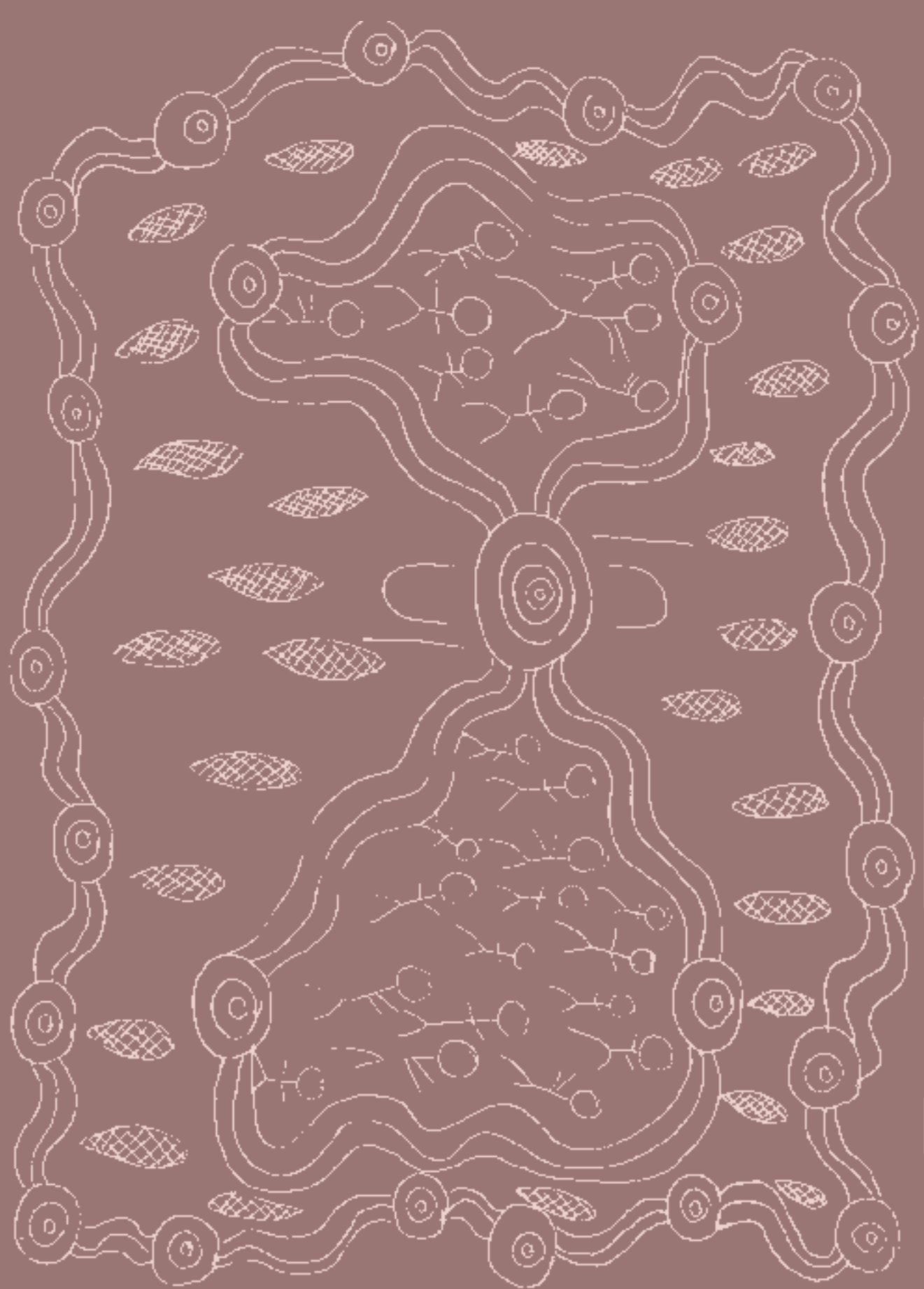


Breaking the Silence: Creating the Future

Addressing child sexual assault in Aboriginal communities in NSW



Aboriginal Child Sexual Assault Taskforce



'This, it stole me, I lost myself. He took me away and I'm here today, a shadow of the person I could have been because he took it away from me and I can never get that person back. ... And society, to want to pretend that it doesn't happen, and this is where we are still victims and they're still making us victims.' Transcript 27



Cover artwork:

Leonie McIntosh, a strong Wiradjuri woman, has provided ACSAT with the cover artwork as well as any artwork used throughout the report. The drawing for *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW* is based on the following story:

'In our culture we are seldom alone, we always have an aunt, an uncle or friend. We have our culture, our dreamtime and dance, our spirit guides and our elders.'
– Leonie Mcintosh 2005

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Breaking the Silence: Creating the Future

Addressing child sexual assault in Aboriginal communities in NSW

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ACKNOWLEDGEMENTS

An end to child sexual assault is the acknowledgement we all hope for.

It has been a privilege and honour for the Aboriginal Child Sexual Assault Taskforce (ACSAT) to have the opportunity to improve services for Aboriginal children and families impacted by child sexual assault. ACSAT sincerely appreciates, and has been humbled by, the Aboriginal people who have come forward and shared their stories. The implementation of the recommendations made in this report is the recognition that they deserve.

ACSAT also recognises the assistance of government and non-government service providers. Their continued support of ACSAT, and commitment to improving services for Aboriginal children, families and communities who have experienced child sexual assault, has been unwavering.

ACSAT was established as a conduit for the Aboriginal community to voice their concerns about, and put forward strategies to address, child sexual assault in their own communities. Therefore it is essential that the voices of Aboriginal people be heard within this report. Direct quotes from consultations, submissions and other written materials are included to provide an insight into the issues surrounding child sexual assault that Aboriginal people are facing.

ACSAT would like to acknowledge the Western Australian State Government agencies and members of the Gordon Inquiry for their continued advice and support. The lessons learnt from the Gordon Inquiry have been invaluable in formulating this report. We would also like to thank the women from Cherbourg Critical Incident Group who talked to ACSAT about how Aboriginal communities can lead the fight against child sexual assault.

ACSAT would especially like to acknowledge Leonie McIntosh, for her beautiful artwork that we have used throughout this report.

ACSAT would like to thank previous members of the Taskforce for their contribution and continued support of the process. They are Cleonie Quayle, Winsome Matthews, Vicki Fair, George Williams and Mareese Terare.

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ABORIGINAL CHILD SEXUAL ASSAULT TASKFORCE

TERMS OF REFERENCE

1. Examine how State Government agencies respond to evidence of child sexual abuse that may be occurring in Aboriginal communities generally; particularly the barriers and capacity of agencies to address the issue of sexual violence in Aboriginal communities;
2. Identify key areas to be addressed by Government in its response to the incidents of child sexual abuse;
3. Examine how family violence impacts on/or contributes to child sexual abuse in Aboriginal communities;
4. Propose measures to assist Aboriginal communities to develop their governance and economic capacity;
5. Recommend practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures;
6. Comment on the possible adaptation of alternate sentencing and restorative justice processes as an adjunct to the criminal justice system;
7. Examine how non-government organisations respond to child sexual abuse;
8. Propose safety and support measures for children reporting abuse.

The Taskforce is to consult widely, including with representatives of Aboriginal communities, youth, health services, children services, counselling services and related organisations.

The Taskforce is to consider national and international programs developed to address sexual abuse in Indigenous communities.



BOB DEBUS
ATTORNEY GENERAL

CHAIRPERSON'S FOREWORD

Child sexual assault is a crime that devastates all families who experience it.

In any community in NSW where an inquiry such as this occurs it could be expected that the people most likely to come forward would be those who were victims of child sexual assault or their parents. However, in this instance, Aboriginal people spoke not only of their own personal experiences of child sexual assault, but also of their sisters, brothers, nieces, nephews, cousins or parent's experiences too. Sometimes, they spoke of the experiences of many relatives. ACSAT believes this openness makes this inquiry unique.

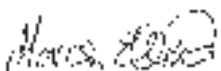
It is widely accepted that Aboriginal children are more likely to be victims of this crime than their non-Aboriginal counterparts. It is also accepted that child sexual assault is a grossly under-reported crime, particularly in Aboriginal communities, so it is difficult to measure its true incidence and any statistical data is likely to under-estimate the extent of the issue. The strength and consistency of testimony from Aboriginal community members leads the Taskforce to conclude that there are few in Aboriginal communities who have not been affected by child sexual assault.

This report contains data and research that describes a stark picture of intergenerational abuse and social disadvantage. ACSAT has continuously considered the potential impact of this on the Aboriginal community's perception of ourselves, and how others perceive us. To ensure this report remains a positive and inspiring document for Aboriginal communities, and the community at large, ACSAT has tried to present its findings in the same spirit it found among communities. That is, in a way that is open and generous, acknowledging the issues are serious and complex, while at the same time as adamantly stating that it wants the abuse to stop, healing to begin and a better future for our children.

The Taskforce wants to make it clear that in all consultations, participants demonstrated a strength and courage that was humbling. With such qualities obviously within our communities, the potential for action towards a safer community is great. This must be supported and grown across the Aboriginal community. The Taskforce makes recommendations to build on capacity in communities and deliver responsive services. This will require strong leadership in both government and community. This is perhaps the greatest challenge.

The Taskforce acknowledges the people we met with deepest respect. They are our community champions who shared their stories with courage and dignity, sometimes at great risk to themselves and their families. These people spoke of the heartache of child sexual assault for victims and their families, and the devastating impact that it has on our communities. It is on the strength of their testimony that the Taskforce focuses particularly on improvements to the way we respond to child sexual assault in order to stop this devastation. The Taskforce is honoured by their honesty and shares their determination to make our communities safer for our children. Once again, we thank you.

In commending this report to you, the Taskforce acknowledges the commitment of the NSW Attorney General, the Honourable Bob Debus. His support for the Taskforce was unwavering. The Taskforce members, both past and present contributed a wealth of knowledge, expertise and experience across a range of areas. Their contributions were invaluable. The Taskforce Secretariat did a wonderful job, under sometimes difficult circumstances, and must also be congratulated.



Marcia Ella-Duncan
Chairperson

EXECUTIVE SUMMARY

Background

The Aboriginal Child Sexual Assault Taskforce (ACSAT) was established in response to the Roundtables on sexual violence in Aboriginal communities conducted by the Department of Aboriginal Affairs in 2001/2 and to the finding of the Aboriginal Justice Advisory Council's 2002 report *Speak Out, Speak Strong* that approximately 70% of Aboriginal women in NSW prisons had been sexually assaulted as children.

Aims

ACSAT's primary aims were to examine child sexual assault in Aboriginal communities, review how government and non-government agencies in NSW respond and make recommendations about how these responses could be improved.

Method

Information for this report was gathered from:

- Review of literature and relevant research
- Written submissions, and other information, from government agencies
- Written submissions from non-government agencies and individuals
- Consultations with Aboriginal communities across NSW
- Consultations with government and non-government agencies

The starting point for analysis was current research into child sexual assault in Aboriginal communities, the Aboriginal community's perspective of child sexual assault and the issues they identified with current service responses. This perspective was then matched with services provided by government and non-government agencies and gaps and barriers were identified. Recommendations were formulated to address these gaps and overcome barriers. (ACSAT recommendations, along with the outcomes these recommendations were formulated to achieve, are tabled at the end of this executive summary.)

Overview of findings

The Aboriginal community's perspective on child sexual assault

Child sexual assault was described as a 'huge issue' in every consultation ACSAT took part in. Both boys and girls were known to be victims and perpetrators were most often described as men who were grandfathers, fathers, step-fathers, uncles, cousins or brothers of the child. Often, perpetrators were also reported as being important people within the community.

Consultation participants often described child sexual assault in their communities as intergenerational and they explained this in a number of ways. Child sexual assault was seen as being passed from one generation to the next. Some perpetrators had sexually assaulted a number of generations of children. Sibling abuse was considered rife and in some communities, the same perpetrator had sexually assaulted a whole generation of children from one extended family.

ACSAT found that child sexual assault was not well understood in Aboriginal communities, which meant it often went 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. It also made it possible for perpetrators to 'groom' their victim without being noticed. Communities believe that these factors, among others, enable the abuse to continue unchecked.

Child sexual assault in Aboriginal communities is seldom reported. Communities acknowledged that reporting was difficult for all victims of child sexual assault. They felt that this difficulty was compounded for Aboriginal children by factors such as complex extended family and community networks; geographic isolation; mistrust of the service system; and poor responses from existing service providers.

Community attitudes as to what should happen to perpetrators varied. However, a number of participants stressed the importance of having a clear understanding of the dynamics of child sexual assault before making any decisions about treatment of perpetrators.

Every community spoken to by ACSAT agreed that child sexual assault has a devastating, and life-long, impact on those who experience it and on their families and communities. Consultation participants believed that child sexual assault is one of the key, underlying factors in the high levels of violence, substance abuse, criminally offending behaviour and mental health issues that many Aboriginal communities are grappling with today. Research supports these links.

Communities and research identified a number of factors that influenced the incidence of child sexual assault. These include: substance abuse; social and economic disadvantage; exposure to pornography and a sexualised society; the 'normalisation' of violence (or intergenerational cycle of violence); the presence of family violence; unresolved trauma and grief; breakdown of family and community structures; lack of community engagement with the issue; lack of support for community-driven solutions; and inadequate responses from service providers.

