relation to agency efforts to fill vacant positions in rural and remote communities.
 - b) The development of a whole-of-government workforce strategy for Aboriginal people, from entry-level through to supported progression for senior positions.
 - c) Exploring how the Education Centre Against Violence could play an expanded role in developing the cultural competency of the NSW Public Sector workforce, including developing strategies to mentor and develop Aboriginal staff.

Chapter 21. Place-based service delivery

Researchers suggest that place-based policy is:

- a long-term development strategy aimed at reducing the under-utilisation of resources and social exclusion of specific places, through the production of integrated bundles of public goods and services
- determined by extracting and aggregating people's knowledge and preferences in these places and turning them into projects.⁹³⁹

The notion of place-based solutions must be premised on the principle of self-determination and, in this respect, must not simply be limited to 'representation on governing boards with predetermined operational systems'; but rather, must include local Aboriginal involvement in the design of governance and service systems.⁹⁴⁰ The Harvard Project on American Indian Economic Development⁹⁴¹ has produced empirical evidence that supports the notion that self-determination is critical to successful community development in Indigenous communities - 'Indigenous self-determination is the only federal policy that has had any broad, positive, sustained impact on native poverty'. However, the project also notes that local decision-making policies 'must be properly backed up with necessary resources and capable institutions so that the move is more than simply on paper'.⁹⁴²

Aboriginal people have repeatedly highlighted successive governments' continuing failure 'to respond to community needs and priorities, or to take advantage of community strengths and abilities'. They acknowledge that 'place-based initiatives have the potential to address these problems' but that this requires governments to change the way services are traditionally delivered – 'through functional agencies...with only minimal coordination' and to 'shift away from the fairly uniform delivery of services, with priorities determined by centrally located government officers'. There is widespread agreement that moving away from the government 'silos' and 'entering into genuine partnerships with Aboriginal communities' are essential for alleviating long standing disadvantage in Aboriginal communities.⁹⁴³

The NSW Government has embraced the need for place-based decision making, with a number of the *NSW 2021* goals supporting this approach including to:

- foster opportunity and partnership with Aboriginal people
- involve the community in decision making on government policy, services and projects, and
- improve government transparency by increasing access to government information.⁹⁴⁴

The Ministerial Taskforce on Aboriginal Affairs (the Taskforce) has been examining ways to improve service delivery and accountability. In line with the notion of place-based service delivery, the Taskforce has proposed a community-led approach to guide and coordinate service delivery at the local level.⁹⁴⁵

We note the NSW Government's commitment to place-based service delivery but unless agencies find a way to successfully work together on the ground in these communities and overcome the silo approach, we will not make progress. Interagency committees and the 'linking' and 'coordinating' of services are not the same as truly integrated place-based service delivery.

21.1 Location-specific initiatives and the Interagency Plan

The Interagency Plan recognised the need for location-specific actions 'to be rolled out in, and tailored to, key locations where communities require intensive assistance'. A major vehicle through which this was to be achieved was the Safe Families program. In our *Addressing Aboriginal disadvantage report*⁹⁴⁶ we examined the progress of Safe Families – a flagship program aimed at reducing Aboriginal child sexual assault by working with Aboriginal communities to provide early intervention and prevention services; enhanced child protection responses; and

939 Barca, F 2009, Pursuing equity through place-based development policies: rationale and the equity-efficiency issue, OECD/TDPC Symposium on Regional Policy, Paris as cited by L Trudzik in *Place-based and place-paced public policy*, <http://www.allenconsult.com.au>. Accessed 23 December 2012.

940 Fisher S, Elvin R, McFallan S, Memmott P, O'Rourke T, Peter S, Porter R, Stanley O, Sullivan P, Tedmanson D and Young M. 2011. *Desert Services that Work: Demand-responsive approaches to desert settlements*. DKCRC Research Report 70. Ninti One Limited, Alice Springs, p.18.

941 The project aims to understand and foster the conditions under which sustained, self-determined social and economic development is achieved among American Indian nations. Information obtained from The Harvard Project on American Indian Economic Development website: <http://hpaied.org>. Accessed 22 December 2012.

942 Fisher S, Elvin R, McFallan S, Memmott P, O'Rourke T, Peter S, Porter R, Stanley O, Sullivan P, Tedmanson D and Young M. 2011. *Desert Services that Work: Demand-responsive approaches to desert settlements*. DKCRC Research Report 70. Ninti One Limited, Alice Springs, p.18.

943 R Gilbert, Place-based initiatives and Indigenous justice, Indigenous Justice Clearinghouse, Brief 13, June 2012, p.1.

944 Advice obtained from NSW 2021 website: www.2021.nsw.gov.au. Accessed 10 December 2012.

945 Ministerial Taskforce on Aboriginal Affairs, *Ministerial Taskforce on Aboriginal Affairs: Progress Report*, August 2012, p.6.

946 NSW Ombudsman, *Addressing Aboriginal Disadvantage: the need to do things differently*. A special report to Parliament under s31 of the *Ombudsman Act 1974*, October 2011.

targeted community development. The program commenced in 2009 and operates in five high-need locations in Western NSW: Wilcannia, Bourke, Brewarrina, Lightning Ridge and Walgett.

In our 2011 report, we highlighted our concerns about the lack of evidence of any substantial results from the Safe Families program. Information provided to us by the partner agencies around the middle of 2011 indicated that a total of six families in Wilcannia and two families in Lightning Ridge had received case management. This was of significant concern given that Safe Families was provided with \$22.9 million funding, and was entering its final year of operation.

In response to both our findings and an earlier evaluation of the program that was also undertaken in 2011, the partner agencies realigned the program by outsourcing Community Services' former case management responsibilities to a number of non-government organisations to provide support to vulnerable families. In return, Community Services sought to focus on improving its core child protection responses within the Safe Families sites.

On 28 September 2012, Community Services advised us that, notwithstanding a target of 100 referrals that was set for the five sites under the reconfigured model, there had only been 21 referrals.⁹⁴⁷ In addition, Health, as one of the partner agencies, advised that it had delivered community education as part of the program to over 1,000 people between July 2011 and August 2012.⁹⁴⁸

The Bourke and Brewarrina experience

We have been advocating for a place-based response to service delivery since we released our report *Inquiry into service provision to the Bourke and Brewarrina communities* in December 2010.⁹⁴⁹ This report focused on the corrosive impact of the failure of existing services to adequately respond to serious child protection issues within these communities. Of particular concern was our finding that the overall service system, and related responses, were disjointed and poorly targeted.

We also noted the remarkably low uptake of services by Aboriginal families, even when their needs were high. This was particularly evident in relation to the limited reach of established Community Services programs such as the Intensive Family Based Service (IFBS) and Brighter Futures. These programs, like many others that are devised centrally and are 'rolled out' to recipient communities with little consultation, were delivered with scant regard for the particular needs of these communities.

Our report called on human service and justice agencies – including relevant federal and local government bodies – to rethink their approach and move towards integrated service planning, funding and delivery. In doing so, we noted that the critical challenges in providing improved service delivery to vulnerable children and families in Brewarrina and Bourke, are similar to those faced by many other high-need communities in disadvantaged rural and remote locations.

For this reason, we structured our recommendations around what should be undertaken to meet the challenges facing high-need communities generally. In particular, our recommendations proposed a joint approach to tackling common challenges: including coordinated recruitment and retention strategies to address critical staffing shortages in Western NSW, and establishing strong accountability mechanisms across government agencies to drive the implementation of identified community priorities.

