



Submission to the *Discussion Paper:*
Towards a Diversionary Framework for the
ACT

April 2011

www.youthcoalition.net

The Youth Coalition of the ACT acknowledges the Ngunnawal people as the traditional owners and continuing custodians of the lands of the ACT and we pay our respects to the Elders, families and ancestors.

We acknowledge that the effect of forced removal of Indigenous children from their families as well as past racist policies and actions continues today.

We acknowledge that the Indigenous people hold distinctive rights as the original people of modern day Australia including the right to a distinct status and culture, self-determination and land. The Youth Coalition of the ACT celebrates Indigenous cultures and the invaluable contribution they make to our community.

Submission to the *Discussion Paper: Towards a Diversionary Framework for the ACT*

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April 2011

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Thank you to the Youth Coalition staff team for their support.

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1. Introduction

Section 1 of this submission provides contextual information about the Youth Coalition of the ACT, young people in the ACT, and the process of developing his submission.

1.1 Youth Coalition of the ACT

The Youth Coalition of the ACT (the Youth Coalition) is the peak youth affairs body in the ACT. Comprised of 100 members, programs, and individuals the Youth Coalition is responsible for representing and promoting the interests and wellbeing of young people aged 12 to 25 years and those who work with them.

The Youth Coalition is represented on many ACT Government advisory structures and provides advice to the ACT Government on youth issues, along with providing information to youth services about policy and program matters.

A key role of the Youth Coalition is the development and analysis of ACT social policy and program decisions for young people and youth services. The Youth Coalition facilitates the development of strong linkages and promotes collaboration between the community, government and private sectors to achieve better outcomes for young people in the ACT.

We welcome this opportunity to provide feedback to the Department of Disability, Housing and Community Services (DHCS).

1.2 Young People in the ACT

The Youth Coalition is concerned that the language utilised in the *Discussion Paper: Towards a Diversionary Framework in the ACT* (the Discussion Paper) relating to children and young people, is inconsistent with definitions adopted by the ACT Government.

The ACT Government defines a child as aged 0 – 11 years, and a young person as aged 12 – 25 years of age;¹ which has not been clearly delineated within the Discussion Paper. The clear identification of these two groups will ensure consistency with the ACT Government policy, and ensure that policies pertaining specifically to age-related requirements are easier to understand.

While the Youth Coalition recognises the legal age of criminal responsibility is considered to be age 10, we feel that this is contradictory in relation to other ACT government policies.

Further to that, the Youth Coalition believes that the discrete group of young people aged 18 – 25 require a specialised response, in line with their developmental stages and needs, and require unique support to transition to adult services.

Whilst it is not in the scope of this submission, the Youth Coalition would like to see further research in this area, particularly in relation to young people transitioning from Bimberi Youth Justice Centre (Bimberi) to the Alexander Maconochie Centre (AMC), the adult prison in the ACT. We are concerned that for many young people aged 18 – 25, serving remand or custodial service in the adult system is inappropriate and counter-productive to the needs of young people, the expectations of the community, and the intentions of the courts.

1.3 Process for Developing and Format of this Submission

This submission is one of many made over a fourteen year period by the Youth Coalition and is based on the following:

- The priority areas highlighted in the *Youth Coalition Strategic Plan 2007-10* and the *Draft Strategic Plan 2011-14*;
- The policy positions outlined in the *Youth Coalition Policy Platform*;
- The views of participants of the updated Youth Coalition's Policy Forum;
- The issues raised at consultations on the *2011/12 ACT Government Budget*;
- The issues raised at consultations on the *ACT Young People's Plan 2009 - 2014*;
- Previous Youth Coalition submissions to the ACT Government;
- The issues raised at the Youth Justice Reference Group, a regular forum for stakeholders, hosted by the Youth Coalition;
- One-on-one consultations with member services and organisations; and,
- Current and topical research on youth affairs.

This submission has been divided into 5 sections, which include the following:

1. Introduction (this section)
2. Summary of Recommendations
3. Discussion Paper Questions
4. Conclusion
5. References

This submission represents an opportunity for the Youth Coalition and stakeholders to identify and advise ACT Government of emerging issues, areas in need of additional resources and collaboratively develop social policy in the ACT.

2. Summary of Recommendations

Section 2 provides a summary of the recommendations this submission. It is vital that these recommendations be referred to in the context of the broader submission.

Recommendation 1

That the Department of Disability, Housing and Community Services, in conjunction with the Department of Justice and Community Safety, provide leadership and support to the community sector to develop and/or adapt evidence-based diversion practices for the ACT; by providing resources, research support, and assisted evaluation mechanisms.

Recommendation 2

That the ACT Government resource a project to map existing youth services/programs against recognised best practice examples of diversion, to better inform the development of a diversionary framework for the ACT, in recognition that many services do not currently have clear and commonly held definitions of diversion models.

Recommendation 3

That the diversionary framework be based on the following principles:

- A wrap-around approach that creates and sustains links between common, targeted and allied services and mainstream support structures;
- Family aware youth work, that recognises that family may be comprised of a range of individuals, that young people have the right to define their own family parameters, and that families play an integral role in the lives of young people;
- Client focused and flexible to the individual needs of young people, and including young people in the development of case plans and programs;
- Community oriented, and locally aware, and;
- Social inclusion.

Recommendation 4

That Justice Reinvestment models be explored, piloted and evaluated in ACT, working in conjunction with existing approaches, such as the Department of Education and Training's Re-Engaging Youth Leadership Group.

Recommendation 5

That an early intervention framework be developed for vulnerable people in the ACT, that can offer strategic direction to the government and non-government sectors, in relation to emerging needs and trends in support requirements, and encompassing the broader children, youth, family support and education sectors.

Recommendation 6

That the Department of Disability, Housing and Community Services, the Department of Justice and Community Safety, the Australian Federal Police, and key stakeholders, such as peak bodies, investigate models of territory wide diversion program co-ordination, that seeks to:

- Avoid duplication of services;
- Enhance existing service strategies;
- Provide leadership on matters of best practice and evaluation, and;
- Develop mechanisms for services to link into strategic early intervention identification and support/needs trends.