The relationship between child sexual assault and family violence

There is little research that specifically considers the relationship between child sexual assault and family violence. The research that there is suggests there is a strong link between the two forms of violence. Communities and research suggest that the presence of family violence in Aboriginal communities has a number of consequences that can influence the incidence of child sexual assault. This link requires further comprehensive research.

The statistics

Data collected by NSW Government agencies suggest that Aboriginal females are almost two and half times more likely to be victims of child sexual assault than non-Aboriginal females. However, this data only reflects incidents of child sexual assault in Aboriginal communities that are reported and where the Aboriginality of the victim is recorded. It is widely accepted that child sexual assault is an under-reported crime, particularly when it occurs in Aboriginal communities.

Overarching government responses to child sexual assault in Aboriginal communities

Policy frameworks for working with Aboriginal people

The Commonwealth and NSW Governments have agreed frameworks for working together to provide services to Aboriginal communities and improve outcomes for Indigenous Australians. These frameworks commit both governments to working with each other, and in partnership with Aboriginal communities, to: address disadvantage; improve access to services; provide services the community identifies it needs in ways that are appropriate; improve accountability of government services; and tackle agreed priority areas.

The specific detail of how the governments will work together, and on what, are enshrined in the Bilateral Agreement between the two governments.

The NSW Government has also developed the *Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012)* to guide how it will work with Aboriginal communities to address disadvantage.

The Commonwealth Government's overarching response to child sexual assault in Aboriginal communities

In reviewing the Commonwealth Government's overarching response to child sexual assault in Aboriginal communities, ACSAT found that there is no national policy framework outlining the Commonwealth Government's position on child sexual assault and that child sexual assault has not been included in the Bilateral Agreement between the Commonwealth and NSW Government.

The Commonwealth Government provides a number of funding programs for family violence, however there is limited funding available to specifically address child sexual assault in Aboriginal communities. Initiatives such as the Family Violence Prevention Legal Services are well received in Aboriginal communities and should be expanded to cover the state.

The Commonwealth Government can help to get child sexual assault onto Aboriginal regional and community plans via its Indigenous Coordination Centres.

Whole of NSW Government's overarching response to child sexual assault in Aboriginal communities

When examining the whole of NSW Government's response to child sexual assault in Aboriginal communities, ACSAT found that there is no state-wide policy framework that specifically addresses child sexual assault in Aboriginal communities and child sexual assault is not explicit in the current *Two Ways Together – Aboriginal Affairs Plan (2003-2012)* framework. In addition, the way the NSW and Commonwealth Governments work together to address child sexual assault needs to be clarified and the links strengthened.

ACSAT also found that service responses to child sexual assault were not being provided in a holistic way. A holistic response would include: understanding Aboriginal families and communities as interlinked networks; providing coordinated service responses; reviewing interagency guidelines; unifying definitions of child sexual assault across agencies; addressing child sexual assault at the same time as addressing social and economic disadvantage; and appropriate physical locations for services. Services need to be provided holistically and this needs to be effectively coordinated.

There are a number of issues with the way data is collected by NSW government agencies, including: inconsistent recording of Aboriginality; use of different key definitions across agencies; agencies recording data across different time periods; and information being lost because the categories used to collect data are sometimes ambiguous. These issues result in data being less useful than it could be and also makes it difficult to correlate and compare data across agencies.

The NSW Commission for Children and Young People currently has no programs that specifically address the safety and well-being of Aboriginal children and young people.

Child sexual assault is currently not on local, regional, state or national agendas. There is limited government leadership of the issue of child sexual assault in Aboriginal communities at the political or the agency level. The NSW Government, via its Department for Aboriginal Affairs, has a role in helping communities to put it on the agenda and develop local strategies to address it. The NSW Government need to provide funding streams for local Aboriginal initiatives to address child sexual assault.

There is a lack of awareness and understanding about child sexual assault among Aboriginal communities and among service providers and this is impacting on the levels of reporting and on the way services respond.

Communities expressed concern that the findings of ACSAT won't be published and that the recommendations won't be implemented. They felt that they had contributed to many government inquiries in the past that had not been acted on. ACSAT believes that an implementation strategy needs to be developed to ensure a coordinated and timely government response to its findings. ACSAT noted the success of having the NSW Police *Aboriginal Strategic Direction* policy audited by the NSW Ombudsman. It believes it would be useful to have the NSW Ombudsman conduct a similar audit of the implementation of ACSAT recommendations across the whole of NSW Government and each of the relevant government agencies.

NSW agency responses to child sexual assault in Aboriginal communities

Department of Community Services

When examining the Department of Community Services (DoCS) response to Aboriginal experiences of child sexual assault, ACSAT found that communities understood that that there was considerable pressure placed on DoCS staff and on the agency as a whole. Participants in some consultations reported that the DoCS workers in their area were doing a good job and really making efforts to work with the community.

However, ACSAT also found that many Aboriginal people continue to fear and mistrust DoCS as a consequence of past practices towards Aboriginal people. This fear and mistrust is compounded by a lack of understanding of DoCS and what it can do and the supportive roles it has. It is also compounded whenever DoCS respond inappropriately or inconsistently to a report of child sexual assault, do not keep the families informed about what is happening with a case or don't make appropriate referrals for support. ACSAT found that for many, the current service system has not been successful in overcoming the wrongs of the past or in building trust with communities.

ACSAT also found that the relationship the Aboriginal community has with DoCS is complex and varies from community to community. In some communities, there was a perception that DoCS was too involved with families and was not letting Aboriginal parents be involved in decisions

about their children. In other instances, communities believed that DoCS did not do enough and that even if they reported child sexual assault to DoCS, DoCS would take no action.

There are few stable out-of-home care placements available for Aboriginal children and young people. In some instances children have been placed in out-of-home 'kinship' care but have remained exposed to risk of violence and sexual assault from someone within this care environment. DoCS need to thoroughly assess and monitor out-of-home care placements to ensure they are safe for children *before* a child is placed there. Where a stable 'kinship' out-of-home care placement exists, DoCS need to provide adequate financial and practical supports to enable it to continue.

Communities identified a need for some DoCS staff to improve their understanding of Aboriginal culture and engage more with local communities. Communities where there was an Aboriginal Child, Youth and Family Strategy worker were more positive about DoCS and knew more about the services DoCS provide. Communities recognised the importance of getting family support early but found that most early intervention and prevention programs were not Aboriginal specific and therefore were difficult to access.

DoCS acknowledge the impact of past practices and have made a commitment to 'encourage positive relationships and bridge cultures' with Aboriginal communities. It reports it is in the final stage of developing an *Aboriginal Strategic Plan* and the DoCS Executive have made 'a clear commitment to make Aboriginal child protection one of the organisation's top priorities over the next few years'. ACSAT believes that the implementation of *Aboriginal Strategic Plan*, and these commitments, should be audited by the NSW Ombudsman, in a similar way to its audit of NSW Police's *Aboriginal Strategic Direction*.

In addition, DoCS have attempted to employ more Aboriginal staff. However, many Aboriginal workers employed by DoCS report feeling overworked and overwhelmed and not properly supported. As a result, DoCS has difficulty attracting and retaining Aboriginal staff.

ACSAT found that: young people aged 16-18 years are falling through a service gap, with many communities not aware that DoCS are supposed to provide support to this age group; the *Negotiating Consent* package produced by the NSW Violence Against Women Unit could be made more effective by including an Aboriginal specific strand; and sexually transmitted infections (STI's) are not being reported to DoCS.

NSW Police

When examining NSW Police response to child sexual assault in Aboriginal communities, ACSAT found that NSW Police has acknowledged the tensions between police and the Aboriginal community and has begun to make inroads into addressing this tension and building relationships with communities through its *Aboriginal Strategic Direction*. When police are involved with the local Aboriginal community in a positive way, and respond appropriately to Aboriginal reports of crime, reports of child sexual assault from the community increase. Some positive relationships between police and Aboriginal communities were reported.

However, there are still a number of historical barriers that prevent Aboriginal people from reporting to police when they become victims of crime. An inappropriate response by police reinforces these barriers, further alienates Aboriginal people from the police and prevents them from reporting child sexual assault. Some inappropriate responses were reported, suggesting that some police do not have the skills required to work effectively with Aboriginal people, nor to respond to child sexual assault.

Aboriginal communities and NSW Police acknowledge the need for more Aboriginal police and more female Aboriginal community liaison officers. NSW Police are working on this through its Aboriginal recruitment strategy.

NSW Health

Overall, Aboriginal communities were positive about the quality of health services provided by NSW Health. Aboriginal community workers who took part in consultations were aware that NSW Health provided training about child sexual assault via the Education Centre Against Violence (ECAV) and they were very positive about ECAV's work. However, ACSAT also identified a number of barriers to NSW Health providing an effective response to Aboriginal experiences of child sexual assault.

ACSAT found that people were often confused about the roles of all the different health workers and were often not aware of the services provided by sexual assault services. Some consultation participants reported to ACSAT that the telephone counselling for child sexual assault, funded through NSW Health, is not culturally appropriate. Drug and alcohol and mental health services are not adequately responding to the possibility/likelihood that their clients may have experienced child sexual assault.

Some NSW Health services are difficult to access for Aboriginal people. It was often reported that there are not enough forensic services available, particularly in rural and regional areas. Similarly, there are not enough counsellors or support workers who are able to respond to child sexual assault in Aboriginal communities. Referral requirements restricted this access even more, resulting in victims often experiencing lengthy delays in accessing counselling and support. ACSAT also identified that it is unclear what sort of counselling models work well for Aboriginal people.

While NSW Health runs the only publicly funded treatment program (outside of a correctional facility) for adolescent sex offenders and pre-trial diversion treatment program for adult offenders of child sexual assault, these programs are only resourced to take a small number of participants and they haven't been very effective for Aboriginal offenders. ACSAT found that there are no publicly funded treatment programs for adults who sexually offend but are not implicated in the criminal justice system.

Consultations identified a need for a network of advocacy and support workers who can provide support to Aboriginal families who have experienced child sexual assault from disclosure through to recovery. NSW Health was considered the ideal agency to host this network as most communities reported a good rapport with their local health services.

Joint Investigative Response Teams

Overall, when community members were involved in a joint investigation response, they were satisfied with the coordination and management of cases. However ACSAT found that most communities remained confused about the functions of JIRT, the roles and responsibilities of the various JIRT officers and how a JIRT response differed from a DoCS or Police response. Few people realised that NSW Health was part of JIRT.

Comments from communities about JIRT responses suggested that some JIRT staff did not understand Aboriginal culture or the implications of child sexual assault occurring in an Aboriginal community. This was reflected in interviewing and communication styles that did not accommodate Aboriginal cultural practices and were not very effective with Aboriginal children

and young people. Families also reported that they were not kept informed about what was happening with the investigation and this made them feel as though they were not getting any response. These factors, coupled with the absence of Aboriginal people in JIRT service delivery, either as staff or community partners, makes the JIRT experience for Aboriginal victims and their families very difficult.

Many Aboriginal people have difficulty attending JIRT offices, particularly in rural and remote areas, as they often have to travel long distances and may not be able to access or afford transport. Where transport is required, community members said they would prefer to be transported by NSW Health, as most do not feel comfortable travelling with DoCS or Police.

Communities often reported that they didn't feel supported by JIRT. NSW Health needs to be more involved in the JIRT response by providing counselling and support services as soon as possible. ACSAT found that co-location of JIRT officers (i.e. DoCS and Police at the same premise) was an effective way of providing services as it promotes a positive working relationship between agencies and provides a more effective and convenient response to Aboriginal children and their families. ACSAT believes a NSW Health worker should also be positioned in all co-located JIRT offices. JIRT also needs to develop working relationships with local and regional support services that may already be providing support to families involved in a JIRT investigation. JIRT needs to let these agencies know how to provide support in ways that will not impact on the investigation.

When ACSAT spoke with a JIRT, or one of its member agencies, throughout the course of this inquiry it found that no one agency has overall responsibility for the coordination and leadership of JIRT.

Office of the Director of Public Prosecution

ACSAT found that where Aboriginal people had received support through the court process from an ODPP Witness Assistance Service (WAS) officer, they felt very supported. Most Aboriginal people said they would prefer to receive this support from an Aboriginal person. However, the small number of Aboriginal WAS officers employed means that access to this support is limited.

WAS officers and prosecutors need a greater understanding of Aboriginal culture and Aboriginal experiences of child sexual assault in order to provide effective support to Aboriginal victims of crime and their families and successfully prosecute offenders in child sexual assault matters where the victim is Aboriginal.

The Judiciary

During consultations, comments made to ACSAT about court processes suggest that some judicial officers have little understanding of Aboriginal culture and an incomplete understanding of child sexual assault and this impacts on their capacity to provide fair arbitration in these matters. The evaluation of the recent Child Sexual Assault Specialist Jurisdiction Pilot confirms this finding. It suggests that, despite having been given a comprehensive information manual on child sexual assault, some judicial officers were still not using all of the measures now available in law to support child witnesses going through the court process.

Attorney General's Department

When examining the Attorney General's Department (AGD) responses to Aboriginal experiences of child sexual assault, ACSAT found that a number of initiatives trialed in Child Sexual Assault Jurisdiction Pilot have begun to improve the experiences of children, young people and their families going through the court process.