However, because we saw Brewarrina and Bourke as a litmus test on progress regarding effective place-based planning and related service delivery, we recommended the development of an action plan for these communities.

21.2 Agency attempts at integrated planning and service delivery

On 13 September 2011, FACS informed us that the implementation of its *One Place, One Plan* model in Brewarrina would constitute its 'first activity' in response to our Bourke and Brewarrina inquiry. The *One Place, One Plan* model was developed 'to deliver regional, place-based planning'.⁹⁵⁰ We were advised that the implementation of the model in Brewarrina would be considered with a view to identifying 'opportunities for realignment and reshaping' of the local service system, consistent with the observations and recommendations contained in our report.⁹⁵¹ We were also advised that the model was to be implemented in another 14 communities.

It was clear from the documentation provided by FACS that despite the model's aim of addressing the currently 'less than ideal planning coordination' in some communities, the primary focus of *One Place, One Plan* was on 'addressing coordination issues within [FACS] agencies' only.

947 Community Services response to NSW Ombudsman Requirement for Information, 28 September 2012.

948 NSW Health response to NSW Ombudsman Requirement for Information, 28 September 2012.

949 NSW Ombudsman, *Inquiry into service provision to the Bourke and Brewarrina communities*, A special report to Parliament under s31 of the *Ombudsman Act 1974*, December 2010.

950 Advice provided by the Department of Family and Community Services, 13 September 2011, p.1.

951 Advice provided by Department of Family and Community Services, 13 September 2011, p.4.

In October 2011, we noted in our addressing Aboriginal disadvantage report that a subsidiary aim of the *One Place, One Plan* model is to improve coordination and planning with other government agencies 'where this supports the business of [FACS]'.⁹⁵² However, we highlighted that the model fell short of embodying a truly integrated approach to local service planning, funding and delivery given that its mandate and, in particular, its governance structure, did not extend beyond FACS agencies.

On 28 September 2012, FACS provided a response to the concerns that we had raised about the limitations of the *One Place, One Plan* model. It advised that a review of the program in early 2012 had included careful consideration of our comments and 'identified various issues and challenges with altering the model'.⁹⁵³ However, FACS also noted that it had decided

*...to implement the existing [One Place, One Plan] and to develop a more comprehensive approach to local service planning through the development of an organisational model for localising the service system and fostering a stronger commitment and structures for engaging communities, government and non-government agencies in service planning.*⁹⁵⁴

We are unclear what this means in practice and continue to be concerned about how this model will provide a truly integrated approach to local service planning, funding and delivery.

21.3 Making universal services the centre of service delivery

Having discussed the limitations of the *One Place, One Plan* model, it is apposite to now discuss the need to recognise the central role that universal service providers must play if we are to make substantial progress in the area of Aboriginal child sexual assault, and in the broad area of addressing Aboriginal disadvantage.

From our consultations with Aboriginal communities over many years, we have found that, not surprisingly, Aboriginal people are far more willing to access health and education services rather than those provided by Community Services. In addition, Education and Health are often much better placed to connect with families at an early stage and to cultivate constructive relationships. From our various audits, we have also observed that Health's resources are often stretched – particularly in more remote locations – due to the demand on its services.

One of the most positive developments in implementing a place-based model in NSW since the release of our *Addressing Aboriginal disadvantage* report⁹⁵⁵ is *Connected Communities*. The potential for schools to act as a hub for local service delivery is a central tenet of this innovative new strategy. Created in consultation with the Aboriginal Education Consultative Group (AECG), principals' groups and the NSW Teachers Federation, the strategy aims to improve educational outcomes for Aboriginal children and young people by delivering a suite of services through 15 schools in some of this state's most complex and disadvantaged communities.⁹⁵⁶ Underlying *Connected Communities* is a growing acceptance of the central role that communities themselves must play in identifying, and engaging, vulnerable young people and their families.

Beginning in 2013 in high-need locations, it is intended that the services, and how they will be delivered, will be tailored to the needs of each community. The aim is to engage children from an early age, while urging parents and communities to play an active role in improving outcomes.

Connected Communities is also intended to support broader economic and social reforms in the high-need locations it is targeting, mainly by fostering 'stronger partnerships between schools, the local community and government agencies' to drive 'better educational opportunities for students'. Education is currently recruiting 'Executive Principals' for each *Connected Communities* hub. These newly created positions have been established to play a central role in building and supporting collaborative partnerships, identifying opportunities for innovative programs and in helping to bring about real change. Executive Principals will be required to develop their strategies in conjunction with community and school leaders, largely through newly established local school governance groups made up of local Aboriginal, AECG, parent and teacher representatives. As school leadership teams are formed in each hub, planning will start with local communities for the 2013 school year.⁹⁵⁷

952 Department of Family and Community Services, *draft One Place One Plan Policy*, January 2011, p.1.

953 Information provided by the Department of Family and Community Services in response to Ombudsman Requirement for Information, 28 September 2012.

954 Information provided by the Department of Family and Community Services in response to Ombudsman Requirement for Information, 28 September 2012.

955 NSW Ombudsman, *Addressing Aboriginal Disadvantage: the need to do things differently*. A special report to Parliament under s31 of the *Ombudsman Act 1974*, October 2011.

956 The 15 schools are Boggabilla Central School, Toomelah Public School, Wilcannia Central School, Walgett Community School, Bourke Public School, Bourke High School, Moree East Public School, Moree Secondary College, Coonamble High School, Coonamble Public School, Taree Public School, Taree High School, Brewarrina Central School, Menindee Central School, and Hillvue Public School (Tamworth).

957 Education response to Ombudsman Requirement for Information, 1 November 2012.

When considering the Government's objectives in establishing *Connected Communities*, the potential links between this strategy's community development/place-based focus and other place-based aspirations – such as *One Place, One Plan* – are obvious. However, what is currently not apparent are the mechanisms that will be put in place to ensure that these, and other, community focused initiatives are brought together to form a genuinely integrated planning and service delivery system within the communities in which they will operate. For many remote and highly disadvantaged communities, integration of this kind will be essential.

The Northern Territory has a similar model to *Connected Communities* that has been running for a number of years – '*Strong Start, Bright Futures*' – which aims to improve the educational outcomes for Aboriginal children by 'improved governance, leadership, integrated service delivery...and vocational education and training' within schools.⁹⁵⁸ We met with staff from the then Department of Education and Training, including the Chief Executive, Mr Gary Barnes, in May 2012. We also visited the West Arnhem College sites of Jabiru and Gunbalanya in May 2012 to get a better understanding of the practical implementation of the framework.

Case study 41 - West Arnhem College – '*Strong Start, Bright Futures*' (from birth to jobs)

The *Strong Start, Bright Futures* model was implemented in Jabiru and Gunbalanya in 2010. Since this time, the schools have noted increased attendance and retention, reengagement of students, strong relationships built through community engagement, service integration and place-based programs and partnerships with local businesses and industry to facilitate employment pathways.

