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Mr Geoff Provest MP
Chairperson
Portfolio Committee on Law and Safety
Parliament of NSW
Email: lawsafety@parliament.nsw.gov.au

6 February 2018

Dear Mr Provest,

Re: Submission to the Legislative Assembly Committee on Law and Safety inquiry into the adequacy of youth diversion programs in NSW

I write to you on behalf of the Aboriginal Child, Family and Community Care State Secretariat (AbSec). AbSec thanks the Committee for the opportunity to provide a submission in relation to the *Inquiry into the adequacy of youth diversion programs in NSW*.

AbSec is the peak Aboriginal organisation within the child and family sector in NSW. AbSec is committed to advocating on behalf of Aboriginal children, families and communities, and to ensure they have access to the services and supports they need to keep Aboriginal children safe and provide them the best possible opportunities to fulfil their potential through Aboriginal community controlled organisations.

Given our focus on Aboriginal children and families, and the over representation of Aboriginal children and young people in the justice system, effective diversion programs for Aboriginal young people must be a priority. We are particularly concerned about those children affected by both the out-of-home care (OOHC) system and the detention system.

Thank you for the opportunity to contribute to this Inquiry.

Yours sincerely,

Tim Ireland
Chief Executive Officer

Aboriginal and Torres Strait Islander young people continue to be over represented within both the youth justice and child protections systems.

New South Wales

- For the 2015/2016 period Aboriginal and Torres Strait Islander children were 7 times more likely to receive child protection services than their non-indigenous counterparts.¹
- For the same period Aboriginal and Torres Strait Islander children aged 10-17 were 17 times more likely than non-indigenous children to be under youth justice supervision.²

Nationally

- Almost 40% of children under youth justice supervision between July 2014 and June 2016 also having contact with the child protection system.³
- During this period young Aboriginal and Torres Strait Islander children were 16 times more likely to be in both the child protection system and under youth justice supervision than non-Indigenous children.⁴ Children who are placed into OOHC have the greatest risk of subsequent youth offending.^{5 6}
- A study by the Royal Commission into the Detention and Protection of children in Northern Territory (Royal commission) likewise demonstrated that 22.8% of Aboriginal children placed in out of home care, were subsequently found guilty of an offence, compared to less than 5 non-Indigenous children.⁷

In order to address this over representation it is imperative to listen to the voices of Aboriginal people and communities. AbSec supports the submissions made by the Aboriginal Legal Service (NSW/ACT) and Just Reinvest NSW to this inquiry, and acknowledge their ongoing work with Aboriginal communities in NSW. We strongly encourage the Committee to carefully consider their recommendations as part of a tailored strategy by and for Aboriginal communities.

¹ AIHW Child protection collection 2016 Data Table S3, Accessed <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/data>

² Australian Institute of Health and Welfare (AIHW) 2017, 'Youth justice in Australia 2015-16', p. 9, Accessed <https://www.aihw.gov.au/getmedia/b85be60c-9fef-436d-85df-82d8e5c5f566/20705.pdf.aspx?inline=true>

³ AIHW 2017, p. 15

⁴ AIHW 2017, p. v

⁵ Malvaso, CG, Delfabbro, PH & Day, A, 2016, 'The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending'.

⁶ Mendes, P, Snow, P, & Baidawi, S 2013, 'Young people transitioning from out of home care in Victoria: Strengthening support for dual clients of child protection and youth justice, Children Australia', vol. 37, no. 1, pp. 10-22, Melbourne.

⁷ NT inquiry ch 35 p. 11

In particular, these recommendations emphasise the importance of:

- Greater investment in prevention and early intervention services
- A holistic approach that is culturally embedded and tailored to the needs and strengths of local communities
- Aboriginal community control of service design and delivery, supported by data, consistent with the principle of Aboriginal self-determination

Focus on holistic cultural embedded approaches at the prevention and intervention stage

Universal services

Lack of access to education has been identified as one of the many underlying causes of incarceration.⁸ Understanding this, the ALS highlights that the education system needs greater incorporation of cultural perspectives to support the retention of Aboriginal and Torres Strait Islander students. A further issue raised by the ALS is the use of school suspensions. Studies have shown suspensions to be a significant factor contributing to the incarceration of Aboriginal children.⁹ This is referred to as the 'school-to-prison pipeline'.¹⁰