Recommendation 7

That the Department of Disability, Housing and Community Services, the Department of Justice and Community Safety, and the Australian Federal Police seek to co-ordinate funding opportunities for the ACT, that focus on diversion and youth justice programs, to assist the community sector to provide targeted programs.

Recommendation 8

That the Department of Disability, Housing and Community Services create opportunities for more flexible and responsive funding contracts that assist Youth and Family Support Programs to report on diversionary activities that may occur as part of other support work, to assist in capturing the nature and scope of the issues.

Recommendation 9

That the ACT Government progress a dedicated and resourced workforce development plan, in partnership with the community youth sector.

Recommendation 10

That the ACT Circle Sentencing Court:

- Is strengthened, resourced and supported to continue to pilot the young person's program;
- That this pilot be evaluated; and,
- That the findings be taken into consideration in the development of the framework, in relation to addressing the disproportionate numbers of young Aboriginal and Torres Strait Islander people in the criminal justice system.

Recommendation 11

That the diversionary framework developed for the ACT be developed with input from the Youth Specialist Homelessness Sector and ACT Social Housing, in conjunction with reforms currently underway to modernise the youth housing and homelessness sector, and that the framework considers the housing needs of young people as a priority area in diversion.

Recommendation 12

That young people with a care and protection experience who come into contact with Police and the justice system, at any level, are offered immediate and intensive support, in recognition of the previous poor outcomes for this target group.

Recommendation 13

That in recognising through-care as an important and integral component of diversion, the Department of Disability, Housing and Community Services formally adopts through-care policies, practices, and procedures for young people in the criminal justice system in developing the diversionary framework for the ACT,

Recommendation 14

That the Department of Disability, Housing and Community Services, in partnership with key stakeholders in the community sector develop clear and mutually recognised policy and procedures for engaging with young people detained in Bimberi Youth Justice Centre; and that these policies and procedures are widely communicated.

Recommendation 15

That the recommendations from the Living Skills Toolkit Pilot Project be resourced and acted upon, with a view to incorporating evidence-based living skills programs in diversion.

Recommendation 16

That the ACT Government further explore models of diversion that could be adapted to the local needs of vulnerable young people in the ACT; and that local community sector stakeholders be actively resourced and supported to engage in that exploration.

Recommendation 17

That the ACT Government recognise the community sector as professional partners seeking to address similar issues concerning vulnerable young people and their families, and as part of that recognition, create more opportunities for stakeholders to share data that may better inform practice and service delivery.

Recommendation 18

That the ACT Government develop a diversionary framework for the ACT that has the following policy principles:

- Comprehensive;
- Strategic;
- Committed to formal through-care policies;
- Social justice;
- Youth participation;
- Collaborative; and,
- Accountable.

Recommendation 19

That the ACT Government review existing Bail Act legislation, with support from the Youth and Family Support Sector, to address issues relating to current breach of bail and remand matters.

3. Discussion Paper Questions

Section 3 of this submission seeks to offer responses to the questions set out in the Discussion Paper.

3.1 Service System

3.1.1 *What are the features of successful services operating in the ACT which directly or indirectly aim to reduce offending by young people and/or their diversion from the criminal justice system?*

'Effective juvenile justice programs focus on addressing the underlying factors behind the offending behavior of juveniles. This may involve focusing on reducing 'risk factors', such as family dysfunction, a delinquent peer group, truancy or alcohol abuse, as well as the adding or strengthening of 'protective factors' such as good parenting, having a positive role model or part-time employment. They generally emphasise the need to divert young offenders from entering the juvenile justice system. Effective responses to youth crime often include programs which deliver family, school or community-based therapies and services'.²

It is clear from a review of best practice, and the current literature regarding youth diversion programs that there are commonalities and obvious examples of successful diversion program features that exist in Australia and around the world.

The ACT has wide range of services working to support vulnerable young people who have involvement with the criminal justice system, as outlined in the Discussion Paper, but many youth and family support agencies will agree that there are many more programs that seek to address these issues, most which exist without being categorised as diversion.

The Discussion Paper offers a list of selected services for young people in the ACT; however, it is acknowledged that this is not a comprehensive example of all the programs and services that currently exist.

To date, it appears there has been little co-ordination and strategic planning of community sector diversion-type programs, and a failure to clearly define exactly what a diversion program looks like, beyond the Restorative Justice Unit and similar government initiatives; and a few crossover style approaches used by some non-government agencies.

To the Youth Coalition's best knowledge, there has been very limited evaluation of diversion programs, or programs with diversion as secondary targets, in the ACT. Despite this, the common features of successful diversion programs, as listed in the Paper, and from review of other jurisdictions, are those that offer:

a) Wrap Around Approach

The Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) defines wrap-around services as:

'...Services that constitute an area of specialty that does not warrant a separate service in a particular context, but instead 'wraps around' and

*sensitises mainstream services to the issues relating to the area of specialty. 'Wrap-around services' also involve multiple service providers collaborating around and with a client, to plan and respond to their individual needs and aspirations.*³

The Youth Coalition believes that this approach, by definition, requires the active partnership of multiple government departments (or in the future, Directorates) beyond the Department of Disability, Housing and Community Services, with departments such as ACT Health, the Chief Minister's Department, Territory and Municipal Services and Justice and Community Safety, and in particular, the Department of Education and Training, to be successful. It is vital that non-government agencies also adopt this model formally at a senior level, to inform daily practice and on the ground service delivery.