Coordination of services is undertaken at a local level by the Executive Principal, John Bray, and dedicated Child and Family Leaders whose role is to work in partnership with the local Aboriginal community and service providers – both government and non-government – to develop an implementation plan to integrate child and family services. Integrated Family Services Regional Managers support this work at a regional level by undertaking coordinated planning and better alignment of governance structures with regional service providers to enable the progression of local implementation plans. The Integrated Family Services Division within the Department of Education and Children's Services works in partnership with the federal and local governments, non-government agencies and Aboriginal peak organisations to develop, improve and coordinate policies and programs at a territory wide level.⁹⁵⁹

A key element of the model is place-based school planning with community to meet local needs. In Gunbalanya, a change in dates to the school year has helped to increase attendance at the local school. While student attendances are high during the wet season, they drop away during the dry season when students often leave Gunbalanya to attend cultural and family activities. The Aboriginal School Principal, Esther Djayhgurmgga, and the local Aboriginal community were integral in pushing for a change in semester dates, starting three weeks earlier each year during the wet season and then taking longer holidays during the dry season. The change in the school calendar year has meant that students can maintain their cultural commitments without missing valuable school time.⁹⁶⁰

Education has become such a focus in Jabiru since the *Strong Start, Bright Futures* model was implemented by traditional owners, the Mirrar, who have used the royalties paid to them by the local Energy Resources Australia Limited mine to fund the establishment of a boarding house facility. The facility has been a locally driven Aboriginal initiative and has cost the Gundjeihmi Aboriginal Corporation (the organisation that administers the mining royalties) approximately \$6.3 million. The Mirrar people have acknowledged that funding the facility has ensured that they get true input into the design and delivery of the services for their young people. They have stressed that there will be strong parental guidance and culturally appropriate case management for each child that will also incorporate individual learning plans. The boarding house accommodates up to 26 young people from 10-17 years with live-in supervision, an in-house teacher (who is funded by the Northern Territory government) and four support staff.⁹⁶¹ The students attend West Arnhem College, Jabiru, and return to the facility each afternoon where staff assist them in reviewing their school work. Since the facility opened in August 2012, accommodating 17 students, all students have attended school 100% of the time.⁹⁶² A further nine students will be enrolled in the facility in 2013.

All of the schools that form part of West Arnhem College employ staff members in what they describe as 'book end' positions (that is, from birth to preschool and from school to work). The birth to preschool position focuses on identifying children in the local community who are eligible for preschool and encouraging their parents to enrol them. The School To Work transition officer focuses on forming industry relationships with local enterprises to ensure kids are trained for potential positions. Partnerships in Gunbalanya and Jabiru

958 Information sheet, *Strong Start, Bright Futures*, Undated.

959 Integrated Family Services Initiative Handbook, Northern Territory Government, p.17.

960 Information obtained from Closing the Gap, <http://www.indigenous.gov.au>. Accessed 5 November 2012.

961 Record of meeting with Jason O'Brien, Executive Officer, Gundjeihmi Aboriginal Corporation, 10 May 2012.

962 Record of conversation with John Bray, College Director, West Arnhem College, 12 November 2012.

have been formed with the local Energy Resources Australia Limited mine; Indigenous Land Corporation (Gunbalanya Cattle Station and Meat Works); and Kakadu National Park to establish identified placements for Aboriginal students. The corporations agreed to the partnerships because they could see the value of employing local people and also because of the added community benefits in providing an incentive for children to stay at school. Most training within these schools is now geared towards jobs in these industries.⁹⁶³ In 2012, two students from Gunbalanya participated in the School To Work Transition program, working three days per week at the Gunbalanya Station and attending school two days per week. The two students were the first Year 12 graduates.⁹⁶⁴ A new training facility is also being built for the Gunbalanya and Jabiru schools to provide for Vocational Education and Training programs.⁹⁶⁵

A key element of the West Arnhem College model is the evaluation being led through Menzies School of Research. The longitudinal evaluation includes assessing the impact of place-based reforms such as the integration of child and family services.⁹⁶⁶ The data and empirical research available has allowed for individual schools to track their progress since the roll-out of the model.⁹⁶⁷

Service integration is such a critical and significant focus for the Northern Territory government that on 11 October 2012, Deputy Chief Minister Lambley announced there will be a single plan across the Office of Children and Families and the Department of Education and Children's Services to improve coordination of key services to children and their families.⁹⁶⁸ The Northern Territory government is hoping this initiative will finally result in integrated services, consolidated infrastructure, strengthened leadership and clear communication and collaboration between educators, child protection workers and support services for families.⁹⁶⁹ In our opinion, the laudable objectives of *Connected Communities* will not be fully realised unless and until the bureaucracy goes beyond the approach recently adopted in the Northern Territory, and commits to a genuine whole of community planning process for remote and highly disadvantaged communities in our state.

21.4 Place-based service delivery – the need for an over-arching framework

As we have noted, currently in NSW there are a range of plans and related initiatives aimed at addressing Aboriginal disadvantage, often developed in isolation and without a clear articulation of how they fit together.⁹⁷⁰ The various plans and commitments have a range of governance structures and reporting mechanisms in place which often overlap and sometimes even conflict. As a result, it is difficult to gain a sense of which elements of the array of existing plans remain relevant, or whether the disparate range of objectives and strategies they encompass are likely to achieve demonstrable improvements in the lives of Aboriginal people.

A number of our reports have noted the impacts of poorly integrated and inefficient service systems operating in local communities, including: the failure to identify and meet the needs of those most vulnerable; the continued funding of NGOs that are failing to provide a good quality service; and the limited return on investment from a number of agency programs. We believe a centralised approach at the local level to decision making about the planning, funding and delivery of services is essential to address continuing disadvantage in Aboriginal communities.

In our recent review of school-aged children from two Western NSW towns, the subject of governance and accountability was once again a focus. Our review aimed to demonstrate how existing agency information holdings could be used to better identify and respond to children at risk. We noted that in an environment of limited resources and high numbers of vulnerable children and families, it is necessary to examine the most efficient and effective ways for agencies to collectively identify those at greatest risk in local communities. In this regard, we advocated for the adoption an intelligence-driven approach to child protection. We emphasised again that collecting, analysing and sharing risk-related data of this type is only one part of the equation and that 'value added' data must be put to good use via robust planning and governance processes.

963 Record of conversation with John Bray, College Director, West Arnhem College, 13 November 2012.

964 Information obtained from ABC Online website: <http://www.abc.net.au/news/2012-11-26/attendance-rates-rise-with-early-start-to-school/4392302/?site=indigenous>. Accessed 4 December 2012.

965 Department of Education and Children's Services, Annual Report 2011-2012, p.19.

966 Integrated Family Services Initiative Handbook, Northern Territory Government, p.23.

967 Record of meeting with Gary Barnes, Chief Executive, Department of Education and Training Northern Territory, 15 May 2012.

968 Advice obtained from Department of Education and Children's Services website: <http://www.det.nt.gov.au>. Accessed 22 November 2012.

969 Northern Territory Government Information Paper: Introducing the Office of Children and Families, p.1.

970 In NSW, there are a number of programs that impact on service delivery to Aboriginal communities. Closing the Gap, together with the associated national partnership agreements, provides the overarching national framework for addressing Aboriginal disadvantage. In NSW, the former State Plan and *Two Ways Together* were both 'adjusted' to reflect the Closing the Gap targets. Individual state and federal agencies also have their own plans for how they will provide services to Aboriginal people, as well as plans that are either aimed at specifically addressing particular problems facing their communities (e.g. NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities). State and federal agencies also incorporate a significant focus on outcomes for Aboriginal people in a number of broader plans (e.g. *National Framework for Protecting Australia's Children; Keep Them Safe: A shared approach to child wellbeing in NSW*).