Culturally embedded prevention and intervention

Juvenile justice programs are designed to focus on addressing the underlying issues that result in offending behaviours and divert young offenders from entering the juvenile justice system.¹¹

Despite the effectiveness of diversionary programs, Aboriginal and Torres Strait Islander children are not correspondingly benefitting. This is reflected by their continued over-representation within the youth justice system.¹² Submissions from the ALS and Just Reinvest NSW, identify cultural appropriateness and holistic responses as key components of successful diversionary programs. This is reiterated by Just Reinvest NSW through their comments regarding a) the lack of diversionary programs for Aboriginal and Torres Strait Islander people and b) the importance of culturally appropriate diversionary programs. As recommended by the Royal Commission, 'to ensure a successful diversionary program it must be culturally appropriate'.¹³

⁸ Victoria government (2008) Education Strategies for Koorie Students. p.5 Accessed <http://www.vaeai.org.au/uploads/ckpg/files/wannik.pdf>

⁹ Hemphill S.A et al. 2017 'Positive associations between school suspension and student problem behaviour: Recent Australian findings' p. 5

¹⁰ Hemphill S.A et al. 2017 'Positive associations between school suspension and student problem behaviour: Recent Australian findings' p. 1

¹¹ Noetic Solutions 2010 'A strategic Review of the NSW juvenile Justice system: Report for the Minister of Juvenile' p. IV Accessed <http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Review%20Report%20FINAL.pdf>

¹² Noetic Solutions 2010 'A strategic Review of the NSW juvenile Justice system: Report for the Minister of Juvenile Justice' p. v

¹³ The Hon Margaret White AO and Mr Mick Gooda (2017) *Royal commission into the Detention and protection of children in the Northern Territory* Accessed <https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx Ch 25>, p251 (Royal commission NT Inquiry)

Holistic responses were also considered vital, with the ALS survey participants highlighting the need for a coordinated approach to divert at risk Aboriginal and Torres Strait Islander youth from entering the Justice System.

Stable investment

There are considerable costs associated with Aboriginal and Torres Strait Islander incarceration with estimated fiscal costs for the justice component alone sitting at \$0.9 billion in NSW.¹⁴ In addition to other associated welfare and economic costs are the unquantified human costs to individuals, families and communities such as loss of culture and isolation.¹⁵ Economic modelling and research has argued that it is more cost effective to direct funding towards prevention and early intervention^{16 17} however to ensure lasting change, funding arrangements must be long term and stable. Too often funding is short term and uncertain.

Both Just Reinvest NSW and the Royal commission recommend the improvement of government resourcing for early intervention programs. The Royal Commission found there to be no government funded support services provided to children for court and in their recommendations included the need for funding to the Youth Diversionary Unit so they could develop more comprehensive services.¹⁸ Just Reinvest NSW state that there is a need for funding cycles to be increased to more than 5 years as competitive short- term funding inhibits relationships between organisations and services as well as their relationship with community. The ALS in addition to access, highlight the need for stability, longer term funding and more consistency in service delivery.

Greater Aboriginal community control

Research regularly highlights the importance of Aboriginal and Torres Strait Islander community designed and lead solutions. Aboriginal and Torres Strait Islander community involvement needs to extend beyond consultation to empowerment through self-determination and ownership of programs, especially when aimed at their children and young adults.¹⁹ Submissions from the ALS and Just Reinvest NSW highlight the importance of community control to create successful youth diversionary programs. Just Reinvest NSW specifically recommend: 1) Aboriginal ownership of programs as critical to being successful; and 2) that Juvenile Justice support diversionary programs that are developed and delivered by Aboriginal communities and community controlled organisations. Just Reinvest NSW also emphasise the importance of community designed and lead solutions given the individual

¹⁴ Noetic Solutions 2010 'A strategic Review of the NSW juvenile Justice system: Report for the Minister of Juvenile' p. 33

Noetic Solutions 2010 'A strategic Review of the NSW juvenile Justice system: Report for the Minister of Juvenile' p. 33

¹⁶ Dossetor, K (2011). Cost-benefit analysis and its application to crime prevention and criminal justice research. Technical and Background Paper no. 42. Canberra: AIC.

¹⁷ Aos, S, Phipps, P, Barnoski, R, and Lieb, R 2001. 'The comparative costs and benefits of programs to reduce crime. Washington State Institute for Public Policy'. Accessed

www.wsipp.wa.gov/ReportFile/756/Wsipp_The-Comparative-Costs-and-Benefits-of-Programs-to-Reduce-Crime-v-4-0_Full-Report.pdf.