Many agencies in the ACT strive to provide wrap-around support to young people in the criminal justice system, by engaging in warm referral practices, attending interagency meetings, and maintaining relationships with allied services. However, despite the good will of many service providers and government departments, there is still a high level of gaps and 'silo' creation. The Youth Coalition believes that some of the issues outlined above could be addressed in consideration of a comprehensive workforce strategy for the ACT community sector, that allocated resources towards better integration practices, staff retention, professional development opportunities, and provided leadership in the areas of system-wide navigation of services.

b) Family Aware

Family dynamics have a strong influence on the way young people see themselves, others and the world; and influence their relationships, behaviors and their wellbeing. The Youth Coalition recognises that families have an integral role in the lives of young people; and in contributing to their development, identity and participation in the community. A national 2009 survey found that 75.6% of young people identified family relationships were highly valued.⁴

Young people are often dependent on their families for economic, emotional and social support, and a range of protective factors. However, some families may experience risk factors, such as abuse and neglect, alcohol and other drug use, incarceration, and chronic illness; which may result in the family having limited capacity to support young people. It is vital that families are supported to build upon protective factors, and identify and address risk factors early.

The Youth Coalition believes that youth workers and the youth sector are well placed to work with young people and their families, and supports the concept of 'family aware youth work practice', developed by Jesuit Social Services. This concept of youth work supports workers to maintain a central focus on the young person, whilst optimising outcomes for young people by identifying, recognising, legitimising, responding and facilitating ongoing family connections; through working in a family aware context.⁵

c) Flexible and Client Focused

In considering young people and families, the Youth Coalition recognises that some groups of young people, such as Aboriginal and Torres Strait Islander, multicultural young people and young people from a refugee background may have unique experiences and definitions of family. This requires services and systems to be responsive, flexible and competent in working with diverse families and their needs.

It is also important that programs take into account not only the existing evidence base of 'what works' in diversion, but have the capacity and opportunity to offer innovative and localised approaches and models. The ACT, with its unique geographical and socioeconomic issues, has a skilled and committed workforce that has spent many years working within the community, and has developed many sound work practices that effectively consider the community's past and present needs.

Nonetheless, recent work by the Youth Coalition to profile the ACT youth sector workforce shows a highly transient and fluid youth sector⁶. This has ramifications for policy development and service delivery, in regards to creating and maintaining relationships with young people and their families, strategic planning for agencies, and sustainable program practices, which will be addressed in other sections of this submission.

Above all, it is important that young people themselves participate and are consulted, not only for their own personal care plan development, as part of case management processes, but also as experts on the effectiveness of diversion programs.

d) Community Oriented

Successful diversion programs also recognise that to work effectively with young people who have come to the attention of the criminal justice system, services must also be able to work within the community environment of that young person. This is achieved when programs seek to understand the social, financial, and educational circumstances of both young people's immediate social environment, as well as the broader community's settings. The recent exposure in Australia to models of justice reinvestment offer a good example of this understanding.

'Justice reinvestment is a criminal justice policy approach that diverts a portion of the funds spent on imprisonment to the local communities where there is a high concentration of offenders.

The money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities. It is not just about tinkering around the edges of the justice system – it is about trying to prevent people from getting there in the first place.

*Justice reinvestment retains detention as a measure of last resort for dangerous and serious offenders, but actively shifts the culture away from imprisonment.'*⁷

The ACT is already working towards identifying differing community needs, through processes such as the development of the Youth and Family Support Program, that will see the creation of regional networks; and the current work underway by the Department of Education and Training, in the Re-Engaging Youth Leadership Group, which has recently seen the start of regional networks with the Tuggeranong Re-Engaging Youth Network. The Youth Coalition believes that this approach, that seeks to create better partnerships with schools, families, young people, and community services, could offer better outcomes for vulnerable young people if it was linked in with more comprehensive diversion programs, such as may be developed under a justice reinvestment model.

e) Socially Inclusive

The term 'social inclusion' has gained common usage in Australian Government policy over recent years, with the Social Inclusion Unit established in December 2007, in the Department of the Prime Minister and Cabinet. *A Stronger, Fairer Australia – A New Social Inclusion Strategy* was launched on 28 January 2010, and sets out the Australian Government's vision and strategy for social inclusion.

*'Social inclusion policies are based on a number of important principles: building on individual and community strengths; building partnerships with stakeholders; developing services tailored to the needs of communities; early intervention and prevention; joined-up government services; the greater use of evidence to inform innovative policy making; using a locational approach to tackle entrenched poverty; and planning to build future resilience in disadvantaged families and communities.'*⁸

It is clear that there are many commonalities between social inclusion and the other principles discussed in this section of this submission. In fact, it may be that social inclusion could be considered an overarching principle, that seeks to empower young people and their communities to fully engage and participate in society, and to address the underlying issues of disadvantage.

Recommendation 1

That the Department of Disability, Housing and Community Services, in conjunction with the Department of Justice and Community Safety, provide leadership and support to the community sector to develop and/or adapt evidence-based diversion practices for the ACT; by providing resources, research support, and assisted evaluation mechanisms.

Recommendation 2

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- Client focused and flexible to the individual needs of young people, and including young people in the development of case plans and programs;
- Community oriented, and locally aware, and;
- Social inclusion.

Recommendation 4

That Justice Reinvestment models be explored, piloted and evaluated in ACT, working in conjunction with existing approaches, such as the Department of Education and Training's Re-Engaging Youth Leadership Group.

3.1.2 *Is there an appropriate balance between services across the spectrum from early intervention through to tertiary intervention?*

Spectrum of Support

The Youth Coalition believes it useful to look at the 'spectrum of support' model currently informing the youth housing and homelessness sector (adapted from the spectrum of support model presented in *Modernising Youth Housing and Homelessness Services in the ACT*.⁹

This model conceptualises that homelessness is not a static or purely physical issue, and that young people in particular are likely to move in and out of need. This approach has much to offer the development a diversionary framework for the ACT, with its key principles of flexibility and client focused responses, that has provisions and resources for agencies to offer wrap-around and integrated responses to a client in a non-linear manner, providing short, medium and long-term support, as needed.