We highlighted that in small, relatively isolated towns, the funding of programs designed to enhance service availability can create multiple and often 'competing' programs, reference committees and multi-agency case management groups – often with overlapping objectives and target client groups.

Our various review activities over a number of years have clearly demonstrated the need for an overarching framework to be in place which is tailored to the needs of individual communities that:

- relies on evidence to identify need and to determine priority areas for funding, as part of an ongoing 'whole of community' service planning and mapping exercise
- funds services based on the priority areas that have been identified (and according to a rigorous procurement process that assesses the capacity of individual services to deliver), and
- ensures that the level and nature of services which are provided by funded agencies are tracked, and the related outcomes are monitored.

Our work has also emphasised the need for robust and effective governance arrangements to drive a genuinely integrated service approach.

In addition, effective governance must also include ongoing assessments of funding contracts to determine whether those who are being referred for support are actually receiving a service, and whether the desired outcomes are being achieved by both individual services and the local service system as a whole. In our view, for funding bodies to effectively discharge their planning and contract administration responsibilities, they also need to be constantly assessing where there are service gaps, and taking this into account in their service planning processes. Further, funding bodies should be ascertaining those services which are not being fully utilised – this should inform service planning (and related procurement decisions).

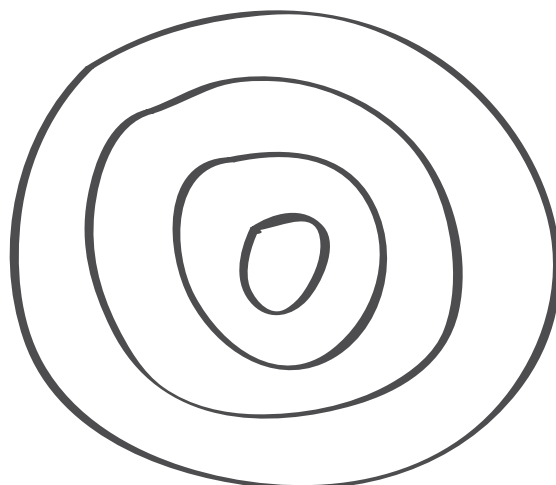
From our experience in reviewing human and justice systems in relation to a number of communities, we are convinced that a more disciplined approach to planning, funding and related governance arrangements is essential to building an effective and seamless place-based service system. Such a system is also dependent on the planning and funding decisions (and related governance arrangements) being driven from a 'whole of community' perspective. In order for this to be achieved, the decision making related to planning and funding, and the related governance arrangements, need to be jointly driven by all relevant federal, state and local government agencies working in partnership with key non-government and community representatives in building an effective place-based service system.⁹⁷¹ Key issues around the leadership (and associated authority) that is required to break down siloed decision making, and to drive integrated planning and service delivery in local communities, must also be addressed before such a system can be built. In this regard, giving an individual responsibility without also giving them the requisite authority is unlikely to be successful.

Recommendations

- 89. The Department of Premier and Cabinet, together with other key stakeholders, should develop and implement a strategy for delivering effective place-based planning and service delivery within a number of high need communities in rural and remote locations. As part of developing and implementing the strategy, the Department of Premier and Cabinet should:**
- a) Trial the strategy in a number of communities in which *Connected Communities* will be operating.
 - b) Ensure that a rigorous 'action learning' evaluation process is put in place in order to inform refinements to the strategy over time.
 - c) Seek to build into the strategy the core elements of effective community development approaches.
 - d) Ensure early, productive and ongoing partnerships with federal and local government stakeholders, and Aboriginal and other community leaders.
 - e) Ensure that initiatives related to the current and proposed work on intelligence-driven child protection are integrated into the strategy.
 - f) Ensure that those required to drive the implementation of the strategy within each involved community have been given the necessary authority to deliver the required outcomes.

⁹⁷¹ The Independent Local Government Review Panel is considering (amongst other issues) the capability for local government to 'support the current and future needs of local communities', their 'ability to deliver services and infrastructure efficiently and effectively' and 'the financial suitability of each local government area'. In relation to Western NSW, the Panel will 'explore a range of possible new models of cooperative governance and service delivery, covering 4-8 existing shires as well as the unincorporated area'. The Panel's recent discussion paper calls for a new approach 'that effectively combines the capacity of local, state and federal agencies'. In this respect, the Panel notes that: 'Simply amalgamating councils is not a realistic approach. People and resources are too thinly spread and distances too great. One option might be some sort of joint local-State government authority, with local community councils providing democratic representation and some place-based services. Alternatively, there could be a region-wide local government – perhaps a modified County Council – that works through community councils and delivers programs as an agent for State and federal governments.' The findings of the Independent Panel are due to be reported in July 2013. The Panel's work will be highly relevant to any consideration of governance and accountability mechanisms for the delivery of services in Western NSW. (Independent Local Government Review Panel, *Better, Stronger Local Government, The case for Sustainable Change*, November 2012, p.26.)

Ongoing Accountability



Chapter 22. Governance and accountability

This chapter is about the need to move beyond aspirations to real action and sustainable and meaningful outcomes.

In our 2011 Addressing Aboriginal disadvantage report we highlighted the need to establish a new accountability framework for addressing Aboriginal affairs in NSW. Our audit of the Interagency Plan has revealed inadequacies in governance arrangements and related accountability mechanisms. These limitations were acknowledged by the Minister for Aboriginal Affairs in his response to the Ministerial Advisory Panel on Aboriginal Child Sexual Assault's (MAP) final report on the Interagency Plan.⁹⁷²

At the time we released our Addressing Aboriginal disadvantage report, the Ministerial Taskforce for Aboriginal affairs had only recently been established. In August 2012, the Taskforce released a progress report based on its second round of community consultations. In its report, the Taskforce recognised the need to strengthen accountability and increase transparency. The Taskforce set itself the goal of developing 'a new accountability approach for Aboriginal affairs across the whole-of-government.'⁹⁷³ The progress report articulates specific improvements to accountability mechanisms which embrace many of the initiatives promoted in our 2011 report.

The Taskforce indicated its intention to develop specific recommendations 'that are likely to address' the following issues in its development of a new Aboriginal affairs strategy for NSW:

- *Making accountability occur at both the state-wide and local levels*
- *Ensuring regular and independent performance auditing of Aboriginal affairs initiatives by government and NGOs that government funds*
- *Involving Aboriginal people in performance auditing of initiatives that affect their lives*
- *Regularly providing public reports about performance that are accessible to all stakeholders*
- *Collecting and utilising evidence of performance on an on-going basis to continually improve programs and service delivery*
- *Strengthening partnership arrangements between government agencies and between government and Aboriginal peaks to deliver on accountability, and*
- *Making clear promises in the final Aboriginal affairs strategy and showing how government will honour them.*⁹⁷⁴

The issues identified by the Taskforce reflect many of the same themes that have been repeatedly emphasised throughout this report.