However, ACSAT also found a number of barriers to Aboriginal people effectively accessing the criminal justice system. Court processes are still long and traumatic for Aboriginal children and their families and sentencing of offenders is perceived as inconsistent and often being too lenient. Across all services, there is a lack of culturally appropriate material explaining court processes and preparing people for court.

There are a number of barriers to Aboriginal victims of crime accessing Victims Services, including: a lack of awareness of Victims Service and the counselling and compensation they can access from this service; limited access to Aboriginal counsellors or counsellors experienced in working with Aboriginal people; difficulties physically getting to counselling sessions as people may have to travel long distances and may not be able to access, or afford, transport; and the cap on counselling provided under Victims Services Approved Counselling Scheme (22 hours) is too low for some Aboriginal victims of crime.

ACSAT found that the Victims Services Remote/Regional Coordinator positions, which would be key to promoting Victims Services to Aboriginal communities, are vacant and have been for some time.

Department of Corrective Services

When examining the Department of Corrective Services (DCS) response to child sexual assault in Aboriginal communities, ACSAT found that Aboriginal people are over-represented in the DCS system. In 2003/4, Aboriginal people made up approximately 19% of the average number of male offenders, and 28% of the average number of female offenders, in custody on any given day¹, yet they make up only 1.5% of the general population over the age of 15 years in NSW.

Research suggests there is a high likelihood that Aboriginal prison inmates are also survivors of child sexual assault. DCS reported that while some support may be provided to female inmates if they disclose a history of child sexual assault, male inmates are actively discouraged from addressing their issues while they are incarcerated. In addition, ACSAT found that DCS staff do not always respond supportively when disclosures of child sexual assault are made by inmates. Aboriginal communities believe this is a lost opportunity, as for some, the time away from family and community can provide the space they need to begin healing from the assault.

DCS does not try and identify survivors of child sexual assault on admission and provides no support programs that specifically address the issue. In DCS programs for inmates that aim to reduce the likelihood of re-offending, ACSAT found no specific reference to the experience of child sexual assault as a possible causal factor in offending behaviour. Data about inmates who are also survivors of child sexual assault is not collected, so DCS does not have an overview of the extent of the issue among the Aboriginal prison population.

In relation to Aboriginal sex offenders, ACSAT found that it was not known whether the sex offender programs being run in DCS facilities were effective for Aboriginal people. While DCS has

¹ Corporate Research, Evaluation and Statistics Unit, DCS statistical data provided to ACSAT 19 January 2006

developed an Aboriginal cultural program that runs in parallel with its sex offender program and aims to help Aboriginal inmates access the program information more effectively, ACSAT believes that an Aboriginal specific program needs to be developed.

Communities reported that the transition of a sex offender back into the community is often conducted without community involvement and without adequate support from DCS and this is putting children and young people at risk.

ACSAT found that DCS has a role to play in developing prevention and treatment programs for adults who display sexually offending behaviour but are not yet involved in the criminal justice system.

Department of Juvenile Justice

When examining the Department of Juvenile Justice (DJJ) response to child sexual assault in Aboriginal communities, ACSAT found that Aboriginal children and young people are grossly over-represented in the juvenile justice system. In 2003/4, Aboriginal children and young people made up 43% of the average number of children and young people in custody on any given day², yet they make up less than 2% of the general population aged 10 to 18 years³.

DJJ reports that if detainees disclose a child sexual assault history, or it is identified in the screening process of new detainees, they are referred to Justice Health for appropriate support and services. However, ACSAT found that the screening processes used by DJJ were unlikely to identify experiences of child sexual assault victimisation among young Aboriginal detainees. Any data about child sexual assault victimisation that is collected is not being collated or analysed in any clear way. In addition, most DJJ staff displayed limited knowledge of the dynamics of child sexual assault in Aboriginal communities and how experiences of child sexual assault might impact on the behaviour of the victim.

There are few programs specifically for Aboriginal detainees and while DJJ is in the process of developing more, none of these will address child sexual assault. Aboriginal detainees also appear to have limited access to child protection education. The impact of experiences of child sexual assault on criminally offending behaviour is not specifically addressed in any programs that aim to reduce the likelihood of re-offending.

It is not known whether sex offender treatment programs for juvenile sex offenders are working for young Aboriginal detainees as this needs to be evaluated and a more effective model may need to be developed. ACSAT also found that DJJ has a role to play in developing prevention and treatment programs for children and young people who display sexually abusive behaviour but are not yet involved in the criminal justice system.

Department of Education and Training

When examining the Department of Education and Training (DET) response to child sexual assault in Aboriginal communities, ACSAT found that overall, communities were positive about their local schools and educational facilities.

² NSW Department of Juvenile Justice, *Annual Report 2003/2004*

³ Standing Committee on Law and Justice, 2000

ACSAT found that while some communities said their local schools were performing their child protection responsibilities adequately, others reported that some teachers in their local schools were not reporting child sexual assault to DoCS even though they knew it was happening and they were mandated to do so.

Participants believed that teaching protective behaviours to Aboriginal children and young people was a vital component to addressing child sexual assault in Aboriginal communities and that schools were the ideal place for this learning to occur. However, they stressed that any teaching and learning about child protection and protective behaviours to Aboriginal children and young people must be culturally appropriate and would ideally involve the local community in its development and delivery. The *Negotiating Consent* package developed by the NSW Violence Against Women Unit was well received and should be run in all secondary schools.

There are a number of Aboriginal people employed within the DET system. However, the community believed that more Aboriginal staff are needed in student support roles, particularly counsellors and welfare positions. It is important that Aboriginal staff working in schools understand the indicators and dynamics of child sexual assault and the impact it has on communities so they can provide appropriate support to students, their families and the school. ACSAT found that further research is required about the specific support needs of Aboriginal children and the best ways to provide this support.

ACSAT found that the human services courses, welfare courses and counselling courses being offered through TAFE need to include teaching about child sexual assault in Aboriginal communities.

Department of Housing

When examining the Department of Housing (DoH) response to Aboriginal child sexual assault, ACSAT found that Aboriginal communities are often unaware that emergency and alternative accommodation is available to families in crisis as a result of child sexual assault.

ACSAT also found that DoH is often the first point of contact between Aboriginal communities and government agencies and that, this contact is regular. Communities believed it was possible that people could disclose child sexual assault to a DoH staff member and that it was crucial that they knew how to respond/refer appropriately and supportively.

Another issue raised was that many Aboriginal communities experienced chronic overcrowding in their houses and this increased the vulnerability of children.

Non-government organisations

When examining the response of non-government organisations (NGOs) to child sexual assault in Aboriginal communities, ACSAT found that communities believed that most NGOs provided a flexible service that responded to their needs. For many Aboriginal people, NGOs are the only service they will use.

Many NGOs reported feeling unsupported by government agencies. In addition, they felt that there is insufficient funding for them to provide a service that truly meets community need. There is a prevalence of one-off, project funding available and they believed that this leads to an ad hoc delivery of services.

While all NGOs involved in consultations were aware of their reporting obligations, some individual staff members indicated that they weren't sure what this meant. Community members also expressed concern that some NGOs weren't making a report even when one was clearly required. As NGOs are often the first, and in some instances the only, point of contact for Aboriginal people who have experienced child sexual assault, it is crucial that they are aware of their reporting obligations and are able to provide an effective response. As such, NGOs need access to training on the dynamics of child sexual assault in Aboriginal communities.

Staff of NGOs reported that they wanted clearer guidelines for instances where they were required to provide support to their own family and/or community.

Alternative models for addressing child sexual assault

ACSAT looked in detail at the model currently being implemented in NSW and then searched for areas within Australia and around the world where a modified or different model is being used to effectively respond to child sexual assault in Indigenous communities.

In this context, ACSAT considered the differences in approach between adversarial (where cases are tried in a court before an impartial judge and guilt must be proven beyond reasonable doubt), inquisitorial (where the court is actively involved in determining the facts of a case) and restorative (where key parties to the dispute meet with the aim of repairing harm) systems of dispensing justice, as well as identifying different ways of working with existing services and new ways of responding.

The alternative models being implemented outside of NSW that are discussed are:

- Specialist sexual offences courts in South Africa, where certain courts have been dedicated to prosecuting sexual offence cases
- Cherbourg Critical Incident Group in Queensland, where a group of community women meet with other community members and government agencies on a regular basis to develop and drive a local response to child sexual assault in the Cherbourg community
- The Community Holistic Circle Healing process of Hollow Water, Canada, a model developed by an Indigenous Canadian community where a disclosure of child sexual assault triggers an immediate *community* response which supports and protects the victim and begins 'working with' the offender to get them to admit to the offence. If the offender admits their guilt, they are offered the choice of going through the criminal justice system or remaining in the community and participating in an intensive community-based treatment and healing process. If the offender does not admit their guilt, the community hands them over to the police

ACSAT considers the discussion of alternative models to be introductory rather than definitive. The theory and principles behind each approach is complex and the appropriateness of various responses to child sexual assault in Aboriginal communities requires careful consideration and thorough research.

Creating the future

ACSAT has completed a thorough review of child sexual assault in Aboriginal communities and the way the NSW Government and non-government sectors respond. This review has identified the devastating effects that child sexual assault is having on Aboriginal communities and an overwhelming desire among community members for the abuse to stop and healing to begin. It has also revealed a comprehensive government system of child protection and criminal justice that has many barriers and gaps in the way services are provided to Aboriginal people. These barriers and gaps are rendering this response ineffective for most Aboriginal people who are seeking help to deal with child sexual assault.

ACSAT has formulated many recommendations that aim to overcome these barriers to access and eliminate service gaps. Once implemented, these measures will allow both the government and the community to work together more effectively and in turn, provide more positive outcomes to Aboriginal people.

However, ACSAT believes that more is required. Aboriginal communities and ACSAT believe that NSW needs an effective, cooperative response to child sexual assault that is *community driven* and works with government agencies in genuine partnership. This would require the development of a new model.

ACSAT believes that in order to truly realise the vision of Aboriginal communities, the recommendations of this Taskforce need to be implemented at the same time as a new model for responding to child sexual assault in Aboriginal communities is researched and developed.

RECOMMENDATIONS

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS

OUTCOME	RECOMMENDATION
<p>NSW Government provides efficient, effective, empathic and seamless service delivery to Aboriginal children, young people, families and communities who have experienced child sexual assault</p>	<p>Recommendation 11</p> <p>Establish an Aboriginal Child Sexual Assault Coordination Unit to:</p> <ol style="list-style-type: none"> a) Liaise with Government, NGO's and communities on Aboriginal child sexual assault policies and programs b) Develop and implement State wide Aboriginal child sexual assault evaluation policy framework c) Coordinate, monitor, review and advise on services provision for Aboriginal child sexual assault across the state d) Ensure that programs that address child sexual assault are developed within a holistic context accessible by the local community it services e) Comprehensively review the Child Protection Interagency Guidelines to specifically address issues relating to child sexual assault in Aboriginal communities <p>Recommendation 12</p> <p>Establish partnerships and formal protocols between Government and peak bodies to address child sexual assault including:</p> <ul style="list-style-type: none"> • Aboriginal Health and Medical Research Council • NSW Council of Social Services • Aboriginal Child, Family and Community Care State Secretariat • NSW Family Services Incorporated • Aboriginal Education Consultative Group • NSW Aboriginal Land Councils • Aboriginal Justice Advisory Council • Association of Children's Welfare Agencies

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS	
OUTCOME	RECOMMENDATION
Current NSW Government policies address the needs of Aboriginal communities to deal with the impacts and incidence of child sexual assault	<p>Recommendation 8</p> <p>Develop a state-wide evaluation policy framework to address child sexual assault in Aboriginal communities. It would include:</p> <ol style="list-style-type: none"> i. A continuum of NSW Government service delivery to ensure efficient and effective service delivery to Aboriginal children, young people, families and communities who have experienced child sexual assault ii. An evaluation framework that is agreed to by Government and community in line with: <ol style="list-style-type: none"> a. Child Protection Interagency Guidelines b. <i>NSW Children and Young Persons (Care and Protection) Act 1998</i> c. <i>NSW Crimes Act 1900</i> <p>Recommendation 10</p> <p>Include child sexual assault explicitly in <i>Two Ways Together, NSW Aboriginal Affairs Plan 2002-2012</i> through the Justice and Families and Communities Cluster groups and develop indicators to measure success in addressing Aboriginal child sexual assault in it</p>
Aboriginal communities are empowered to respond to child sexual assault that may be occurring in their community through the provision of education and the development and support of local initiatives	<p>Recommendation 5</p> <ol style="list-style-type: none"> a) The Commonwealth Government funds Family Violence Prevention Legal Service so that they are accessible to every community in the state b) Every Family Violence Prevention Legal Service includes a specialist child sexual assault position <p>Recommendation 7</p> <ol style="list-style-type: none"> a) The Commonwealth Government develops an economic strategy/funding strand to fund Aboriginal child sexual assault prevention initiatives b) Provide untied funds to child sexual assault programs