Elements include:

a) Prevention

This is the broader work of government agencies, peaks and service providers to address the structural causes of youth crime. It can also be seen as the work of police crime prevention initiatives. However, prevention in this regard should also encompass the wider community and mainstream services, such as education providers, health care systems and grassroots youth engagement, such sporting clubs and cultural groups. In use of the term here, it is this 'structural' characteristic which distinguishes it from the 'individualised' characteristic of early intervention.

b) Early Intervention

This is the work of service providers who work specifically and individually with children and young people at risk of coming to the attention of the youth justice system, to 'turn off the tap'. It can also be seen as support offered early in the life of problem, for example, at first point of contact with police.

Young people are not always offered support based purely on identified risk factors. Programs and services are often working with young people and their families in response to issues that could be deemed to fall into the tertiary definition, as it currently stands.

The need for greater recognition and intervention with young people in the life of the problem, as well as the life of the young person, is clearly articulated in the National Youth Strategy, 2010.¹⁰ However, many ACT services report that they often do not have the capacity and resources to work with young people and their families intensively at an early stage in the life of the problem.

Consideration must also be given to time needed for many young people to build a rapport and trusting relationship with youth workers and services that allows services to gain a full understanding of the underlying support needs.

That said, the Youth Coalition believes that as part a comprehensive and strategic workforce development strategy, the youth sector can better implement evidence-based assessment and support needs-analysis processes that could be developed in consideration with a early intervention framework.

This approach to early intervention requires effective and sector recognised assessment tools, and then the subsequent effective and comprehensive casework that should occur before, if possible, or beyond the first offense or identification of support needs in relation to youth justice matters.

c) Specialist Youth and Family Support Services

A range of service providers who provide short to long term assessment and casework / management support in a combination of direct and indirect support to young people. These services also provide multiple elements of the spectrum and a co-ordination (with mainstream support, reconnection) and advocacy role to support young people's needs. Services in this field need to perform effective assessment and identification of support needs, and provide appropriate support, assistance and common and specialist referral.

d) Mainstream Support

All other services, which work towards either prevention, early intervention or ongoing re-engagement support, such as health, education, housing and other allied community services.

e) Re-Engagement and Reconnection

Whenever appropriate / possible, young people are offered support to engage / re-engage with their families, community, education providers, and employment etc. It is important that government and non-government services do not cease re-engagement support work due the perceived level of the intervention hierarchy required of the young person, i.e. primary, secondary, etc.

Programs must work to reconnect young people with employment, family / community, education and good health and wellbeing beyond the initial instigation of support. There are various models and services that relate to each of these elements.

f) As Needs Be

Young people's support needs will vary in degrees over time in relation to their relative needs, their desire to engage with services, and in their own perception of the issues. Some young people may be seen to move 'in and out of need', and services need the flexibility and resources to respond to intensive 'crisis' situations, as well as medium to long-term support.

An aspect of youth work that is often overlooked and underrated is the capacity for rapport and trust-building that must occur before some vulnerable young people are willing to accept or seek support. The process of engagement can take time and skill, but is a crucial issue for agencies that seek to offer support to often vulnerable, and potentially service cautious, young people.

g) Bringing it all Together

The youth sector has recognised the need for governance and systems structures to be in place to coordinate and case-manage young people needing support along this spectrum. In the anticipated Youth and Family Support Program Framework, the peak bodies and the current service stakeholders are placed to provide oversight and co-ordination to mix and match the elements of the spectrum as required at the stages of early intervention, crisis and intensive support, restoration, and re-engagement.

The Youth Coalition believes that for the framework to be effective, comprehensive and strategic, this co-ordination is vital.

Recommendation 5

That an early intervention framework be developed for vulnerable people in the ACT, that can offer strategic direction to the government and non-government sectors, in relation to emerging needs and trends in support requirements, and encompassing the broader children, youth, family support and education sectors.

Recommendation 6

That the Department of Disability, Housing and Community Services, the Department of Justice and Community Safety, the Australian Federal Police, and key stakeholders, such as peak bodies, investigate models of territory wide diversion program co-ordination, that seeks to:

- Avoid duplication of services;
- Enhance existing service strategies;
- Provide leadership on matters of best practice and evaluation, and;
- Develop mechanisms for services to link into strategic early intervention identification and support/needs trends.

Recommendation 7

That the Department of Disability, Housing and Community Services, the Department of Justice and Community Safety, and the Australian Federal Police seek to co-ordinate funding opportunities for the ACT, that focus on diversion and youth justice programs, to assist the community sector to provide targeted programs.

Recommendation 8

That the Department of Disability, Housing and Community Services create opportunities for more flexible and responsive funding contracts that assist Youth and Family Support Programs to report on diversionary activities that may occur as part of other support work, to assist in capturing the nature and scope of the issues.

3.1.3 Is there a need for more targeting in services for particular young people? If so, what targeting do you consider necessary?

The Youth Coalition believes that the youth sector should have the capacity to work with all young people. To achieve this, workers need to have the skills that are required to effectively work with a cross-section of young people, and the resources to adapt to young people's needs.

The ACT Government is currently engaging in discussions with the youth sector around workforce development, which may include a minimum qualification and ongoing professional development. The Youth Coalition encourages the ACT Government to progress this commitment to workforce development through the development and implementation of a dedicated and adequately resourced plan, which also addresses organisational capacity and quality assurance, for the youth sector.

This investment in workforce would assist all youth services to be able to respond in an appropriate and helpful way to supporting young people at risk of involvement in the criminal justice system and their families.

However, some consideration needs to be given to unique sub-groups of young people, without being prescriptive or exclusive. Issues of developmental stages of

adolescence should be considered when providing support to a wide age range of young people. Some young people of differing backgrounds and personal histories may form better engagement with services that have a specific focus.

While interventions should be based on considering the whole needs of clients on an individual basis, there must still be room for specialised support programs targeted at particular needs. This may include, but is not limited to: Aboriginal and Torres Strait Islanders, newly arrived or refugee young people, young people who identify as gay, lesbian, bisexual, transgender or intersex, young people who have suffered significant trauma, those with mental health and/or alcohol and other drug use issues requiring therapeutic interventions, or those with past or present care and protection orders.