The Minister has also made clear his expectation that new measures to strengthen accountability will be developed to 'support greater transparency and power sharing with Aboriginal communities and provide a stronger platform for government to work with communities in a respectful way.' The Taskforce has proposed that improved accountability to Aboriginal communities should occur across all of government, and that this should include a focus on Aboriginal child protection primarily by building on existing reporting.⁹⁷⁵

Arising from this audit, we have identified three areas that relating to Aboriginal affairs warrant strong governance arrangements. They focus on the need to monitor whether there is true progress and whether the systems in place are contributing to and achieving positive outcomes. They are:

- Firstly, discrete Aboriginal child sexual assault initiatives being monitored and driven by the *Keep Them Safe* Senior Officers Group.
- Secondly, discrete Aboriginal child sexual assault initiatives being driven by specific human service and/or justice agencies (and in conjunction with the *Keep Them Safe* Senior Officers Group receiving ongoing advice on progress and outcomes).
- Thirdly, initiatives that, although relevant to Aboriginal child sexual assault, primarily relate to the need to improve the broad social determinants across Aboriginal communities.

While at the end of each chapter in this report we have made detailed recommendations about what needs to be done, we believe that it is a matter for government to determine what governance – and appropriate accountability arrangements – should be put in place.

However, it is clear that any future governance arrangements, if they are to be successful, will need certain components. In this regard, it is essential to recognise the role Aboriginal leadership must play in driving progress,

972 Minister for Aboriginal Affairs' response to the Ministerial Advisory Panel's (MAP's) Final Report on the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities (the Interagency Plan), undated, received 29 November 2012.

973 Ministerial Taskforce on Aboriginal Affairs, *Ministerial Taskforce on Aboriginal Affairs: Progress Report*, August 2012, p.6.

974 Ministerial Taskforce on Aboriginal Affairs, *Ministerial Taskforce on Aboriginal Affairs: Progress Report*, August 2012, p.6.

975 *Beyond the Interagency Plan to tackle Child Sexual Assault in Aboriginal Communities*, received November 2012, p.6.

in helping to mobilise community support, and in holding to account those who will be tasked with responsibility to deliver on particular initiatives.

Throughout this report, we have discussed the vital role of Aboriginal leadership within local community settings. For example, our chapter on place-based service delivery strongly emphasises the role of Aboriginal leadership. It also highlights the need for local leaders to be backed by much more robust arrangements for delivering efficient and integrated place-based plans and related services. However, in addition to Aboriginal leadership (and associated governance arrangements) at the community level, it will be essential for government to put in place arrangements that recognise Aboriginal leaders' right to provide over-arching strategic direction, and to receive detailed ongoing advice, in relation to each of the three areas referred to above.

In relation to the specific issue of Aboriginal child sexual assault, we acknowledge the important role played by the Ministerial Advisory Panel (the MAP) in contributing to the ongoing monitoring of the Interagency Plan. The increased community reporting of Aboriginal child sexual assaults during the life of the Plan, reflects the benefits in working in partnership with Aboriginal leaders regarding future initiatives focused on Aboriginal child sexual assault and broader strategies aimed at addressing Aboriginal disadvantage. However, in our discussions with the MAP, it correctly identified its over-reliance on advice given to it by those within the bureaucracy. In our view, this issue needs to be addressed and better managed in any future governance arrangements.

It is essential for this state to make real progress in improving the circumstances of Aboriginal people and, given the critical role of Aboriginal leadership in this regard, we believe that legislation needs to be enacted establishing a NSW Aboriginal Advisory Council with responsibility for providing independent advice to government on the success (or otherwise) of major government initiatives in the area of Aboriginal affairs. Given the breadth of potential issues, the Council's advisory body role should be triggered by the referral of specific issues and/or initiatives by the Minister for Aboriginal Affairs.

The legislation should make clear that, following the referral of a matter to the Council, it is the responsibility of public authorities to provide the Council with information that it requires to fulfil its mandate.

From a structural and operational perspective, we envisage the Council playing a role somewhat analogous to a Board of Directors. While a Board should have the expertise to consider the strategic direction of a company – and from time to time immerse itself in a detailed examination of discrete operational issues – a Board is usually dependent on others actually obtaining the critical evidence on the success or failure of a company's important endeavours.

Thus, in terms of the work of the proposed Aboriginal Advisory Council, we accept that it would need to be dependent on the bureaucracy (and others) obtaining, and making available, relevant evidence for it to consider – this process could be supported by Aboriginal Affairs. But we also believe that integral to the notion of having an Aboriginal Advisory Council providing independent advice to government, is the need for the Council to also have access to independent evidence and analysis about the extent of progress on key initiatives. Therefore, in addition to establishing an Aboriginal Advisory Council, we believe that much of the independent 'due diligence' work in relation to obtaining and analysing critical source evidence relating to key initiatives, should be carried out by an independent body. This body should have the legislative power to, where necessary, compel witnesses, require the production of information and investigate specific issues to enable it to provide a robust and frank assessment of whether major government plans in this area are resulting in real progress. This body would also need to have the necessary skills, experience and standing with Aboriginal leaders and communities.

Recommendations

90. That the NSW Government adopts the framework that we have outlined in this chapter in connection with the three areas relating to Aboriginal affairs that we have identified as 'warrant(ing) strong governance arrangements'.
91. That following the NSW Government's decision on Recommendation 90:
 - a) The Department of Premier and Cabinet takes responsibility for ensuring a coordinated and timely response to all of the recommendations in this report.
 - b) The Government commits to public reporting during the next two calendar years, on the progress of the response to all of the recommendations in this report.
92. That the NSW Government adopts the proposal for an Aboriginal Advisory Council with the legislative responsibilities and powers that are consistent with those we have proposed in this chapter.
93. That the NSW Government ensure that the proposed Councils' advisory role is supported by an independent statutory authority with:
 - a) The specific legislative functions and powers that we have proposed in this chapter.
 - b) The necessary skills and experience and standing with Aboriginal leaders and communities.

Annexure 1

Status of Interagency Plan Actions

Action in the NSW Interagency Plan	Lead Agency	Status [^] as reported by Aboriginal Affairs
[^] Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
1. Significantly boost surveillance and evidence gathering efforts by NSW Police to investigate any paedophile activity, focusing efforts on select rural and remote communities.	NSW Police Force	Completed
2. Support the Australian Crime Commission's National Indigenous Violence and Child Abuse Intelligence Taskforce and second two NSW Police officers to the Taskforce to obtain evidence and develop information sharing capacity to better inform police operations and investigations into paedophiles.	NSW Police Force	Completed
3. Participate in Commonwealth/State Joint Strike Teams as appropriate, including major operations where paedophilia is involved.	NSW Police Force	Completed
4. Implement reforms to AVOs as soon as possible, and ensure a review of their effectiveness is undertaken.	Department of Attorney General and Justice	Completed
5. Provide better protection to victims and families in the context of bail applications by offenders, by encouraging Police prosecutors and the ODPP to seek Place Restriction Orders as part of bail, or to have other relevant conditions attached to a bail order to restrict the movements of the accused.	Department of Attorney General and Justice	Completed
6. Further develop and implement the NSW Police Aboriginal Strategic Direction in light of the recommendations of the ACSAT report.	NSW Police Force	Completed
7. The Attorney General reapply for a guideline judgment from the Criminal Court of Appeal, prescribing a sentencing range for child sexual assault matters; and	Department of Attorney General and Justice	Completed
8. Monitor implementation of the Standard Minimum Non-Parole period that applies upon conviction to sexual offences committed after 1 July 2003.	Department of Attorney General and Justice	Completed
9. Reinforce Police awareness of Prosecution Guideline 14, and encourage Police to follow any advice from the ODPP as to the charge, further investigation or prosecution of that case.	Department of Attorney General and Justice	Completed
10. Review and reinforce all relevant Police Standard Operating Procedures that impact on child sexual assault in Aboriginal communities or the arrest of an Aboriginal person for child sexual assault.	NSW Police Force	Completed
11. Ensure consistent data collection on Aboriginality of offenders by Police, Juvenile Justice and Corrective Services to monitor trends and patterns.	NSW Police Force	Completed