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS

OUTCOME	RECOMMENDATION
	<p>Recommendation 13</p> <p>A team is established within CCYP which includes:</p> <ul style="list-style-type: none"> • An Assistant Commissioner to provide leadership for the Commission’s work with Aboriginal children and young people and communities • 4 Aboriginal team members <p>The role of this team would be to:</p> <ol style="list-style-type: none"> i. Promote the wellbeing of Aboriginal children and young people ii. Improve the capacity of Aboriginal and mainstream services to involve Aboriginal children and young people in their organisations, particularly at a regional level iii. Raise awareness and improve the WWCC for Aboriginal people and organisations iv. Build safer Aboriginal organisations for children and young people v. Advocate for adequate service provision in mainstream organisations for Aboriginal children and young people <p>Recommendation 14</p> <p>Appoint a political figurehead to lead issue of child sexual assault in Aboriginal communities</p> <p>Recommendation 15</p> <p>Agency Chief Executive Officers are appointed to champion the issue of child sexual assault and advocate for communities who may be in crisis</p> <p>Recommendation 17</p> <p>NSW Government to establish funding stream to develop regional/ local initiatives to address or respond to child sexual assault issues in Aboriginal communities in a culturally effective manner. This may include, but is not limited to:</p> <ol style="list-style-type: none"> a) The establishment of negotiating tables whereby government, non-government agencies and the local Aboriginal community meet on a regular basis to address emerging issues and local child sexual assault responses b) Develop/empower “community champions” to advocate for child sexual assault in the local community c) Develop community protocols to address child sexual assault for each community d) Men, women, children and family cultural camps

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS

OUTCOME	RECOMMENDATION
	<p>Recommendation 18</p> <p>Develop a comprehensive education strategy for NSW that will make training available to government and non-government agencies, communities and children. (Each agency is responsible for their involvement in the development of this cross government strategy and is to also ensure that training of their staff is consistent with the strategy.)</p> <p>The issues to be addressed in this competency based education/training strategy include:</p> <ul style="list-style-type: none"> a. For government agencies: <ul style="list-style-type: none"> i. Racism/stereotypes, cultural dynamics around Aboriginal child sexual assault, Indigenous parenting techniques, local community issues/local context, importance of the Aboriginal community's involvement in addressing child sexual assault b. For non-government agencies: <ul style="list-style-type: none"> i. Child sexual assault dynamics, indicators, impacts and reporting, confidentiality issues, criminal Justice and government agency procedures c. For communities: <ul style="list-style-type: none"> i. Child sexual assault dynamics, indicators, impacts and reporting, criminal Justice and government agency procedures, public awareness d. For children and young people: <ul style="list-style-type: none"> i. Protective behaviours, positive relationships/mentoring, self-awareness <p>Recommendation 19</p> <p>Employ education/policy officers to identify gaps, develop, coordinate and evaluate this strategy in consultation with:</p> <ul style="list-style-type: none"> i. Government agencies including the Education Centre Against Violence (ECAV) ii. Centre for Community Welfare Training (CCWT) iii. Aboriginal Child, Family and Community Care State Secretariat (AbSEC)

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS

OUTCOME	RECOMMENDATION
<p>A proactive NSW Government works in partnership with Aboriginal communities and the Commonwealth Government to address child sexual assault</p>	<p>Recommendation 3 Develop a national statement addressing child sexual assault in conjunction with States and Territories</p> <p>Recommendation 4 a) Include strategies to address child sexual assault in the Bilateral Agreement through Key Focus Areas b) All relevant NSW and Commonwealth agreements include a statement addressing Aboriginal child sexual assault</p> <p>Recommendation 9 Negotiate policy and service provision with the Commonwealth regarding child sexual assault in Aboriginal communities, through the <i>Two Ways Together – Aboriginal Affairs Plan</i>, Bilateral Agreement, Indigenous Coordination Centres and Regional Coordination Management Groups</p> <p>Recommendation 12 Establish partnerships and formal protocols between Government and peak bodies to address child sexual assault including:</p> <ul style="list-style-type: none"> i. Aboriginal Health and Medical Research Council ii. NSW Council of Social Services iii. Aboriginal Child, Family and Community Care State Secretariat iv. NSW Family Services Incorporated v. Aboriginal Education Consultative Group vi. NSW Aboriginal Land Councils vii. Aboriginal Justice Advisory Council viii. Association of Children’s Welfare Agencies
<p>Addressing child sexual assault in Aboriginal communities is a priority on all local, regional, state and national agendas</p>	<p>Recommendation 6 Commonwealth Government is to work jointly with communities and NSW Department of Aboriginal Affairs to ensure child sexual assault is included in all regional and local plans</p> <p>Recommendation 16 a) Make child sexual assault a priority on the agenda of every Aboriginal community plan and include local strategies to address it b) Ensure that Aboriginal child sexual assault is a standing agenda item on regional planning and management meetings</p>

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS	
OUTCOME	RECOMMENDATION
<p>NSW Government continues to research and develop new evidence based initiatives to address child sexual assault in Aboriginal communities more effectively</p>	<p>Recommendation 1 Comprehensively research the relationship between family violence and child sexual assault in Aboriginal communities to develop policies and strategies that can address the issues in a holistic way</p> <p>Recommendation 2 Develop a framework for collecting data about child sexual assault that is adopted by all relevant agencies to clearly establish prevalence, patterns and trends relating to the incidence of child sexual assault and the outcomes of intervention in order to continuously identify gaps and improve service delivery</p> <p>Recommendation 100 Research is undertaken to investigate the relationship between child sexual assault victimisation and criminally offending behaviour in Aboriginal detainees (both adults and children and young people). This will provide an evidence base for future programming to address offending behaviour. It is to be undertaken by the Centre for Health in Criminal Justice</p> <p>Recommendation 119 In consultation with the Aboriginal community, research, develop and implement a new model to address child sexual assault in Aboriginal communities through the continuum of the legal process from initial investigation through to sentencing</p>
<p>ACSAT recommendations are strategically and effectively implemented</p>	<p>Recommendation 20</p> <p>a) Develop an implementation strategy within three months of release of the report and ensure that is endorsed by government. The strategy is to include:</p> <ul style="list-style-type: none"> i. formal responses by each government department to the recommendations ii. an evaluation framework to measure impacts of implementation including definitive time frames iii. a plan for public release of the report iv. a strategy for communicating with communities v. an independent evaluation mechanism. <p>b) Establish a steering committee to guide the implementation that includes Aboriginal community members</p>

OVERARCHING NSW AND COMMONWEALTH GOVERNMENTS

OUTCOME	RECOMMENDATION
	<p>Recommendation 21</p> <p>Legislate the NSW Ombudsman to conduct a review/audit of the implementation of the Aboriginal Child Sexual Assault Taskforce Recommendations in a holistic context. This review would consider whole of government responses as well as the responses of:</p> <ul style="list-style-type: none"> i. NSW Police ii. Department of Community Services iii. NSW Health iv. Joint Investigative Response Teams v. Department of Education and Training vi. Department of Corrective Services vii. Department of Juvenile Justice

DEPARTMENT OF COMMUNITY SERVICES

OUTCOME	RECOMMENDATION
DoCS achieves a positive and effective working relationship with Aboriginal communities	<p>Recommendation 22</p> <p>A strategic plan, vision or overrepresentation strategy is developed and effectively implemented to build effective working relationships with and improve service provision to Aboriginal communities</p> <p>Recommendation 23</p> <p>Develop a targeted, comprehensive communication strategy to inform Aboriginal communities and individuals of the roles and responsibilities of DoCS as an agency and of DoCS staff</p> <p>Recommendation 24</p> <ul style="list-style-type: none"> a) Each CSC implements a plan to improve relationships with the local Aboriginal communities in its area b) Provide ongoing comprehensive cultural training for DoCS staff at from a policy maker through to caseworker level. Training on local Aboriginal issues for caseworkers must be undertaken a minimum of every two years <p>Recommendation 25</p> <p>Encourage and support all DoCS caseworkers to engage with the local Aboriginal communities for at least ten hours per month and provide proactive support to communities, explaining about child sexual assault and its indicators, dynamics and impacts and how DoCS can help</p> <p>Recommendation 29</p> <p>Contact is made with reporters and families within 48 hours indicating whether the concerns raised in the report are being investigated</p>

DEPARTMENT OF COMMUNITY SERVICES	
OUTCOME	RECOMMENDATION
	<p>Recommendation 32 Provide targeted training to non-Aboriginal Helpline/Intake staff about Aboriginal communication styles</p> <p>Recommendation 40 NSW Ombudsman to monitor and audit NSW Department of Community Services to improve their relationship with and service provision to Aboriginal people. This will include the area's of:</p> <ul style="list-style-type: none"> i. Child Protection responses and intervention ii. Early Intervention and prevention iii. Out of Home Care Placements, including Kinship and other extended family and community care arrangements
<p>DoCS are able to fulfil their legislative obligations in a culturally respectful and effective way</p>	<p>Recommendation 27 Ensure that risk of harm assessments acknowledge potential risk to other family members, extended family and community</p> <p>Recommendation 30 Review after hours' responses to ensure that all Aboriginal child sexual assault reports are responded to immediately</p> <p>Recommendation 31 Improve access to crisis accommodation through Supported Accommodation Assistance Program</p> <p>Recommendation 33 Establish standards of practice for casework processes to ensure transparency in casework and that family, community and relevant agencies are kept informed of progress</p> <p>Recommendation 34 a) Develop and implement annual mandatory reviews of all DoCS supported placements. This includes:</p> <ul style="list-style-type: none"> i. Formal Out of Home Care arrangements ii. Kinship and extended family care arrangements and iii. Non Parental Care Allowance arrangements <p>A thorough placement assessment including the completion of the Working With Children Check must be undertaken for every DOCS supported placement</p> <p>Recommendation 35 a) Include young people between 16-18 years in service delivery through the Youth Policy currently being developed by DoCS b) Provide community education to young people, families and communities on the services available to young people between 16-18 years</p>

DEPARTMENT OF COMMUNITY SERVICES	
OUTCOME	RECOMMENDATION
	<p>Recommendation 37 Participate in the development of community-based sex offender treatment programs for Aboriginal children and young people an age 10-17yo that is accessible through self and agency referral and not dependant of the criminal justice system. The development of this program is in partnership with NSW Health and Department of Juvenile Justice</p> <p>Recommendation 38 Lead the development of a strategy/awareness campaign in conjunction with NSW Health that encourages the reporting of STIs in children and young people under the age of 16</p>
Aboriginal children, young people, families and communities are effectively supported, empowered and protected from child sexual assault	<p>Recommendation 26 Provide more child protection early intervention and prevention services to Aboriginal communities that specifically include community development/empowerment models</p> <p>Recommendation 28</p> <ol style="list-style-type: none"> a) Make it a mandatory policy to provide information and refer victims and families to support services upon receipt of reports of Aboriginal child sexual assault b) Target intake caseworkers in all CSC's to ensure that all Aboriginal child sexual assault reports are provided with appropriate referrals and responses even no investigation takes place c) Helpline to provide callers with information on counselling and support services <p>Recommendation 36 Review and amend the Negotiating Consent package to include:</p> <ol style="list-style-type: none"> i. An Aboriginal specific strand ii. Information on how to support and respond to friends who disclose sexual assault
DoCS provide a healthy and supported workplace for Aboriginal staff	<p>Recommendation 39</p> <ol style="list-style-type: none"> a) Provide professional supervision and debriefing (rather than just case-planning issues) to all Aboriginal staff b) Develop a specific program to support to Aboriginal staff and help them to balance the expectations of community, family and the department. This would include mentoring, cultural supervision and support mechanisms and may be delivered through the Professional Supervision Framework

NSW POLICE	
OUTCOME	RECOMMENDATION
NSW Police achieves a positive and effective working relationship with Aboriginal people	<p>Recommendation 41 The Ombudsman continue to monitor and audit NSW Police to improve their service provision for Aboriginal people</p> <p>Recommendation 42 a) Every LAC is to develop and implement a local plan for improving relationships with Aboriginal communities b) Officers are to proactively engage with the local community for at least 10 hours per month</p> <p>Recommendation 49 Review and further develop the Aboriginal Employment Strategy to recruit and retain more females in ACLO positions, including developing local employment strategies</p>
Police staff are able to understand and effectively respond to child sexual assault issues in Aboriginal communities	<p>Recommendation 46 In addition to the training received at the academy on entrance to NSW Police, provide annual cultural training for all officers as part of the local cultural awareness programs. This should include:</p> <ol style="list-style-type: none"> i. Local Aboriginal communities and issues ii. Youth issues iii. Interviewing and working with Aboriginal people iv. Child protection issues including child sexual assault <p>Recommendation 47 Provide comprehensive training on child sexual assault in Aboriginal communities to all DVLOs, Youth Liaison Officers and general duties police</p> <p>Recommendation 48 Provide specific and mandatory training to all ACLOs about child sexual assault</p>

NSW POLICE

OUTCOME

Police provide an efficient and appropriate response to reports of child sexual assault within Aboriginal communities

RECOMMENDATION

Recommendation 43

Reinforce the *Policy for the Investigation of Sexual Assault, Standard Operating Procedure number 2.7*, which prevents the arrest of an Aboriginal person on an outstanding warrant if they have come to the police station to report child sexual assault or to support someone who is reporting child sexual assault. This is to be done through:

- i. Ensuring that training of the existing policy occurs
- ii. Developing a community education strategy to inform the community of the policy

Recommendation 44

Develop a protocol for taking reports of child sexual assault from Aboriginal people, which includes:

- i. A clear understanding of the risk factors of underreporting
- ii. Automatic referral to appropriate support services
- iii. Adults survivors reporting their child sexual assault experience

Recommendation 45

Make it mandatory for all evidence briefs involving child sexual assault in Aboriginal communities are to be forwarded to the Office of the Director of Public Prosecution in accordance with Prosecution Guideline 14. Police **must** follow any direction or advice set out by the ODPP in relation to charging, further investigation or not to proceed with legal actions.