¹⁸ Royal commission NT Inquiry 2017 ch 19 p. 41

¹⁹ Richards, K, Rosevear, L, and Gilbert, R 2011. 'Promising interventions for reducing Indigenous juvenile offending. Indigenous Justice Clearinghouse', Brief 10.

needs and issues different communities face. The Royal Commission into the Protection and Detention of Children in the Northern Territory likewise recommends the need for youth diversionary programs in remote communities to be developed and operated in partnership with, or by, Aboriginal communities and/or Aboriginal controlled organisations.²⁰ The ALS survey participants also stated the need for the devolution of control over services to local communities and noted a lack of Aboriginal and Torres Strait Islander run programs generally.

Making data more accessible to community to empower them to make decisions

Aboriginal and Torres Strait Islander Data sovereignty is a valuable resource to assist with overcoming inequality and disadvantage. It is imperative that data sovereignty is retained so that Aboriginal and Torres Strait Islander people are able to effectively participate in decision-making matters that affect them. This right enshrined with the *United Nations Declaration on the Rights of Indigenous Peoples*.²¹ One of the central components of the Just Reinvest NSW strategy is its place-based data driven approach. Just Reinvest NSW has transparency with the community to inform and assist them to identify priority issues and work toward solutions.

Mick Gooda stated that, 'Tackling the over-incarceration of Aboriginal and Torres Strait Islander peoples will require leadership and action at multiple levels. The evidence from around the world tells us that putting people in jail for minor crimes does not create safer communities. But it does create a cycle of incarceration that is tearing apart families and communities. I am supporting the Just Justice campaign because we need to encourage a public debate that is focused on ensuring effective, evidence-based solutions to over-incarceration'.²²

These place-based initiatives involve genuine partnerships between local community and all levels of government. The benefits are all encompassing. The capacity of the local community is enhanced as they identify and tackle their own challenges with sufficient resources to devise, implement and evaluate initiatives.²³

Whilst the focus of this inquiry is on the effectiveness of diversionary programs, AbSec wishes to raise concerns about the contributing factors for over-representation of Aboriginal and Torres Strait Islander children in both the child protection system and the youth justice system.

²⁰ Royal commission NT Inquiry 2017 ch 19, p. 42

²¹ Article 18 UN Universal Declaration of Human Rights, Accessed: <http://www.un.org/en/universal-declaration-human-rights/>

²² Just Reinvest NSW 'What is Justice Reinvestment' Accessed <http://www.justreinvest.org.au/what-is-justice-reinvestment/>

²³ Just Reinvest NSW 'What is Justice Reinvestment'

The key areas that influence the crossover of children in OOHC and the justice system include:

- Criminalisation of children in care - children in OOHC are often subjected to greater police intervention for behaviours that would normally be dealt with by families within the home.²⁴
- Police bias - children in OOHC are more likely to be charged and remanded by police for minor offences.²⁵
- Trauma - New South Wales research suggests that less experienced police officers may lack the skills to defuse situations where a child acts out or behaves aggressively, often a behavioural response to trauma.²⁶
- Inadequate court support - despite the Department of Community Services (DoCS) having a duty to the young people in its care often little support is provided if they become involved in the youth justice system. Research has shown that children who become involved in the justice system often have no report provided to the Department of Juvenile Justice and no DoCs officer present for child's court appearance.²⁷

AbSec wishes to draw the committees attention to the existing NSW, *Joint Protocol to reduce the contact of young people in residential out of home care with the criminal justice system*, which provides procedures to address these issues.

In summary, an Aboriginal community-led initiative is vital to delivering the services and supports needed to address the over-representation of Aboriginal children and young people in the juvenile justice system. Given the expertise of the ALS and Just Reinvest NSW on the issue, and their method of community engagement and participation in data collection, AbSec urges the committee to implement the recommendations put forward, and work with Aboriginal communities and their organisations to effectively meet the needs of Aboriginal children and young people, their families and communities.

²⁴ Cruickshank et al., 2008 in McFarlane thesis p. 142

²⁵ Royal commission NT Inquiry ch 35 p. 24

²⁶ Royal commission NT Inquiry ch 35 p. 24

²⁷ McFarlane, K 2015, 'Care-criminalisation: the involvement of children in out of home care in the NSW criminal justice system'