Action in the NSW Interagency Plan	Lead Agency	Status [^] as reported by Aboriginal Affairs
[^] Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
12. Require every Local Area Command (LAC) to address the following elements in LAC Aboriginal Action Plans: <ul style="list-style-type: none"> • measures to improve relationships with Aboriginal communities. • annual local Aboriginal cultural awareness training. • training of Aboriginal Community Liaison Officers (ACLOs) in recognising child sexual assault. • Better utilising ACLOs in police inductions, mentoring and training. • more effective rostering of ACLOs to utilise their role as advocates and referral agents. • local employment strategies to recruit more females in ACLO positions. • commitment to working cooperatively with CORR S, CS, Health, Education and the community on agreed processes/protocols to manage issues that arise. 	NSW Police Force	Completed
13. Roll out cultural competency training across the state for all Witness Assistance Service (WAS) officers and prosecutors; and	Department of Attorney General and Justice	Completed
14. Expand the provision of cultural awareness advice and training to judicial officers state-wide. This could be done in partnership with the Judicial Commission and Aboriginal Community Justice Groups, and could build on the training provided as part of the Child Sexual Assault Jurisdiction Pilot, subject to its evaluation.	Department of Attorney General and Justice	Completed
15. Employ additional Aboriginal WAS officers to provide support during child sexual assault prosecutions, and refer ODPP matters on child sexual assault in Aboriginal communities to an Aboriginal WAS officer for assistance and support.	Department of Attorney General and Justice	Completed
16. Ensure that the state-wide roll-out of technologies used in the Child Sexual Assault Specialist Jurisdiction Pilot occurs first in priority locations, and aim to reduce total length of court process to less than one year;	Department of Attorney General and Justice	Completed
17. Ensure that JIRT office equipment is compatible with new Court technologies in priority locations.	NSW Police Force	Completed
18. Require Police recruitment panels in areas with significant Aboriginal populations to include an Aboriginal person, or an employee of the AA regional office.	NSW Police Force	Completed
19. Focus on Aboriginal police recruitment and retention strategies (for Aboriginal men and women) through the roll out of vocational responses, including: <ul style="list-style-type: none"> • special intakes of Aboriginal students to ensure that Aboriginal recruits support each other; and • where possible, locate police training facilities closer to Aboriginal communities to minimise the dislocation experienced by Aboriginal recruits and to foster better relationships with Aboriginal communities. 	NSW Police Force	Completed
20. Develop options for providing alternative accommodation (e.g. bail brokerage) for Aboriginal persons who are granted bail or subject to AVOs or Place Restriction Orders relating to child sexual assault. This should include some accommodation for under 16 year olds; and	Department of Attorney General and Justice	Completed
21. Ensure that community treatment services and counselling are linked to alternative accommodation for perpetrators.	Department of Attorney General and Justice	Completed
22. Explore the introduction of legislative measures including new categories of offences under the Crimes Act 1900 for grooming and procurement of children for the purposes of sexual assault.	NSW Police Force	Completed

Action in the NSW Interagency Plan	Lead Agency	Status ^ as reported by Aboriginal Affairs
^ Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
23. Review the effectiveness and use of parole provisions and non-association or place restriction orders, and strengthen requirements on the Parole Authority to apply such orders where a child sex offender may be at risk of re-offending. This may involve the use of electronic monitoring devices to accompany place restrictions.	Corrective Services NSW	Completed
24. Consider expanding the CORRS trial of enhanced monitoring of offenders, including homes visits, frequent contact, and global positioning devices, subject to positive evaluation of the trial.	Corrective Services NSW	Completed
25. Expand sexual assault medical services for children through extending existing NSW Health Child Health Networks (three across NSW) to provide additional training for doctors, nurses and GPs and to establish a professional advice and response line including an on-call roster of doctors.	NSW Health	Completed <i>"This action led to a staged blended model of sexual assault forensic and medical service provision by doctors and nurse examiners being developed to address the service gap in rural and metropolitan regions. However, there were delays in implementing this model."</i>
26. Implement findings of the review of JIRTs [See Actions 27- 31].	Community Services	Completed
27. Data collection systems and administrative support to maintain these systems should be enhanced within the three agencies to (a) capture data relevant to the JIRT process and outcomes for children, (b) enable sharing of relevant information for the three agencies, and (c) enhance quality improvement.	Community Services	Completed
28. Review and enhance JIRT Operational procedures/protocols including: <ul style="list-style-type: none"> conduct of initial response meetings; the criteria for acceptance of cases by JIRT; the process for making referral assessment decisions development of safety, welfare and wellbeing plans in appropriate cases; improved availability of counselling services; the focus on a child's disclosure in the JIRT response procedures; communication protocols for keeping victims and families informed throughout the JIRT investigation; support where appropriate with Local Area Police Commands to assist JIRT investigations; and consistent application of the Referral Pathways Protocol. 	Community Services	Completed
29. Enhance interagency protocols including, for example: <ul style="list-style-type: none"> timely exchange of information during referral stage; functioning of Local Coordinating Groups; and resolution of operational management issues. 	Community Services	Completed
30. Resolve workforce issues including, for example: <ul style="list-style-type: none"> review medical services including forensic medical services provided for physical abuse and neglect of children and the networking and training of medical practitioners; undertake joint interagency training to enhance professional development, support and clinical supervision leading to increased retention of qualified and experienced staff; JIRT agencies will utilise more Aboriginal staff to advise and assist with matters relating to Aboriginal clients; and JIRT agencies will develop plans to increase employment and rotation of Aboriginal staff, and retention strategies that include a system of peer support, mentoring and supervision. 	Community Services	Completed