Recommendation 50

Develop a strategic plan to respond to and address issues of child sexual assault in Aboriginal communities

Recommendation 51

Ensure that standard data collection questions regarding the Indigenous status of both victims and offenders are asked and recorded as a part of the response procedures for child sexual assault

NSW HEALTH	
OUTCOME	RECOMMENDATION
Aboriginal communities understand the roles and responsibilities of NSW Health staff	<p>Recommendation 52 Develop an education/communication strategy on the different roles and responsibilities of health professionals in NSW</p>
Aboriginal people have access to culturally effective counselling and support services in a timely manner	<p>Recommendation 53 Develop a case coordination model that provides advocacy and support for families and victims and guides them through the process from disclosure to recovery. A case manager will be located in every Health region and the model would be developed in line with the Aboriginal Family Health Strategy</p> <p>Recommendation 55 Sexual Assault Services are able to accept and action referrals from victims, families and non-government agencies</p> <p>Recommendation 56 Employ, and retain, trained Aboriginal counsellors in each Health service area</p> <p>Recommendation 57 Investigate the viability of accrediting counsellors to work with victims of Aboriginal child sexual assault and subsequently develop a register of those accredited counsellors.</p> <p>Recommendation 58 Research the efficacy of counselling techniques to identify best practice models/principles for working with Aboriginal people, not limited to the individual but including extended family and community</p> <p>Recommendation 59</p> <ol style="list-style-type: none"> a) Establish/fund an Aboriginal specific, child sexual assault telephone counselling, support and referral service staffed by trained counsellors b) Provide training to Rape Crisis Centre and Dympna House about responding to Aboriginal people in a culturally sensitive manner

NSW HEALTH	
OUTCOME	RECOMMENDATION
Aboriginal children and young people are provided with forensic services in an efficient and effective manner	<p>Recommendation 62</p> <p>a) Develop a recruitment and incentive program to encourage medical practitioners to train in forensics, particularly in regional, rural and remote areas</p> <p>b) Resource the training and accreditation of medical staff in forensic procedures to fast track the process</p> <p>Recommendation 63</p> <p>Engage Aboriginal support people who are on call to health forensic services and who are able to support families through the process</p>
Aboriginal people have access to culturally effective sex offender treatment services (adult and juvenile)	<p>Recommendation 64</p> <p>Lead the development of community-based treatment programs (in partnership with DoCS and DJJ) for Aboriginal children and young people an age 10-17yo who displays sexually abusive behaviours. It is to be accessible through self and agency referral and not dependant of the criminal justice system</p> <p>Recommendation 65</p> <p>Lead the development of community-based sex offender treatment programs (in partnership with DCS) for Aboriginal adults that are accessible through self and agency referral and not dependant of the criminal justice system</p>
All Health staff and service providers are able to understand and effectively respond to child sexual assault issues in Aboriginal communities	<p>Recommendation 38</p> <p>Assist DoCS in the development of a strategy/awareness campaign that encourages the reporting of STIs in children and young people under the age of 16</p> <p>Recommendation 60</p> <p>a) Comprehensive training on child sexual assault as a causal factor for all drug and alcohol counsellors</p> <p>b) Development of service agreements between all sexual assault services and drug and alcohol services regarding common clients</p> <p>Recommendation 61</p> <p>a) Comprehensive training on child sexual assault as a causal factor for all mental health counsellors</p> <p>b) Development of service agreements between all sexual assault services and mental health services regarding common clients</p> <p>Recommendation 66</p> <p>Direct all frontline staff to:</p> <ol style="list-style-type: none"> i. Report all Sexually Transmitted Infections in children and young people under 16years ii. Refer/provide all children or young people who have been diagnosed with an STI as a result of “consensual” sex to sexual health counselling

NSW HEALTH	
OUTCOME	RECOMMENDATION
NSW Health provide employ, retain and support Aboriginal staff	<p>Recommendation 54</p> <p>Strengthen the <i>Aboriginal Workforce Development Strategic Plan</i> for Aboriginal staff and ensure that it contains strategies that include:</p> <ol style="list-style-type: none"> i. Mentoring/work placements ii. Trainee/cadetships for Aboriginal counsellors, health workers, education officers iii. Recruitment iv. Retention including improved clinical supervision and debriefing for sexual assault and Aboriginal health workers

JOINT INVESTIGATION RESPONSE TEAMS	
OUTCOME	RECOMMENDATION
JIRT achieves a positive and effective working relationship with Aboriginal people	<p>Recommendation 67</p> <p>Develop and implement a comprehensive targeted community education strategy that explains the roles and responsibility of JIRT, Police, DoCS and Health</p> <p>Recommendation 68</p> <p>Ensure that JIRT is involved in the delivery of community education of child sexual assault issues</p> <p>Recommendation 69</p> <p>Encourage and support all JIRT officers to engage with the local Aboriginal communities for at least ten hours per month and provide proactive support to communities, explaining about child sexual assault and its indicators, dynamics and impacts</p>
JIRT staff are able to understand and effectively respond to child sexual assault in Aboriginal communities in a supportive way	<p>Recommendation 70</p> <p>Provide local cultural awareness training for all JIRT officers every two years</p> <p>Recommendation 75</p> <ol style="list-style-type: none"> a) Develop a culturally appropriate interviewing model for working with Aboriginal children and young people b) JIRT Officers undertake refresher training in interviewing techniques and cultural competencies every two years <p>Recommendation 76</p> <p>Make a referral to NSW Health automatically at the time of once DOCS and Police Officers receive the initial report from the Helpline</p>

JOINT INVESTIGATION RESPONSE TEAMS

OUTCOME	RECOMMENDATION
	<p>Recommendation 77 JIRT to develop a formal relationship with relevant peak bodies and local support services to provide culturally adequate support for families and children going through the JIRT process</p> <p>Recommendation 78 a) Provide a formal response to reporters and families for all accepted JIRT matters b) Develop a communication protocol to keep families informed of progress in each matter</p> <p>Recommendation 80 JIRT to work in partnership with Victim Services and ODPP to develop culturally appropriate court preparation materials and information packages</p>
JIRT services are accessible to Aboriginal communities	<p>Recommendation 72 JIRT travels to communities rather than requesting Aboriginal people to attend an office</p> <p>Recommendation 73 Health provides transport (or brokers transport) to help with forensics and interviews. Families are not to be transported by Police or DoCS unless they have explicitly expressed a preference for this to happen</p> <p>Recommendation 74 a) Ensure that there is a collocated JIRT in each region b) Position health workers in all collocated JIRT offices</p>
JIRT employ, retain and support Aboriginal staff effectively	<p>Recommendation 71 Develop an Aboriginal recruitment and retention strategy in all three agencies with the target the ratio of Aboriginal JIRT staff employed to equal the ratio of Aboriginal clients accessing services</p>
JIRT recording systems are effective	<p>Recommendation 79 Ensure JIRT recording systems are digitalised</p>
JIRT services are effectively coordinated	<p>Recommendation 81 One agency CEO is delegated the responsibility for JIRT's overall strategic leadership and accountability</p>

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS	
OUTCOME	RECOMMENDATION
<p>Aboriginal child witnesses and their families are effectively supported through the court process</p>	<p>Recommendation 84</p> <p>a) All Aboriginal child sexual assault matters prosecuted by the DPP must be referred to an Aboriginal Witness Assistance Officer for support and assistance throughout the court process</p> <p>b) Employ more Aboriginal WAS Officers across NSW (to a total of 12), including:</p> <ul style="list-style-type: none"> i. 2 Senior Aboriginal WAS Officers to supervise and assist all Aboriginal WAS officers ii. 1 Aboriginal WAS Officer placed in each DPP Office, including: <ul style="list-style-type: none"> • Campbelltown • Parramatta • Penrith • Wollongong • Newcastle • Gosford • Bathurst • Dubbo • Wagga Wagga • Lismore <p>Recommendation 80</p> <p>ODPP to participate in the development of culturally appropriate court preparation materials and information packages in partnership with JIRT and Victim Services</p>
<p>ODPP staff are able to understand and effectively respond to Aboriginal children who have experienced child sexual assault</p>	<p>Recommendation 82</p> <p>Develop a competency based training package for prosecutors and WAS officers which includes:</p> <ul style="list-style-type: none"> i. Aboriginal child sexual assault indicators, dynamics and impacts ii. Cultural issues iii. How to interview Aboriginal children in line with traditional culture <p>Recommendation 83</p> <p>a) Consider the appointment of specialist child sexual assault prosecutors</p> <p>b) All Aboriginal child sexual assault matters are to be conducted by an experienced prosecutor</p>

THE JUDICIARY

OUTCOME	RECOMMENDATION
Judicial staff are able to provide fair arbitration with an understanding of child sexual assault in Aboriginal communities	<p>Recommendation 85</p> <p>Mandate judicial staff to undertake bi-annual training on child sexual assault in an Aboriginal context</p>
Judicial staff can access Aboriginal cultural advice to assist them in their arbitration	<p>Recommendation 86</p> <p>a) Aboriginal Community Justice Groups to make cultural advice available to judicial officers</p> <p>b) Employ a cultural officer within judicial commission to oversee its Aboriginal cultural awareness program and provide cultural advice to judicial officers as needed</p>

ATTORNEY GENERAL'S DEPARTMENT

OUTCOME	RECOMMENDATION
Victims Services provides culturally effective counselling services to Aboriginal people	<p>Recommendation 90</p> <p>Develop and implement a strategy to increase the number of counsellors experienced in Aboriginal issues. This strategy will include:</p> <ol style="list-style-type: none"> i. A register of counsellors experienced in counselling Indigenous clients ii. A register of Aboriginal counsellors iii. Provide mandatory competency-based training in Aboriginal child sexual assault. No counsellor is able to work with Aboriginal people if they have not successfully completed this training iv. A recruitment and retention strategy for Aboriginal counsellors <p>Recommendation 93</p> <p>Consider amending the <i>Victims Support and Rehabilitation Act 1996 No 115</i> to:</p> <ol style="list-style-type: none"> i. Remove the 22 hour cap for Aboriginal people ii. Include greater capacity to provide counselling to extended family and community
Victim Services programs are easily accessed by Aboriginal people	<p>Recommendation 91</p> <p>a) Establish partnerships with Aboriginal organisation to assist in transporting clients to counselling services</p> <p>b) Increase levels of outreach to Aboriginal clients</p> <p>c) Establish a fund/grant to assist in the transport of clients to counselling appointments, particularly in rural and remote areas</p>

ATTORNEY GENERAL'S DEPARTMENT	
OUTCOME	RECOMMENDATION
	<p>Recommendation 92 Develop an awareness campaign to encourage Aboriginal people to access Victim Services</p> <p>Recommendation 94 Develop a recruitment and retention strategy to employ/retain staff in Remote and regional areas. This may include the implementation of incentives such as a rural financial loading</p>
Culturally effective court preparation materials are available to all Aboriginal child sexual assault victims and their families	<p>Recommendation 80 Victim Services to lead the development of culturally appropriate court preparation materials and information packages in partnership with JIRT and ODPP</p>
Court matters are dealt with efficiently	<p>Recommendation 87</p> <ol style="list-style-type: none"> a) Closely monitor the state-wide roll-out of technologies used in the Child Sexual Assault Specialist Jurisdiction Pilot to ensure that the technologies are successfully installed in each court, all relevant court staff know <i>how</i> to use the technology and all relevant judicial officers know when to use the technology b) Continue to improve case management and pre-trial conferencing techniques developed as part of the Pilot and reduce the total length of the court process to less than one year
Sentencing is consistent and effective for Aboriginal sex offenders	<p>Recommendation 88</p> <ol style="list-style-type: none"> a) The Attorney General applies for a guideline judgment from the Criminal Court of Appeal which will set a sentencing range that the courts are expected to follow for child sexual assault matters, unless there are special circumstances b) Monitor the implementation of the Standard Minimum Non-Parole period (SMNPP) that applies to sexual offences committed after 1 July 2003 upon conviction following a trial <p>Recommendation 89 Establish a local Aboriginal advisory panel to be consulted on sentencing child sexual assault matters. Members may include a representative for the victim and the offender and could utilise existing Community Justice Groups</p>