There is an opportunity for government and non-government agencies to work together better at identifying, and subsequently supporting, target groups of vulnerable young people, by utilising current data knowledge in a more strategic manner. This can include data from the out of home care, youth housing and homelessness, education and training, mental health, and alcohol and other drug sectors, as well as information from the Australian Bureau of Statistics and the Australian Institute of Health and Welfare. Further, mainstream services should be involved in this identification process, and will aid in creating a more succinct view of the community's needs.

Aboriginal and Torres Strait Islander Young People

In relation to the criminal justice system, and for focused consideration in the development of a diversionary framework for the ACT, is the recognised high proportion of Aboriginal and Torres Strait Islander people engaged in the criminal justice system. The Youth Coalition has welcomed the recognition of this problem by the ACT Government in recent times, in work such as the 'Aboriginal and Torres Strait Islander Justice Agreement', between the ACT Government and the ACT Aboriginal and Torres Strait Islander Elected Body.

Key Aboriginal and Torres Strait Islander Justice Data includes:

- Aboriginal and Torres Strait Islander people account for 1.2% of the ACT population;
- Young Aboriginal and Torres Strait Islander people aged 10 to 19 years account for 2.1% of the ACT population;
- ACT Policing data in 2008/09 shows 8.7% of adult apprehensions (733) and 10.8% of apprehended young people (172) were Aboriginal and Torres Strait Islander;
- Aboriginal and Torres Strait Islander young people in the ACT account for approximately 21% of young people on community justice orders and 23% of young people in detention in the ACT;
- Aboriginal and Torres Strait Islander adults in the ACT fluctuate between 10-12% of adults on community justice orders, in prison or on remand;
- Aboriginal and Torres Strait Islander women and children in the ACT are over-represented as victims and through hospitalisations;
- Aboriginal and Torres Strait Islander children and young people are over-represented in the care and protection system;
- The ACT Aboriginal and Torres Strait Islander community are 5 times more likely to be affected by physical violence than the non-Indigenous population, but only 2% of Victim Support ACT clients are Indigenous;

- Aboriginal and Torres Strait Islander people make up 24% of the people being referred for treatment through court-based drug and alcohol diversion programs in the ACT;
- National research suggests Aboriginal and Torres Strait Islander young people are less likely to be cautioned by Police and possible factors have been canvassed such as a higher level of offending, non-admission of guilt, lack of diversionary options and the possibility of racial bias; and,
- The number of Aboriginal and Torres Strait Islander prisoners has increased dramatically over the past ten years –between 1995 and 2002) increasing by 17% per year.¹¹

It is clear from this that much more work needs to be done to reduce the number of young Aboriginal and Torres Strait Islander people coming in contact with the criminal justice system, as well as offering comprehensive diversion programs. A broader approach is necessary, that looks at core issues such as social inclusion, economic inequity, the effect of past racist policies, education and health needs.

The ACT Department of Justice and Community Safety recently released an options paper, looking at strengthening the ACT Circle Sentencing Courts.¹² While recognising some of the difficulties inherent in the pilot and evaluation phase of the recent move to allow juvenile Aboriginal and Torres Strait Islander people to face charges in the Circle Court, the Youth Coalition looks forward to seeing the outcomes of this initiative.

The Youth Coalition would like to acknowledge the positive and practically applicable work of the ACT Policing Indigenous Liaison Unit, the Crime Prevention Unit, and Northside Community Service, as a model of collaborative and community oriented practice, and draw attention to the fact this program is now unfunded.

Homelessness

It is clear from the information contained in the Discussion Paper, previous research and consultations undertaken by the Youth Coalition, and statistical and anecdotal evidence locally and nationally, that housing and homelessness are key issues that need be considered when discussing youth justice matters. This is not just in relation to bail and remand matters, although they are the areas of main concern.

More broadly, when discussing a diversionary framework, the topic of stable, safe, supported (if appropriate) and affordable accommodation for young people in the ACT has links to some of the potential core issues relating to social inclusion and criminogenic needs.

Out of Home Care

It is clear that young people with an experience of the care and protection system are more likely to be involved with the juvenile, and subsequently, adult justice system.¹³ These vulnerable young people also experience poorer educational and employment achievements, and often lack structured support system beyond the age of 18.

Recommendation 9

That the ACT Government progress a dedicated and resourced workforce development plan, in partnership with the community youth sector.

Recommendation 10

That the ACT Circle Sentencing Court:

- Is strengthened, resourced and supported to continue to pilot the young person's program;
- That this pilot be evaluated; and,
- That the findings be taken into consideration in the development of the framework, in relation to addressing the disproportionate numbers of young Aboriginal and Torres Strait Islander people in the criminal justice system.

Recommendation 11

That the diversionary framework developed for the ACT be developed with input from the Youth Specialist Homelessness Sector and ACT Social Housing, in conjunction with reforms currently underway to modernise the youth housing and homelessness sector, and that the framework considers the housing needs of young people as a priority area in diversion.

Recommendation 12

That young people with a care and protection experience who come into contact with Police and the justice system, at any level, are offered immediate and intensive support, in recognition of the previous poor outcomes for this target group.

3.1.4 *Considering young people who are offending and in contact with the justice system, do you consider that there is a range of services to meet their needs? If not, what areas of need are not being met? How are these areas of need best met?*

ThroughCare

*'Throughcare is the co-ordinated, integrated and collaborative approach to reducing the risks of re-offending. It covers all people who are managed by Corrective Services from their first point of contact with Corrective Services to the completion of their legal orders and their transition to law-abiding community living.'*¹⁴

Through-care is the delivery of 'seamless' quality services for offenders from initial to final contact. The processes to manage through-care are the development and implementation of strategies for sentence/unit management plans for each offender in prison and the development of case plans for each offender in the community.¹⁵

The term 'through-care' refers to arrangements for managing the continuity of care, which started in the community or at an offender's first point of contact with the criminal justice system through custody, court, sentence, and beyond.