Action in the NSW Interagency Plan	Lead Agency	Status [^] as reported by Aboriginal Affairs
[^] Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
31. Strategies for more effective liaison/engagement with Aboriginal communities: <ul style="list-style-type: none"> a designated support person during the JIRT process to assist the child and family/carers; JIRTs with significant numbers of Aboriginal referrals develop plans for regular proactive engagement with Aboriginal communities in the area, including community education strategy about the JIRT process, and links with other services such as Women's Groups; cultural awareness training for all relevant JIRT staff that will improve their knowledge and understanding of issues that impact on Aboriginal people and their communities; development of a culturally appropriate JIRT model of intervention for Aboriginal children and young people by a working party of Aboriginal representatives and staff from Police, CS and Health; and building safeguards to protect client confidentiality. 	Community Services	Incomplete: <i>"While this action has largely been completed, a discussion paper on a JIRT support person is substantially delayed, and was still subject of further review at the end of the reporting period. The JIRT agencies proposed to monitor progress on this milestone and report via KTS."</i>
32. Review the adequacy of powers available to the Director-General of Community Services in providing appropriate care and protection to children at risk, in the context of the Government's current review of the Children and Young Persons (Care and Protection) 1998.	Community Services	Completed
33. Reinforce the appropriate application of the Aboriginal Placement Principles such that placement decisions are separate and secondary to threshold decisions around the removal of children from harm. Apply thorough placement assessments, and Working with Children Checks for each CS supported placement.	Community Services	Completed
34. CS review its procedures for providing feedback to mandated and non-mandated reporters, in relation to reports relating to Aboriginal children or young people, and having regard to privacy considerations and risks to the family and the issues associated with ensuring reporters are encouraged to act in identifying abuse or ongoing abuse or neglect.	Community Services	Completed
35. CS review its interagency information sharing processes to ensure that other agencies (e.g. Health and Education) can assist with tracing children and families at risk who move location. This would seek to ensure continuity of service delivery for Aboriginal people and families suffering child abuse and family violence.	Community Services	Completed
36. For at risk communities, encourage compliance with mandatory reporting obligations, conduct a re-education and awareness raising campaign around fines for non-reporting, interagency guidelines on child protection intervention and child sexual assault indicators, and conduct targeted compliance work in those communities for breaches; and	Community Services	Completed
37. Direct all frontline staff to report all Sexually Transmitted Infections (STIs) in children and young people under 16 years.	NSW Health	Completed
38. Trial Aboriginal Child Protection Liaison workers to work with Child Protection caseworker teams in Aboriginal communities, as the interface with communities and Community Service Centres.	Community Services	Completed
39. Link the Corrective Services Probation and Parole Service to JIRT teams, to inform the court and pre-sentence report on the level of risk the offender poses, sentencing options and the degree of supervision that would be required if a community-based sentence were imposed.	Corrective Services NSW	Completed


Action in the NSW Interagency Plan	Lead Agency	Status ^ as reported by Aboriginal Affairs
^ Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
40. Develop options for increasing the provision of safe living environments including safe houses and refuges for victims, witnesses and families at risk of child sexual assault where required. This could include: <ul style="list-style-type: none"> indigenous-run emergency foster care and halfway houses in key locations as short-term options until suitable/stable placements can be arranged; and the use of NSW Aboriginal Land Council (NSW ALC) rural properties as respite centres for Aboriginal people at risk of violence. 	Community Services	Completed
41. Compile research on safe houses for Aboriginal women and children undertaken by NSW Police, NSW ALC, the Women's Refuge Movement and the UN Rapporteur.	Community Services	Completed
42. Develop options for removing impediments to reporting child sexual assault and family violence, including the provision of alternate financial assistance and support for families and primary carers where a family member has been removed or charged for committing child sexual assault, and additional assistance for situations where primary carers and victims wish to re-locate.	Aboriginal Affairs	Completed
43. JIRT, Victims Services, ODPP, Corrective Services and Education Centre Against Violence develop joint culturally appropriate court preparation materials and information packages.	Department of Attorney General and Justice	Completed
44. Expand regional and state-wide sexual assault counselling capacity to provide more timely and culturally appropriate responses to victims and their families. Provide additional Aboriginal specialist child sexual assault counsellors and establish "special response groups" to travel to communities as required and to work with local service providers.	NSW Health	Completed
45. Implement the Government's package of measures to address domestic violence, and monitor Aboriginal specific elements as part of the Government's plan on child sexual assault in Aboriginal communities.	Department of Premier and Cabinet	Completed
46. Review existing drug and alcohol services and expand service capacity in these services (e.g. MERIT) where required, through such measures as cadetships for Aboriginal drug and alcohol counsellors;	NSW Health	Incomplete
47. Raise awareness amongst courts and legal professions of the availability of these programs for use as conditions of bail where the offender has a history of drug or alcohol related violence;	Department of Attorney General and Justice	Completed
48. Link offender based drug and alcohol services provided by the Corr S to Health drug and alcohol services to ensure coordinated service delivery.	Corrective Services NSW	Completed
49. Government agencies to review and enhance strategies to support, mentor and recruit Aboriginal staff, and enhance workforce development where necessary;	Aboriginal Affairs	Completed
50. Make available the Aboriginal Cultural Education Program (TAFE Certificate IV) to all NSW Government agencies to enhance cultural awareness training and build staff cultural competency. The program was developed by the Department of Education and Training; and	Department of Education and Communities	Completed
51. Where necessary, agencies consult and work with the Education Centre against Violence to tailor cultural awareness training to the needs of Aboriginal clients.	Aboriginal Affairs	Completed

Action in the NSW Interagency Plan	Lead Agency	Status^ as reported by Aboriginal Affairs
^ Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
52. Establish consistent assessment tools for identifying domestic violence in families, to assist in referring victims more quickly to services that meet their needs without families falling through the 'gaps' where there are inconsistent arrangements. Ensure that the assessment tool addresses violence in Aboriginal families specifically.	NSW Health	Completed
53. Review justice agencies' health and mental health screening processes to ensure that questions and protocols to address child sexual assault victimisation are adequate.	NSW Health	Completed
54. Review the child sexual assault training package for Juvenile Justice staff and supervisors to improve and fill gaps in training for "screening, Detecting, responding and referring" clients who are victims of child sexual assault.	Juvenile Justice NSW	Completed
55. Establish an Overarching Partnership Agreement between Government and peak bodies to address child sexual assault that consolidates existing protocols and funding agreements, in view of the Interagency Guidelines. Key NGOs and peaks could include: <ul style="list-style-type: none"> • Aboriginal Health and Medical Research Council • NSW Aboriginal Land Council • NCOSS • Aboriginal Child, Family and Community Care State Secretariat • NSW Family Services Incorporated • Aboriginal Education Consultative Group • NSW Justice Advisory Council • Association of Children's Welfare Agencies. 	Community Services	Completed
56. Establish an additional community-based treatment program (based on the New Street program) to service rural areas to treat Aboriginal children and young people aged under 10 years and 10-17 years who sexually offend or display sexually abusive behaviours, which is accessible through self and agency referral and operates outside the criminal justice and child protection systems.	NSW Health	Completed
57. Conduct cultural camps for Aboriginal children, men or women and include education about child sexual assault and promote healing. Link the camp to support services and trained staff/ counsellors to ensure that appropriate support is provided if/ when disclosure occurs.	Department of Attorney General and Justice	Completed
58. Develop interagency protocols/ governance frameworks for service delivery as part of local Aboriginal Child Sexual Assault Prevention (ACSAP) plans, covering allocation of personnel to regions, duration of service, referral between agencies, and engagement with Aboriginal communities, to facilitate the building of effective working relationships with Aboriginal communities. These should build upon the Interagency Guidelines.	Aboriginal Affairs	Incomplete <i>"The implementation of the Focus communities program was dependent on the readiness and willingness of the local community to work with the Government on this difficult issue, as well as the engagement and support of local agencies and service providers. Difficulties recruiting program officers in these communities also impacted significantly on, and delayed the implementation and progress of the program. As a result, milestones for some of the communities were met and others faced delay."</i>