DEPARTMENT OF CORRECTIVE SERVICES	
OUTCOME	RECOMMENDATION
Aboriginal sex offenders are able to access culturally effective programs	<p>Recommendation 65</p> <p>Participate in the development of community-based offender treatment programs for adults that are accessible through self and agency referral and not dependant of the criminal justice system. (The development of this program is to be led by NSW Health.)</p> <p>Recommendation 95</p> <p>Research and develop an Aboriginal specific sex offender treatment program:</p> <ol style="list-style-type: none"> a) Drawing on models such as the Aboriginal specific programs used in WA, Qld and SA b) Involving Aboriginal community members in the delivery of programs providing both male and female specific programming
Aboriginal people incarcerated are able to access programs and counselling to address historical issues of child sexual assault	<p>Recommendation 96</p> <p>Develop a protocol and programs for victims of child sexual who disclose whilst in the corrective system (including both community or custody orders)</p> <p>Recommendation 97</p> <p>Develop and fund a model to provide child sexual assault counsellors/ program coordinators in correctional facilities. Ensuring that:</p> <ol style="list-style-type: none"> i. There is a counsellor/program coordinator on site of every female correctional facility ii. Counsellors/program coordinators are available to all male correctional facilities
The Aboriginal community is aware of and involved in transition planning for Aboriginal sex offenders	<p>Recommendation 98</p> <ol style="list-style-type: none"> a) Research and develop a model and protocol for involving communities in transition planning for offenders b) Develop a communication strategy to inform community members of DCS sex offender programs and transitioning processes
Data is collated and analysed regarding historical child sexual assault	<p>Recommendation 99</p> <p>Develop and implement protocols to collect data of offenders on community and custodial orders to ensure that appropriate services are made available to the adult survivors of child sexual assault</p>

DEPARTMENT OF JUVENILE JUSTICE	
OUTCOME	RECOMMENDATION
DJJ clients receive appropriate counselling and support to address their issues of child sexual assault victimisation	<p>Recommendation 103 Develop a service delivery model which employs child sexual assault counsellors/sexual health workers in every detention centre to provide:</p> <ol style="list-style-type: none"> i. Child sexual assault counselling ii. Protective behaviours programming iii. Sexual health counselling <p>Recommendation 105 Include consistent and mandatory protective behaviours/personal safety in all detention centres programming and deliver this information in partnership with Aboriginal communities</p>
Sex Offender programs are accessible and effective for Aboriginal children and young people	<p>Recommendation 64 DJJ to actively work with NSW Health and DoCS to develop programs for Aboriginal offenders who have not yet come into contact with the criminal justice system in a crime prevention/early intervention capacity</p> <p>Recommendation 106 Examine the effectiveness of current sex offender programs for Aboriginal children and young people</p> <p>Research and develop specific sex offender treatment models to engage young Aboriginal sex offenders more effectively</p>
DJJ staff are able to understand and respond effectively to child sexual assault issues for Aboriginal clients	<p>Recommendation 104 Review current child sexual assault training to include Aboriginal specific issues</p> <p>Provide comprehensive training for counselling staff on indicators, impacts, dynamics and responses to child sexual assault in Aboriginal communities</p> <p>Provide extensive training on Aboriginal experiences of child sexual assault to all staff annually</p>
Data relating to child sexual assault victimisation is effectively collected and analysed	<p>Recommendation 101 Review current screening processes to ensure that appropriate child sexual assault victimisation questions are asked</p> <p>Recommendation 102 Standard data about victimisation of child sexual assault is collated, analysed and included in annual reporting processes so that any trends and needs can be identified</p>

DEPARTMENT OF EDUCATION AND TRAINING

OUTCOME	RECOMMENDATION
<p>DET staff are able to understand and effectively respond to child sexual assault issues in Aboriginal communities</p>	<p>Recommendation 107 Develop and implement a targeted training strategy to educate staff in the dynamics, indicators and impacts of child sexual assault in Aboriginal communities. This strategy is to include:</p> <ul style="list-style-type: none"> i. Annual staff training on Aboriginal specific child protection issues ii. Extensive child sexual assault education for Aboriginal staff to build their understanding and awareness
<p>Aboriginal children and young people have an understanding of child sexual assault through the development and delivery of a culturally effective Child Protection Education curriculum</p>	<p>Recommendation 108 a) Involve the local Aboriginal community in development and planning of locally relevant strategies and resources for the delivery of child protection education b) Involve Aboriginal people in the delivery of the child protection education curriculum</p> <p>Recommendation 109 Encourage/support schools to implement the <i>Negotiating Consent</i> Program in secondary schools</p>
<p>Aboriginal students are able to access support from Aboriginal staff within DET</p>	<p>Recommendation 110 Develop strategies, short and long term, to increase the number of Aboriginal staff in student support roles</p> <p>Recommendation 111 Research Aboriginal student support/ counselling needs, the efficacy and outcomes of current Aboriginal student support/ counselling provisions, and determine and undertake the best means for providing such support /counselling</p>
<p>Students undertaking human services and welfare courses through TAFE have an understanding the dynamics, indicators, impacts and responses of child sexual assault in Aboriginal communities</p>	<p>Recommendation 112 Department of Education Science and Training and Community Services and Health Skills Council to develop a TAFE subject/ component to be included in all Health and Welfare courses on child sexual assault in Aboriginal communities</p>
<p>There is an increase in the number of Aboriginal people with child sexual assault counselling qualifications</p>	<p>Recommendation 113 NSW TAFE to customise the child sexual assault counselling course to include:</p> <ul style="list-style-type: none"> i. Child sexual assault counselling in an Aboriginal context ii. Delivery of the course to Aboriginal people

DEPARTMENT OF HOUSING	
OUTCOME	RECOMMENDATION
DOH provides accommodation to Aboriginal children and their families who have experienced child sexual assault issues	<p>Recommendation 114</p> <ul style="list-style-type: none"> a) Provide emergency accommodation assistance to families in crisis because of child sexual assault b) Raise awareness in the Aboriginal community that Priority Housing assistance and emergency temporary accommodation may be available if a family is in housing crisis because of child sexual assault.
DOH staff are able to understand and effectively respond to child sexual assault issues in Aboriginal communities	<p>Recommendation 115</p> <ul style="list-style-type: none"> a) Develop and implement a policy to respond to Aboriginal families who experience child sexual assault b) All frontline DOH staff are provided training in the dynamics, indicators and responding to child sexual assault in Aboriginal communities <p>Recommendation 116</p> <p>Aboriginal client service officers are employed in all DOH areas where there is a significant Aboriginal population</p>
Aboriginal children and young people are not vulnerable as a result of their accommodation circumstances	<p>Recommendation 117</p> <p>Develop and implement a comprehensive strategy to address overcrowding in Indigenous homes</p>

NON GOVERNMENT ORGANISATIONS	
OUTCOME	RECOMMENDATION
NGO's are able to effectively respond to child sexual assault in Aboriginal communities	<p>Recommendation 118</p> <p>Every NGO working with Aboriginal children, young people, families and communities must develop and implement a reporting/response protocol to child sexual assault as part of any funding and performance agreement. It must include:</p> <ul style="list-style-type: none"> i. Response and reporting processes ii. A conflict of interest strategy iii. Promotion of statements about reporting within the agency and to clients



CHAPTER 1

Introduction



Overview

On 12 August 2003, the Aboriginal Child Sexual Assault Taskforce (ACSAT) was established as an independent body by the Honourable Bob Debus, NSW Attorney General, Minister for the Environment and Minister for the Arts. A list of ACSAT members can be found in Appendix 1.

Background

Sexual violence has been an issue of great concern to Aboriginal communities in NSW for a number of years. Within Aboriginal communities, it is known that the sexual assault of children and women is widespread and intergenerational.

The recorded rate of victimisation for assault, sexual assault and sexual assault against children is three times higher for Aboriginal people than the total population. The recorded victimisation rate for domestic violence related assault is six times higher. It is widely accepted that sexual assault and child sexual assault are under-reported crimes, particularly within Aboriginal communities. It is therefore likely that the recorded incidents of child sexual assault grossly under-represent the reality.

The implications of such high rates of sexual violence are devastating for Aboriginal people and communities alike. One long-term implication was demonstrated in the *Speak Out, Speak Strong* report. Conducted in 2002 by the Aboriginal Justice Advisory Council (AJAC), this report examined the needs of Aboriginal women in prison. One of its most disturbing findings was that 70% of the Aboriginal women in custody who were interviewed for the report said that they were victims of child sexual assault. More than 40% also said that they had been sexually assaulted as adults. The report found that the women who had been sexually assaulted were more likely to use drugs, particularly heroin, and that drug-related crime, for example stealing to get money for drugs, was the main reason for their imprisonment.

In 2001/02, the NSW Department of Aboriginal Affairs conducted a number of roundtable discussions involving service providers and Aboriginal community members to explore the issue of sexual violence in Aboriginal communities. One of the findings of the roundtable was that government agencies needed to improve the service they were providing to Aboriginal communities if they were to respond effectively to those who were experiencing sexual assault. One of the roundtable's recommendations was to establish a taskforce that reviews the services provided to Aboriginal communities in response to sexual assault and recommends strategies for making this service response more effective.⁴

Scope

ACSAT's Terms of Reference were to review the services provided by government and non-government agencies in response to child sexual assault in Aboriginal communities. However, this did not include investigating actual child sexual assault allegations. If ACSAT received information that suggested a child was at risk of sexual harm, it was referred to the appropriate government agency for investigation.

⁴ Recommendation 2 (2) from the Roundtable states: With respect to government services that address adult and child sexual assault establish a taskforce to: develop a coordination framework between and within government agencies to ensure service delivery is coordinated and heading in the same direction; develop a service delivery improvement plan between agencies to ensure timely and effective outcomes for Aboriginal people, with performance indicators consistent with the aims of Aboriginal communities; and establish benchmarks for organisations to promote best practice and accountability to both community and funding bodies. (From *Roundtable on Sexual Violence in Aboriginal Communities – Final Report*, Appendix 1, Page 2)

Key terms

ACSAT agreed to use the broad definitions stated below:

Aboriginal

In this report an Aboriginal person, means a person who:

- Is a member of the Aboriginal race of Australia, and
- Identifies as an Aboriginal person, and
- Is accepted by the Aboriginal community as an Aboriginal person

Child

A person who is under the age of 16 years as per the *Children and Young People (Care and Protection) Act 1998*.

Young person

A person who is aged 16 years or above, but who is under the age of 18 years, as per the *Children and Young People (Care and Protection) Act 1998*.

Child sexual assault

Child sexual assault is a crime under the *Crimes Act (NSW) 1900*.

Child sexual assault occurs whenever an adult, adolescent or older child uses their power and authority over a child, or takes advantage of the child's trust and respect, to involve them in a sexual activity.⁵ It includes touching, fondling and/or masturbation, having the child touch, fondle or masturbate the abuser, oral sex performed by the child, or on the child by the abuser, and anal or vaginal penetration of the child. It also includes prostitution and exposure to, or participation in, pornography.

The term 'child sexual assault' is used in this report in preference to the term 'child sexual abuse'. Use of the term 'assault' highlights the true nature of the offence, avoids minimisation of the abusive acts and forces the 'abuse' to be treated as a criminal assault.⁶

Family violence

Family violence is the term used to describe all forms of violence (including physical, emotional, sexual, sociological, economic and spiritual) in intimate, family and other relationships of mutual obligation and support⁷. In Aboriginal communities, family means the whole family, including the extended family. The Aboriginal and Torres Strait Islander Commission (ATSIC) describe family violence as⁸:

⁵ Definition from http://www.kids.nsw.gov.au/info/1023240040_26970.html as at April 3 2005

⁶ As per a recommendation of the 1995 report of the Victorian Parliamentary Crime Prevention Committee

⁷ Partnerships Against Domestic Violence 1998, cited in Gordon, Hallahan and Henry (2002)

⁸ This definition is from the 1992 ATSIC report *Tjunparni: Family Violence in Indigenous Australia*

'The beating of a wife or other family members, homicide, suicide and other self-inflicted injury, rape, child abuse and child sexual abuse, incest and the sale of younger family members for misuse by others as a way of obtaining funds for drink or gambling. When we talk of family violence we need to remember that we are not talking about serious physical injury alone but also verbal harassment, psychological and emotional abuse, and economic deprivation, which, although as devastating, are often more difficult to quantify than physical abuse.'

Method

The Terms of Reference for ACSAT state that it is to consult widely, including with representatives of Aboriginal communities, youth, health services, children services, counselling services and related organisations. This guided the manner in which ACSAT gathered information and informed the comprehensive consultation plan developed in February 2005.

Informing the community of ACSAT

ACSAT agreed that before it began its consultation and research process, it needed to let the community know what it was doing, what it hoped to achieve and how communities, individuals or agencies could provide it with information. To do this, ACSAT used the media. It placed advertisements in a range of local, regional, state and national newspapers inviting individuals and agencies to provide submissions. A number of local, regional and national radio and television programs interviewed ACSAT members to talk about the consultation process and encourage community members to make oral or written submissions.

Gathering information

Information was gathered in the following ways:

1. Review of literature and relevant research

At the outset of the inquiry, a comprehensive literature review was completed and used to inform ACSAT and help set directions. This included local, national and international research into child sexual assault in Indigenous communities and can be found on the CD accompanying this report or at www.lawlink.nsw.gov.au/acsat.

2. Written submissions, and other information, from government agencies

Written submissions from government agencies were formally requested by the Attorney General in March 2005. Agencies were asked to respond to the ACSAT Terms of Reference and also, answer questions specific to their agency. Eighteen written submissions were received.

Any further information required from agencies was requested through the Whole of Government Senior Officers Group that supported ACSAT. All requests were well received and information was provided in a timely manner.