Many youth sector workers consulted for this submission discussed the apparent lack of through-care for young people exiting detention, equating to young people being 'lost' in the transition phase of case planning. This issue is reflected in other sectors, including out of home care providers and in the adult corrections system in the ACT.

Anecdotally, this appears to be a major communication failure on behalf of services, both government and non-government, with young people's outcomes being adversely affected as a result. Commonly cited causes for this include:

- Poor role definition in case management / case work;
- Incomplete or ineffective initial assessments;

- Perceived and / or real barriers to access with young people in Bimberi for community services who work with young people pre and post detention;
- Disengagement from services by young people post release, for a variety of reasons, and;
- Incomplete, poorly communicated, or poorly developed 'leaving care' plans.

During these consultations, it became clear that there are many misconceptions and 'myths' surrounding the issue of through-care, which may be assisted by a better mapping of existing services, and clear and concise explanation of roles and service provision.

Living Skills

Living skills are personal skills considered necessary for an individual to function on a day-to-day basis.

In 2008/9 the Youth Coalition undertook the *Living Skills and Youth Supported Accommodation Assistance Scheme Consultation Project* engaging Dr Justin Barker to undertake research into the living skills training needs of young people at risk of or experiencing homelessness. This project involved consultation with workers in the then Youth SAAP Services Sector as well as young people accessing services.

Dr Barker found that:

*'...the breadth of the conceptualisations of 'living skills' includes a wide range of practices that vary from merely providing a cookbook or cleaning products to intensive one-on-one training or support. The diverse range of conceptions of 'living skills' exist in part due to the range of people included under the banner of 'homeless youth'. However, whilst it is important to include a wide range of practices that are relevant to a diverse spectrum of young people, the lack of conceptual clarity can have a negative impact in practice.'*¹⁶

The ACT youth sector has identified that living skills is an ongoing challenge faced by both young people and the sector and has been raised on numerous occasions in various forums. Challenges include:

- Lack of clarity;
- Lack of resources;
- Lack of understanding;
- Lack of training; and,
- Lack of continuity.

The Youth Coalition believes that comprehensive, and evidence-based living skills programs should be available to vulnerable young people in the ACT. In particular, young people with a care and protection experience, and young people who have had contact with the criminal justice system, may benefit from these programs, in relation to areas such as:

- Social development (friends, family and relationships);
- Health (including alcohol and other drug and mental health);
- Tenancy and accommodation (obtaining and maintaining accommodation);
- Sexual health;
- Personal development;
- Budgeting and money matters; and,

- Accessing and using government and non-government services.

Recommendation 13

That in recognising through-care as an important and integral component of diversion, the Department of Disability, Housing and Community Services formally adopts through-care policies, practices, and procedures for young people in the criminal justice system in developing the diversionary framework for the ACT,

Recommendation 14

That the Department of Disability, Housing and Community Services, in partnership with key stakeholders in the community sector develop clear and mutually recognised policy and procedures for engaging with young people detained in Bimberi Youth Justice Centre; and that these policies and procedures are widely communicated.

Recommendation 15

That the recommendations from the Living Skills Toolkit Pilot Project be resourced and acted upon, with a view to incorporating evidence-based living skills programs in diversion.

3.2 Models of Diversion

3.2.1 What existing ACT Services could contribute to improving tertiary diversion of young people from the criminal justice system?

Please refer to previous sections that relate to underlying principles.

3.2.2 Would any of the three models described be effective in improving tertiary diversion?

All 3 models described in the Discussion Paper have commonalities that make up the base of a positive model for tertiary diversion; however, the Youth Coalition believes that the concept needs to be broadened to include the Discussion Paper's definition of secondary prevention programs, as many young people require support at earlier stage.

Bail support and accommodation support are vital to reducing the high number of young people in the ACT who are placed on remand, or face court again and again on charges relating to 'against government procedure' which practically equates to breaches of bail / good behaviour/probation orders. The shortfall with all 3 models presented, however, is that the criteria is dependant on 'assistance required to / at risk of being unable to meet the demands of bail conditions'.

The premise of this type of support is flawed, then, if the issues of bail conditions are not addressed as well. Anecdotal evidence suggests that many workers in the youth sector can regularly predict that the bail conditions imposed on a young person will adversely affect them, their family, or existing case management plans, that the young people they are supporting do not have a full understanding of the issues, and furthermore, that the bail conditions stand a high risk of being breached, resulting in a young person effectively feeling 'set up to fail'.

A young person who has committed or been charged with a crime, or come to the attention of the Police may not require ongoing intensive support, but as an identifiable and clear risk factor, this incident should be considered a window of opportunity for the community and the various potential government and community sectors agencies to engage with a young person and their family to identify any

support needs and strategies that will seek to not only reduce further involvement in criminal behaviour, but also to assess other risk factors and support needs that may arise, such as mental health concerns, educational disengagement etc. It is important to consider this as being an intervention or support episode that is early intervention in some regards, not perhaps in the life of the young person, but early in the life of the problem.

While the models that are being discussed that might be developed in the ACT, may not have the capacity or resources to offer ongoing support, it does at least highlight and identify possible needs and areas of concern, and can offer targeted referral for a young person and their family, beyond simply navigating bail and any subsequent court appearance.

3.2.3 What other strategies would be effective to improve tertiary diversion?

A co-ordinated service, based on the principles outlined in the previous section, may assist young people from 'falling through the gaps'.

Greater co-ordination of the different levels of interventions outlined in the Discussion Paper, as well as the community sector's responses to young people and their family, who may have highly complex and ongoing support needs, may assist greatly in reducing the numbers of young people who come into contact with the criminal justice systems, not to mention have positive benefits for the whole community, in terms of social inclusion and equitable access to educational goals and career ambitions, for example.