Action in the NSW Interagency Plan	Lead Agency	Status ^ as reported by Aboriginal Affairs
^ Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
59. Monitor implementation of the Schools in Partnership Program and ensure these programs are available to Focus Communities; and	Department of Education and Communities	Completed
60. Review the effectiveness of Two Ways Together Kids Excel and Youth Excel numeracy and literacy programs and ensure these programs are available to Focus Communities.	Department of Education and Communities	Completed
61. Implement a truancy reduction strategy in relevant priority locations, encompassing measures to enforce school attendance such as door knocking, and funding for individual schools to offer incentives to students such as recreational rewards for school attendance. This would incorporate an evaluation of the Dubbo truancy reduction strategy; and	Department of Education and Communities	Completed
62. Work with communities to develop and enhance school holiday activities, sport and recreational facilities and transport assistance. Link these initiatives as incentives to truancy reduction outcomes. This action should incorporate existing services where possible, for example, PCYC programs.	Aboriginal Affairs	Completed
63. Develop and implement incentives packages to attract experienced staff to service agencies in rural and remote areas. Implement measures to address staff burn out and stress.	Department of Premier and Cabinet	Completed
64. Roll out the Aboriginal Maternal Infant Health Strategy (AMIHS) and build stronger links to the Aboriginal Child, Youth and Family Strategy, using the AMIHS as the entry point to the broader service system.	NSW Health	Completed
65. Initiate an interstate working group with Queensland (and later Victoria) to consider the need for legislative amendments to support interventions and cooperation in cross-border areas on child sexual assault around: <ul style="list-style-type: none"> • privacy and information sharing for child protection • AVO recognition • health and emergency service access • child protection • sharing of forensic evidence. 	Department of Premier and Cabinet	Completed
66. Focus Aboriginal recruitment and retention efforts in JIRT agencies in locations where there is a large Aboriginal client base, providing additional professional supports and opportunities to debrief.	NSW Police Force	Completed
67. Review resources for the teaching of existing sexual health and child protection education to ensure that suitable material for Aboriginal students, including information on related services for young people, are identified and promoted in schools. This is to include specific support roles for secondary schools implementing 'talking sexual health and negotiating consent' with Aboriginal students.	Department of Education and Communities	Completed
68. Introduce mandatory personal safety/ protective behaviours courses in juvenile Detention centres' programming with an Aboriginal component.	Juvenile Justice NSW	Completed
69. Review current Juvenile Sex Offender Programs provided in juvenile Detention and where necessary adapt programs to the needs of Aboriginal young sex offenders aged 10-17 years and encourage completion of treatment programs. Link to community-based treatments to encourage continuity of treatment post-release.	Juvenile Justice NSW	Completed
70. Additional Aboriginal Teacher Scholarships.	Department of Education and Communities	Completed
71. Consider a universal offer of two years of early childhood care/ preschool/ supported playgroup for Aboriginal children.	Community Services	Completed

Action in the NSW Interagency Plan	Lead Agency	Status [^] as reported by Aboriginal Affairs
[^] Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
72. Develop strategies to build the school counsellor/ student support workforce to meet the needs of Aboriginal students and victims. This should consider customising TAFE training courses for prevention of child sexual assault to cater for Aboriginal students	Department of Education and Communities	Completed
73. Review Area Health Service counselling services, including best practice techniques, principles and models for counselling Aboriginal people including those in correctional facilities, the need for a register of Aboriginal counsellors and review of specialised medical services delivery in rural and remote areas. Implement findings of this review as appropriate.	NSW Health	Completed
74. Conduct research into males and juveniles in custody/Detention with regard to victimisation of sexual assault/child sexual assault modelled on the Speak Out, Speak Strong report.	Department of Attorney General and Justice	Completed
75. Monitor the extension of the Aboriginal Intensive Family Based Services Program in Campbelltown, and consider expanding to Focus Communities in the longer term.	Department of Education and Communities	Completed
76. Appoint a State-wide Advisory Panel to advise on the issue of child sexual assault in Aboriginal communities, comprising Taskforce members and other Aboriginal representatives such as Aboriginal child protection experts	Aboriginal Affairs	Completed
77. Develop milestones and indicators to measure success in implementing the plan and reducing Aboriginal child sexual assault, to be reported/monitored under the Two Ways Together and State Plan reporting frameworks.	Aboriginal Affairs	Completed
78. Include a statement on child sexual assault in Aboriginal communities in the Bilateral agreement and develop a plan or schedule with the Commonwealth for improved service provision and support for local solutions to child sexual assault.	Department of Premier and Cabinet	Completed
79. Call on the Commonwealth to expand the Family Violence Prevention Legal Service (FVPLS) for Indigenous victims, and provide a child sexual assault position in each Service.	Department of Premier and Cabinet	Completed
80. Develop a network of local Aboriginal reference groups in priority locations to help develop the service response, to link families with local services, and to raise the local public profile of child sexual assault within their communities. Where appropriate, this will utilise existing working parties and community level governance structures, and will include local agency representation.	Aboriginal Affairs	Incomplete <i>"The implementation of the Focus communities program was dependent on the readiness and willingness of the local community to work with the Government on this difficult issue, as well as the engagement and support of local agencies and service providers. Difficulties recruiting program officers in these communities also impacted significantly on, and delayed the implementation and progress of the program. As a result, milestones for some of the communities were met and others faced delay."</i>

Action in the NSW Interagency Plan	Lead Agency	Status ^ as reported by Aboriginal Affairs
^ Advice provided by Aboriginal Affairs 6 December 2012. Actions relating to the Department of Attorney General and Justice have been updated based on advice provided by the Department.		
81. Develop a suite of culturally appropriate awareness raising programs to target the causes and address the consequences of abuse. This will build on existing programs, where appropriate, including prevention, education, community development and healing programs. This work will involve collaboration between all agencies with interest or expertise in particular aspects. The suite of programs will include: <ul style="list-style-type: none"> • providing Aboriginal children, young people, families and communities with an understanding of the indicators of child sexual assault so that they can readily recognise children in their communities exhibiting these behaviours, and to know how to report suspected abuse; • providing Aboriginal communities with targeted information on the roles of NSW Government agencies and on the type and nature of services that may be provided to children and families who have experienced sexual assault; • teaching Aboriginal children and communities protective behaviours to prevent abuse from occurring. Giving Aboriginal community members skills and knowledge to effectively support children and families who have experienced abuse; and • local information resource kits on the dynamics of sexual offending and grooming behaviours. 	NSW Health	Completed
82. Fund a multi-media campaign, initiated by the Aboriginal community, to educate people about child sexual assault and their legal rights	Department of Attorney General and Justice	Completed
83. Expand funding and resources for community legal education and victim support for Indigenous child sexual assault, through the bilateral agreement with the Commonwealth.	Department of Premier and Cabinet	Completed
84. Extend initiatives to support Aboriginal women to be advocates and to access services. For example, distribute the ATSI Women's Key Phone Book, and increase provision of legal workshops to familiarise Aboriginal women with legal language, court processes and to develop their leadership skills.	Department of Attorney General and Justice	Completed
85. Monitor and extend strategies to increase the number of Victims Services Approved Counsellors experienced in Aboriginal issues.	Department of Attorney General and Justice	Completed
86. Develop for further consideration a model of restorative justice for Aboriginal sex offenders that adapts the principles of the Hollow Waters model and Circle Sentencing.	Department of Attorney General and Justice	Completed
87. Request the Victims Services to report to Government on its development of an Aboriginal counselling model, for possible application to other agencies.	Department of Attorney General and Justice	Completed
88. Raise the 22 hour cap on Victims Services counselling for Aboriginal victims of crime.	Department of Attorney General and Justice	Completed



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