3. Written submissions from non-government agencies and individuals

Written submissions, either by invitation or by the submitters own initiative, were received from:

- Five individuals; and
- Nine non-government agencies

4. Consultations with Aboriginal community members

ACSAT wanted to consult widely with Aboriginal people and make sure that they visited a cross-section of communities in NSW. After review of a number of factors⁹, the following 14 communities were selected: Newcastle, Blacktown, Redfern/La Perouse, Tamworth, Moree, Lismore/Casino, Kempsey, Albury, Leeton, Orange, Broken Hill, Bourke, Bega and Nowra/Wreck Bay. However, due to the demand by other communities, ACSAT visited a total of 29 Aboriginal communities across NSW. Additional communities visited include; Brewarrina, Toomelah, Forbes, Batemans Bay, Narrandera, Wallaga, Menindee, Mt Druitt, Walgett, Tabulam, Balranald, Tumut and Bowraville.

Over 300 people were consulted. This included both individual community members and representatives from government and non-government agencies.

ACSAT noted that community interest in its work grew as the consultations continued. However, time and resource restrictions prevented ACSAT from consulting with all communities that requested it. If ACSAT could not visit a community, it advised the community to make a submission in writing. ACSAT acknowledges that this is not the best way to obtain information from Aboriginal communities.

Supporting communities during consultations

A consultation strategy was developed to ensure that people who wished to provide ACSAT with information were able to do so in a safe place and in a confidential manner. ACSAT also needed to make sure that people who spoke with them were appropriately supported through this process. These safety measures were put in place through:

- The **Senior Officers Group**, set up to coordinate support to ACSAT across government and consisting of senior departmental staff from: Department of Community Services; Attorney General's Department; NSW Health; NSW Police; Department of Corrective Services; Department of Juvenile Justice; Commissioner for Children and Young People; Department of Aboriginal Affairs; and Department of Education
- A **Whole of Government Working Group**, set up to provide support to communities during the consultation process and to advise ACSAT of the services available at individual locations. This group would meet prior to ACSAT visiting a community to discuss the services available, any gaps that may exist (for example, if there were no sexual assault counsellors in the area) and how to address these gaps to ensure the immediate safety and well-being of community members who chose to participate in ACSAT consultations. The group consisted of operational level officers and included all the agencies listed in the Senior Officers Group

The consultation process

For each consultation, ACSAT visited the community and held a public information session, briefing the community on the role of ACSAT and discussing some of the more general, local community concerns about child sexual assault. Approximately two weeks later, ACSAT members returned to the community to conduct formal, private consultations with community members who requested it.

⁹ ACSAT considered the following factors: population; the number of reports of Aboriginal child sexual assault made to Department of Community Services (DoCS); the number of convictions of child sexual assault within a community; a communities request for consultation; whether the community was stable or transient; geographic location, i.e. was it remote, rural, regional, metropolitan; and community supports that were available, i.e. was there an Aboriginal Legal Service, Family Health Worker or DoCS Office accessible to the community.

All those who were consulted were advised that their information would be respected and kept confidential and their recommendations would be reflected in the report. Most community consultations were conducted using a free narrative form with the ACSAT facilitator using a community questionnaire as a guide for discussion.

A consultation kit was developed to help consultation facilitators and as a guide for anyone wanting to make a written submission. This contained a community questionnaire, a fact sheet, the Terms of Reference for the project and contact details for ACSAT.

Confidentiality

ACSAT established strict information management policies and procedures to ensure that material provided to ACSAT was handled with confidentiality at all times. The Crown Solicitor advised ACSAT that all transcripts and submissions from communities, individuals and non-government organisations are exempt from the *Freedom of Information Act 1989 (FOI)*. (This advice is included in Appendix 2).

Confidentiality and ACSAT's information management policies were clearly explained to everyone who considered providing information. An information release form was developed that outlined what information would be used and how this would be used and that confidentiality would be maintained. (A copy of the information release form can be found in Appendix 3.)

Consultations with Aboriginal communities, government and non-government agencies were recorded either on tape or by hand. All taped transcripts were marked confidential, recorded on a register and kept in a secure file.

Quotes from consultations and written submissions have been used throughout the document to illustrate issues raised and points made by communities. All quotes are attributed to a particular consultation session or written submission. This is identified in the report by a submission, transcript, information session or non-audio recorded consultation number. Appendix 4 contains a register of community information, itemising submissions, transcripts, information sessions and non-recorded consultations and providing detail of participants, agencies and/or locations where participants gave permission to do so.

5. Consultations with government and non-government agencies

ACSAT consulted a number of government and non-government agencies in NSW, either at the request of the agency or through the initiation of ACSAT.

Outside of NSW, ACSAT consulted with senior officers of the Western Australian Government, and members of the Gordon Inquiry who published *Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities in 2002*, to find out how the recommendations of this Inquiry were accepted and implemented.

ACSAT also consulted with the Critical Incident Group in Cherbourg, Queensland. This is an Aboriginal community group established to address child sexual assault within their own community.

Progress report

On 31 July 2005, a progress report was publicly released that outlined the consultation process and reflected the issues and themes emerging after consultation with a number of Indigenous communities. This report did not report any specific findings or make recommendations.

This report was made available to individuals, communities, government and non-government agencies. It was also published on the ACSAT website at: www.lawlink.nsw.gov.au/acsat

Website

ACSAT has a portal on the NSW Lawlink Website. It can be accessed at www.lawlink.nsw.gov.au/acsat. This site was developed to provide information on the progression of ACSAT, and information such as fact sheets, Terms of Reference, frequently asked questions, a questionnaire to guide community responses, progress report and literature review.

Cessation of the Taskforce

At the conclusion of the report process, ACSAT will cease to exist. As such, all records and fixtures shall be returned to the Attorney General's Department. All files and documentation will be archived and kept as per the *State Records Act 1998*. Further correspondence relevant to ACSAT should be directed to:

NSW Attorney General's Department
GPO Box 6
SYDNEY NSW 2001
Telephone: (02) 9228 8307



CHAPTER 2

Breaking the silence



PART 1: CHILD SEXUAL ASSAULT — THE ABORIGINAL COMMUNITY PERSPECTIVE

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 - Lack of community engagement with the issue
 - Lack of support for community driven solutions
 - Inadequate responses from service providers

Overview of findings

- Child sexual assault was described as a 'huge issue' in every ACSAT consultation
- Both boys and girls were known to be victims
- The perpetrators were most often described as men who were grandfathers, fathers, stepfathers, uncles, cousins or brothers of the child. Often, they were also reported as being important people within the community
- Child sexual assault in Aboriginal communities was often described as intergenerational and this was explained in a number of ways
- Child sexual assault was not well understood in Aboriginal communities, which meant it often went 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
- It was described as common for perpetrators to 'groom' their victims
- Child sexual assault in Aboriginal communities is seldom reported. Communities acknowledged that reporting was difficult for all victims of child sexual assault. They felt that this difficulty was compounded for Aboriginal children by factors such as complex extended family and community networks; geographic isolation; mistrust of the service system; and poor responses from existing service providers
- Community attitudes as to what should happen to perpetrators varied
- Child sexual assault has a devastating and life-long impact on those who experience it, their families and communities. Consultation participants believed that child sexual assault was a key, underlying factor in the high levels of violence, substance abuse, criminally offending behaviour and mental health issues that many Aboriginal communities are grappling with today. Research supports these links
- Communities and research identified a number of factors that influenced the incidence of child sexual assault. These include: substance abuse; social and economic disadvantage; exposure to pornography and a sexualised society; the 'normalisation' of violence (or intergenerational cycle of violence); the presence of family violence; unresolved trauma and grief; breakdown of family and community structures; lack of community engagement with the issue; lack of support for community-driven solutions; and inadequate responses from service providers

Introduction

As its starting point for the inquiry process, ACSAT spoke at length with Aboriginal communities across NSW. Initially, ACSAT planned to visit 14 communities. However, as the inquiry progressed, interest in the work of ACSAT grew and many more communities invited ACSAT to talk with them. Finally ACSAT visited a total of 29 communities. Fifty-seven individual or group consultations were undertaken across NSW involving over 300 people.

Those who took part in the consultations were asked to talk about child sexual assault in their communities. Discussions were conducted in a free-form narrative style and covered issues such as the extent of the problem, how much people knew about child sexual assault, what they knew about the services that were available to help them address the issue and what were their experiences, or perceptions, of these services. People were also asked if they had any ideas about what could be done and how services could be improved.

The consultations revealed many consistencies across communities, particularly the extent of the problem, the ways in which it was damaging the community and the overwhelming need and want to do something to stop the assaults. Also consistent were the community's experiences and perceptions of service providers and many of the suggestions about how services could be improved.

However, there were also differences. Factors such as community and family dynamics, geographic location, levels of substance abuse and the community standing of the perpetrators all influenced the patterns of child sexual assault in a community. These differences highlighted a need for a holistic response that can be delivered flexibly to meet the specific needs of each community.

The extent of child sexual assault in Aboriginal communities

Everyone who spoke to ACSAT as part of this inquiry said that child sexual assault was a huge issue in their community and often used words and phrases such as 'massive', 'epidemic' and 'it's a way of life' to describe the extent of the problem.

The focus of this inquiry

This Taskforce has been charged with examining child sexual assault in Aboriginal communities and the barriers that Aboriginal families experience when trying to access services that can help.

ACSAT acknowledges that child sexual assault is devastating for *anyone* who experiences it, and for their families and communities. ACSAT also acknowledges that all children and young people experience some barriers when trying to access services and that the services to address child sexual assault are limited.

In focusing on child sexual assault in Aboriginal communities, ACSAT does not, in any way, intend to minimise the experience of non-Aboriginal children and young people.

ACSAT hopes that the service improvements recommended as a result of this inquiry will be of benefit to all children and young people and their families.

When asked if they could think of a family in their community that had not been affected by child sexual assault, no Aboriginal person who took part in the consultations could. As one participant recalled:

‘It doesn’t matter who you are or what your situation is – it happens.’ *Transcript 38*

Who are the victims of child sexual assault?

Both girls and boys of all ages were known to be victims of child sexual assault. While participants did not believe that there was any difference in the severity of sexual assault if it was experienced by boys, it was suggested that it might be ‘harder for them to come out with it’.

Who are the perpetrators of child sexual assault?

The perpetrators of child sexual assault in Aboriginal communities were most often described as Aboriginal men who were grandfathers, fathers, stepfathers, uncles, cousins or brothers of the child.

Some communities also reported instances where non-Aboriginal men were perpetrators, coming into the community (often brought by Aboriginal men) to trade drugs and/or pornography for sex with children.

The perpetrators who were Aboriginal men were often described as also being important people within the community. As one participant said:

‘they’ve got a known history of being perpetrators, they’ve also got a known history of being good blokes. They’re often ex-farm managers, they’ve got good – like they’ve always been hard working, good jobs...and they haven’t been charged for any of it, you know.’ *Transcript 37*

Research suggests that abuse perpetrated by someone who is known to the child tends to be more systematic, often continues over a number of years and may include a large number of children in the same area. The abuse is often not detected as the child is afraid of reporting and this leaves the perpetrators to sexually abuse even more children.¹⁰

The nature of child sexual assault in Aboriginal communities

Child sexual assault is intergenerational

Child sexual assault in Aboriginal communities was often described as intergenerational and this was explained in a number of ways. In some communities, the perpetrators were identified as older men who had sexually assaulted generations of children. Participants could recall perpetrators who had assaulted at least three generations of children.

Participants also suggested that child sexual assault was being passed from generation to generation. Some men who had been victims of child sexual assault themselves and were now brothers, uncles, fathers and grandfathers had become perpetrators. Some women who had been victims of child sexual assault and were now grandmothers and mothers were not protecting their

¹⁰ Sanderson, C. (2004), *The Seduction of Children: Empowering Parents and Teachers to Protect Children from Child Sexual Abuse* Jessica Kingsley Publishers New York.

own children and in some instances, even seeing sexual assault as ‘just something you had to go through’. As one participant recalls:

‘A young mum. She said to me, “Well, you know, she should put up with it, you know. I had to put up with it, why can’t she?” Like it’s a rite of passage, like that’s acceptable.’ *Transcript 13*

Communities expressed consistent concern about the high incidence of sibling abuse. One participant suggested that this type of abuse sometimes started when the children lived with family violence and the children would get into bed together for comfort. Another suggested much more deliberate strategies of abuse, reporting:

‘It’s not just men against women and men perpetrating against children, it’s sibling groups as well. We have, you know, siblings who actually sexually abuse their siblings and I am finding that those kids they have... that they quite cleverly, through a process of grooming, can be the perpetrator for a very, very long time with nobody actually discovering until some sort of you know disclosure, innocent disclosure of the victim.’ *Transcript 2*

In another consultation, participants talked about a situation where a whole generation of children within one extended family were abused by the same perpetrator over a long period of time.

Child sexual assault is not well understood in Aboriginal communities

Participants who spoke to ACSAT were aware of the extent of child sexual assault and that it was devastating their communities. Most had some personal experience of it, either as a victim, or family member or friend of a victim, or as someone who was a support worker.