Such a service would need to be resourced to adequately assess the support needs of the young person in question.

It is clear that the ACT has many community services working as best they are able to support young people, but as the Discussion Paper recognises, demand for services can sometimes exceed supply for young people with a range of complex needs.

It is important that any models seek not only to divert young people from remand, custodial sentences and court appearances, but also seek to address the underlying causes of young people's behaviour that drew the attention of the criminal justice system.

This can be conceptualised by not focusing on 'diversion' as the only goal, but also the next step of redirection or positive reengagement. In doing so, we can see the young person as a unique and valued member of our society, not just someone needing to be turned away, 'diverted', but also turned towards, or supported to seek, a healthy and productive future, that recognises their inherent strengths and abilities.

The Youth Coalition of the ACT believes that the definitions of primary, secondary and tertiary intervention in this Discussion Paper needs to allow for greater flexibility in service response, similar to the concept of spectrum of support used in housing and homelessness sectors, as discussed in previous sections.

Recommendation 16

That the ACT Government further explore models of diversion that could be adapted to the local needs of vulnerable young people in the ACT; and that local community sector stakeholders be actively resourced and supported to engage in that exploration.

3.3 Data on Diversionary Activity

3.3.1 Do you consider that sufficient data is presently available on diversionary activity for young people in the ACT? What types of information and data on diversion of young people in the ACT would you like to be available? How would this assist you or your agency?

The Youth Coalition of the ACT is pleased to see that some data that has been requested for previous works, which were unavailable, have been included in the Discussion Paper. The unpublished DHCS data offers a much clearer insight into the current and historical trends in youth justice, and of particular interest in this submission is the information regarding bail and remand episodes.

Against Government Procedure

The Youth Coalition has requested, in the past, a more detailed breakdown of these and other criminal statistics, beyond the published quarterly ACT Criminal Justice Statistical Profile (CJSP). A particular request was regarding the breakdown of the types of charges covered under the title 'Justice Procedure & Govt Operations'¹⁷, which relate to the issues of breach of bail, probation, good behavior bonds and other similar offences.

For the September 2010 Quarter, of the 90 new receptions to Bimberi Youth Justice Centre for Remand, 49 of those fell into the Justice Procedure & Govt Operations' category, highlighting just how important that information is.

Access to this data may have assisted Youth Coalition member services to develop targeted programs, and engage with focused interventions, as well as assisting the Youth Coalition to respond better to allied policy submissions, such as the Department of Education and Training recent 'Earn or Learn' changes, or informing other sector development work, such as supporting Youth Specialist Homelessness Services.

Recidivism

Also of high importance is local and time relevant data regarding recidivism. The Youth Coalition's enquiries to both DHCS and the Australian Institute of Criminology seeking this data has been unsuccessful, with the advice offered that the information may lead to identification of young people, and therefore is considered privileged.

The Youth Coalition believes that there are many options open to DHCS and other researchers to effectively de-identify this data, and is concerned that the lack of statistical information on this important aspect of tertiary and secondary diversion equates to services responding to anecdotal evidence, gained from local knowledge and personal experience.

While this approach is valid, and often means that young people and their families are supported in times of crisis or are identified as requiring more long term supports and referrals, it leads to unfunded responsive approaches, instead of the best practice approach to this issue, which dictates a family aware, targeted and often longer term support period, involving multiple agencies and departments. The issue of recidivism does not appear to have been focus of the Discussion Paper or the consultations, and the Youth Coalition is concerned that this oversight fails to support the community sector in responding to youth justice issues.

Recommendation 17

That the ACT Government recognise the community sector as professional partners seeking to address similar issues concerning vulnerable young people and their families, and as part of that recognition, create more opportunities for stakeholders to share data that may better inform practice and service delivery.

3.4 Embedding Diversionary Principles and Practices

3.4.1 What are important diversionary principles for young people? Do these diversionary principles and practices need more emphasis in legislation and/or policy in the ACT? What would be the benefits of a greater emphasis on diversionary principles and practices in legislation and/or policy?

The Youth Coalition believes the following principles are key:

a) Comprehensive

The Youth Coalition welcomes the Discussion Paper's aims of developing a framework for diversion in the ACT, as it may offer the currently fractured and occasionally piecemeal approach to youth justice issues an opportunity to coalesce and integrate with a broader strategic plan to support young people and their families. As the Discussion Paper illustrates, the ACT has many programs that aim to work with young people who have high risk factors, but there is currently very little streamlining or cohesion.

These principles, once embedded in policy development, can enhance and be enhanced by working in collaboration with:

- Existing government policies, such as the *ACT Young People's Plan 2009-14*, and the important work of Department of Education and Training in the Youth Commitment;
- Broader crime prevention strategies, drawing on both national, territory wide and local initiatives;
- Inter-governmental departments to avoid silo thinking, and provide settings for the community sector to increase collaborative practice; and,
- Maximising positive outcomes for vulnerable young people.

b) Strategic

The Youth Coalition believes that the current diversionary systems / programs in the ACT, while offering important and valid responses to the issues, lack long-term sustainability and vision.

c) Through-Care

(Please also refer to previous sections)

Diversion programs need to be envisioned as working with young people along a spectrum of support, as described in previous sections of this submission. An integral part of this work is the links between young people and their support needs before, during and after contact with Police, the courts, any remand or custodial sentence or period, and the months after release or cessation of Community Youth Justice orders.

Many young people do not receive comprehensive needs assessments along this spectrum, and frequently do not have tangible and effective after-care or transition plans, as echoed in care and protection. This failure to recognise, and then develop

and work with, client centred care plans for young people, particularly when incarcerated, leads to many problems, for young people and the community sector support workers who may be engaged.

There is also a need for the youth sector to provide greater leadership in regards to case management and case work for young people who are in custody or on orders, however; these attempts are often stymied due to poor communication systems, role definition and the resource expectations that exist between the government and non-government sectors.

d) Social Justice

The Youth Coalition believes that the current social, economic and physical structures that exist in young people's lives can impose systemic disadvantage on certain individuals and groups. The Youth Coalition believes that economic and political processes must be developed to address the structural causes of this social injustice.

In order to address the needs of young people in the ACT, a whole of community and whole of government approach must be adopted to support social justice principles. To achieve social justice young people must be guaranteed equitable access to society's common resources.

e) Youth Participation

All young people have the right to participate in the making of decisions that affect them. Consultative processes established for this purpose should be accessible and facilitate open discourse. Decision-makers who consult with young people have a responsibility to respect the advice provided and to incorporate this advice into their decisions. The Youth Coalition believes that participatory processes that are useful, realistic, flexible and adaptable to a changing social environment lead to better outcomes for vulnerable young people. Young people also have a right to have a say in their participation as consumers of a service.

The Youth Coalition further believes that the diversionary framework needs to support young people to engage with service providers with the principles of openness and collaboration. The Youth Coalition operates from the position that all young people should feel valued and have the opportunity to participate fully in the life of our society.

f) Collaborative

Co-operative endeavours involving the meaningful partnership of different sectors and groups represent the most appropriate strategy for policy development and the delivery of services. Strong relationships between sectors and within the youth sector are required to increase awareness of youth issues and to create more opportunities for young people's involvement.

It is important to develop collaborative relationships with organisations providing services and advocacy in all areas affecting young people, including housing, substitute care, drug and alcohol use, disability, justice, income support, education, training, employment and mental, sexual and general health.

g) Accountable

Organisations that affect the lives of young people must be accountable to young people. This means that the use of resources, distribution of powers, development of

policy and implementation of programs must be open to scrutiny. Mechanisms must be put in place to enable young people and their advocates to hold relevant authorities to account. This principle is also relevant in regards to the youth and family sectors, and funding bodies, in terms of programs needing to be evidence-based and examples of best practice. Funding bodies, young people and the broader community need to be provided with quality programs that show positive investments in social capital, and are effective in working towards their aims and objectives.

Recommendation 18

That the ACT Government develop a diversionary framework for the ACT that has the following policy principles:

- Comprehensive;
- Strategic;
- Committed to formal through-care policies;
- Social justice;
- Youth participation;
- Collaborative; and,
- Accountable.

3.5 Legislative Reform

3.5.1 What are the key areas of ACT legislation that support the diversion of young people from the justice system in the ACT? Are there legislative barriers to diversion of young people from the justice system? If yes, what are they? Are there areas of ACT legislation which could be amended to improve the rate at which young people are diverted from the justice system?

As addressed in previous sections of this submission, the primary concerns raised in consultations relate to the Bail Act, bail conditions, high numbers of young people on remand in the ACT, and issues of through-care.

Bail

The existing Bail Act, Section 23, states that the primary consideration when in bail matters should be in 'the best interests of the child'.¹⁸

International therapeutic jurisprudence research has repeatedly found that detention of young people should be avoided whenever possible.

As was clearly articulated in the Discussion Paper, the ACT has high number of young people on remand, and serving custodial sentences, when compared to other jurisdictions. As discussed in previous sections of this submission, community sector workers consulted stated that many young people report not having a total understanding of their bail conditions, or probation orders. Workers also felt that many young people were being 'set up to fail', with unduly restrictive conditions, that did not take in account the broader support issues, such as transport, family demands, existing case/care plans, and most importantly, the current housing environment.

With an estimated 1,364 people homeless in the ACT on any given night, and 60% of those being under the age of 25¹⁹, Youth Specialist Homelessness Services are reporting a high rate of unmet need.

When faced with unaffordable rent, few housing options, and insufficient supported accommodation beds, many young people are 'couch surfing', a term that relates to moving between friends, extended relatives, or even complete strangers, homes.

Young people may need to move quickly from place to place, as relationships deteriorate, or become unsafe, and they are often unable to clearly identify where and for how long they may be able to sleep.

This can equate to some young people being unable to offer a fixed address, when applying for bail, and also complicates 'Reside as Directed' orders by Magistrates. The Youth Coalition believes that the Discussion Paper offers some positive models that seek to address these issues, such as a Bail Support Co-ordination Service.

However, the conditions placed on young people seeking bail need to be reviewed as well, to inform better outcomes not only for vulnerable young people, but in the long term, the wider community as well. Ultimately, the diversionary framework needs to recognise, and work in conjunction with, ACT Social Housing and Homelessness and the Youth Specialist Homelessness Services as they collaboratively work towards reducing homelessness, and modernising the youth housing and homelessness sector.

Through-Care

As discussed in previous sections, the concepts of through-care are important in developing the Framework.

Recommendation 19

That the ACT Government review existing Bail Act legislation, with support from the Youth and Family Support Sector, to address issues relating to current breach of bail and remand matters.

4. Conclusion

The Youth Coalition thanks the ACT Department of Disability, Housing, and Community Services for the opportunity to comment on the *Discussion Paper: Towards a Diversionary Framework for the ACT*.

The assessment of how we deliver services to support young people at risk of entering, or engaged in, the criminal justice system affords us the chance to construct an overall service delivery framework that recognises and encompasses the following key ideas:

- That a properly co-ordinated response to youth justice is required, that clearly identifies the role of mainstream agencies (such as the police, schools etc) as well as specialist services (i.e. homelessness, youth support, mental health, alcohol and other drug services) in providing a spectrum of support to young people;
- That there are current examples of good practice, skills and knowledge within the government and community youth sector in the ACT which can be utilised to inform future direction;
- That we need to not only design services using an evidence base, but also contribute to the ongoing development and understanding of service system effectiveness through good evaluation of both individual programs and overall response; and,
- Young people need to be key partners and informants in design, implementation, and evaluation of the service system.

The Youth Coalition and stakeholders look forward to further opportunities to identify and advise ACT Government of emerging issues, areas in need of additional resources and collaboratively develop social policy and service system response to youth justice in the ACT.

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