There was a clear understanding among participants of the threats and intimidation used by sexual offenders and the impact that this power had over children:

‘...there would be nothing more threatening than sitting there looking at a perpetrator, because perpetrators threaten. They threaten, you know, that “You’ll go to a home”, that “I’ll kill you, I’ll kill your mother, I’ll do this, I’ll do that”’. *Transcript 29*

‘I mean adults are so powerful, that’s the perception of kids and they do threaten these children and they become victims and they not only become victims as a child, they grow up to become victims too.’ *Transcript 24*

All participants were clear and resolute — they wanted the violence against their children to stop and healing for themselves and their people to begin. However, they also acknowledged the complexity of the issue and expressed a difficulty in knowing where to start and how to help.

Participants believed that there was a general lack of awareness in Aboriginal communities about the dynamics of child sexual assault — what it was, how it occurs, the way it impacts on individuals, families and communities and that it is a crime, not a normal way of life.

This lack of awareness contributed to a culture of silence and denial that, according to participants, is one factor that enables the sexual abuse of children to continue unchecked. In this culture of silence and denial, child sexual assault becomes a taboo subject that no one feels able to break, even if they want to. As no one in the community is talking about it, nor condemning it, perpetrators actions are not challenged in any way and children are unable to discover that what is happening is wrong nor identify anyone they could talk to about it.

In addition, participants reported that it was common for some community members, who did not understand the dynamics of sexual assault, to side with the perpetrator, who was also their husband/boyfriend/uncle etc, over the child. In such instances, children were often accused of ‘making it up’ or ‘just saying it to make trouble’.

Perpetrators of child sexual assault often 'groom' the children they target

Aboriginal communities are extended family networks based on principles of caring and sharing. It is common for community members to give each other gifts and for families to look out for, and support, each other. This includes caring for each other's children on a regular basis.

Participants described how perpetrators would often exploit and manipulate this atmosphere of trust and giving. They would take a special interest in the child or children they targeted, 'grooming' them by giving them things like gifts or money or lollies or doing special things with them, like taking them to events or away on holidays. Because the practices of giving and sharing were common among all community members, it was often difficult to detect the particular grooming actions of a perpetrator.

In addition, participants noted that often the perpetrators who were 'grooming' children were people in respected community positions. These people had the means to be generous and financially supportive to families and children and their position in the community ensured they had community trust.

Child sexual assault in Aboriginal communities is seldom reported

Child sexual assault is difficult for anyone who has experienced it to talk about, let alone report. Participants spoke of many factors which made it difficult for children to report child sexual assault. These include: fear, shame and guilt; lack of understanding that what was happening was sexual assault; threats from the perpetrator; pressure from the family; confusion about their relationship with the perpetrator; fear of not being believed; actual experiences of not being believed and disclosures not being acted upon; having no-one to tell; and/or not knowing who to tell.

Participants also believed that these difficulties were compounded for Aboriginal children because of factors such as: complex extended family and community networks; geographic isolation; community-wide mistrust of the service system; and poor responses by current service providers. Specifically, some of the issues that impact on reporting of Aboriginal child sexual assault discussed in consultations include:

Complex extended family and community networks

In Aboriginal communities, the extended family is important and communities are mostly made up of extended family groups who are usually interconnected in some way, for example through marriage. It is important to note that many families and communities are very supportive of children who disclose child sexual assault and will immediately protect their children and ensure the abuse stops. As one participant reports:

‘...What I wanted was just something to say this happened and this support was here, because I suppose when it came out, we ostracised this man from the community’ *Transcript 27*

However, the interface between community, family and individuals means that the dynamics of child sexual assault, and the effect of reporting, impact on the entire cultural network. There can be life-changing implications to reporting, especially when the offender is part of that community or family. As one participant reports:

'We've lost a lot relationships wise, so anyone who tries to do something about it, it has a lot of repercussions, you know... and sometimes people just aren't strong enough to go up against, you know, there can be a community or family backlash.' *Transcript 26*

Many people talked about experiencing pressure from their own extended family not to report, with consultations suggesting that often children who did tell a family member were either not believed or not listened to. For example, as one participant recalls after they disclosed child sexual assault to family members:

'A couple of aunties turned around and said, 'Oh, they're lying, they're bullshit, it never happened. That didn't happen.' *Transcript 21*

Another participant reported that:

'The young girls are telling the grandmothers, but the grandmothers are not listening, because it most probably happened to them and no one listened to them and they're saying to these young little girls, they're saying, "Go away, you're making trouble for the family. But they're not; they're actually trying to reach out to their grandmothers for help.' *Transcript 15*

And another:

'My word wasn't good enough as a child and I suffered through that for a lot of years and the other children in my community also did as well. We also disclosed to our relatives and we got the biggest hiding ever because it was like no, he's not like that, or she's not like that da-da-da-da, don't you talk about your uncle, don't you talk about your grandfather and whoever it might be, and so we felt, well, we had no-one, you know what I mean? And I still see that, the silence is still not completely broken today. The clientele, the clients that come through the door through juvenile justice or whether it be the women that come in through the door today here, you know, with family level of non-trusting and you have to really penetrate that barrier, you know, and the barrier is still thick these days.' *Transcript 1*

Family and/or community rifts arising from disclosures can be very long-term and sometimes permanent. One participant reported being at a funeral recently, some ten years after disclosing child sexual assault, and seeing one of her aunties, who was also the perpetrator's sister. She reports:

'I went up to say hello to her and she turned on her heels and walked away from me. And I just think, you know, this is how we, as a community, are dealing with it, that they're siding with the perpetrator and they're blaming me for what happened and that is happening today and it's sad because it goes back to educating people about child abuse.' *Transcript 27*

Participants spoke strongly about the fear of, or actual, repercussions from the perpetrator or the perpetrator's family. If one community member discloses child sexual assault and puts another community member at risk of being incarcerated, it is possible (even likely) that other community members could ostracise or even harm the family or child who spoke out. One participant reported an instance where a child had disclosed experiencing child sexual assault and the next day, the child's family home was burnt down. Another participant reports:

'...disclosures in our community, you know, if a child discloses it's the whole family that's sort of... targeted, you know.' *Transcript 33*

Geographic isolation

Many Aboriginal communities are geographically isolated, often without telephones and limited access, if any, to transport and support services. Information flowing in and out of these communities is often restricted and may be monitored or controlled by community leaders, some of who may also be perpetrators.

Such isolation means that communities may receive little or no information about child sexual assault and what they can do about it. It also means that people are not able report child sexual assault, even if they want to.

Mistrust of the service system

Aboriginal communities have a history of experiencing oppression from service providers set up to 'protect them'. There is a community-wide mistrust and fear of 'outsiders' and a reluctance to involve them in communities in any way. Communities can exert considerable pressure on individuals and families not to report, with comments such as 'you'll make trouble for the whole mob' or 'he will end up in gaol' reported as common.

Poor responses from existing service providers

Participants often spoke of the importance of a positive response when a child first discloses child sexual assault. They talked of the strength a child needed to talk about an assault and how frightening it was for them to talk with strangers, often in unfamiliar surroundings and sometimes without support from their community.

They also spoke of how common it was for these children to receive a poor response from current service providers. As one participant said:

'...and these poor little girls, who were strong, who have stood up and done something about it and then these freaking, all these government departments are not doing a thing.' *Transcript 32*

Participants said that children were often required to travel long distances to attend services and then they had to talk to service providers who they described as sometimes being 'rude', 'ignorant' and 'hopeless'. The following responses were reported as common:

- Service providers responding inappropriately, for example in some instances children were going to the police to report child sexual assault and instead of police taking their statements, they were arresting the child's parents for outstanding warrants
- Service providers listening to the children and then telling them there was nothing they could do because the statement was not clear or there was not enough evidence
- Service providers making children repeat their story over and over again
- No-one explaining to the children, or to the people supporting them, what the process was or what would happen next
- No follow-up once the report was made, with no one knowing whether the incident was being investigated
- Long waiting times for incidents to be investigated and for perpetrators to be charged. Sometimes the abuse continued until the perpetrator was charged

Some community members believe that more Aboriginal people would talk about child sexual assault if they were just asked the right questions in an appropriate way. For example, one participant stated that they used a screening questionnaire for all the young parents that accessed their service. This questionnaire included a question about their experiences of sexual assault.

They report:

'...I think out of 95 young mothers, there were 37 who came out with, during the six week program, that they had been the victims of sexual abuse.' *Transcript 12*

Community attitudes to perpetrators varied

All those who took part in the consultations condemned the actions of perpetrators of child sexual assault and accepted no reason as an excuse for their actions. However, participants varied on how they believed communities, and society, should respond to perpetrators.

Some believed that perpetrators could not be treated and should just be run out of town or locked up for a very long time. Others, while still believing the perpetrator must stop offending and be accountable for their actions, were more optimistic and believed that treatment and rehabilitation was possible. They 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. As one participant reports:

'Sometimes, you know, some members of the Aboriginal community have said to me that they'd prefer a more holistic approach where somehow the perpetrator is included in the process, like there is a clear division between working with the victims and, you know, and the perpetrators are over there, that quite often they're concerned that there is a need for some resolution within the family and that doesn't happen the way the system sort of sends them off in opposite directions and I've heard indigenous people talk about the model that's used in Canada in the indigenous communities there.' *Transcript 16*

A number of community members stressed the importance of having a clear understanding of the dynamics of child sexual assault before making any decisions about treatment of perpetrators. They were concerned that, in some instances, people were sympathetic to the perpetrator because they didn't really recognise nor understand child sexual assault and the long-term impacts for victims and communities.

The impacts of child sexual assault

The impact of child sexual assault on those who experience it

'This, it stole me, I lost myself. He took me away and I'm here today, a shadow of the person I could have been because he took it away from me and I can never get that person back. ... And society, to want to pretend that it doesn't happen, and this is where we are still victims and they're still making us victims.' *Transcript 27*

Many participants spoke about the devastating personal cost of child sexual assault. They talked of the damage it caused them as children and continues to cause them into their adult life. Many described feelings such as guilt, shame, anger and/or feeling responsible for the abuse or for 'letting it happen'.

Some participants spoke of the confusion caused by the assaults and talked of being groomed by the perpetrator, of being given gifts, lollies and special attention. They spoke of being drawn to the perpetrator and feeling special, not realising that the abuse that followed was not a normal part of a 'special' relationship with an adult. They also spoke of the confusion they often experienced when the abuser 'moved on'. They reported feeling jealous of their cousins when the perpetrator began to give them gifts and lollies and feeling on the 'outer' because he didn't want them anymore. In later life, these feelings turned to guilt when they realised that their cousins were being abused as they had been and believing that 'maybe they could have done something to stop it'.

Many talked about betrayal of trust and feelings of isolation. The perpetrator was often a family member or an important member of the child's community, someone the child may have loved and/or respected.

Children often felt they had no one to talk to or to tell. If they did tell someone (either a family or community member or a service provider), they often weren't listened to or believed or they were made to feel as though it was their fault. The devastation caused by these negative responses was raised regularly throughout consultations.

'My first counsellor ... told me it was my fault and that I deserved it. I could have died many times from when they told me, to when I finally was told it wasn't my fault. I could have died. Now, I tried to kill myself 27 times in that timeframe ...' *Transcript 25*

Many participants described feelings of despair and depression and of self-harm, suicide attempts and substance abuse as ways of trying to make the feelings go away.

In some instances, where children disclosed child sexual assault and were supported by their family they were often very aware of how their parents or other carers felt in response to the abuse and would feel responsible for these feelings. One participant described feeling guilty that their parents felt so much responsibility because they had not been aware of the abuse and had not been able to protect their children.

The impact of child sexual assault on Aboriginal communities

Child sexual assault is also having a devastating effect on communities. One consultation suggested that child sexual assault had the potential to 'tear communities apart'. Participants of this consultation suggested that once the extent and detail of child sexual assault emerged, a kind of war would erupt, that pitched family against family, community against community.

Many participants suggested a link between experiences of child sexual assault and of long-term, intergenerational violence and the increasing alienation and behavioural issues of Aboriginal children and young people. As stated in one consultation:

'After going through something like that, it can be very – "do I open my mouth or do I live with the secret?" And most of them live with the secret and that's where we have our behaviour problems and the promiscuous behaviour and stuff.' *Transcript 12*

Communities described children and young people as seeing violence and sexual assault as a completely normal way of life. They are involved in crime and other risk taking behaviour such as substance addiction and prostitution, are ending up in gaols and institutions and experience a hopelessness and despair that is all too often resulting in self-harm and suicide. As one participant reported:

'The whole lot of girls in that family have been abused and now they are all soliciting themselves. They are all getting into trouble. There's signs of anger, and all the anger I went through as well, and they're just getting, you know, the criminal justice system is just so thick with it, they're drowning in the criminal justice system, because they're taking their anger out on just innocent people up there.' *Transcript 8*

And in other consultations, participants stated:

'Kids are acting out, behaving badly and are seen as naughty. One of the reasons they are probably doing that is because of sexual abuse.' *Transcript 13*

'Its not just molestation. It opens up a circle of drugs, hate, no trust and self-loathing.'
Non-audio recorded 16

'There's a lot of children out there and these children, they'll either turn to drugs and alcohol to try and get rid of the problem.' *Transcript 21*

Research supports this link. In particular, one Australian study, conducted in 2002 by the Aboriginal Justice Advisory Council (AJAC), examined the needs of Aboriginal women in prison¹¹. One of its most disturbing findings was that 70% of the Aboriginal women in custody who were interviewed for the study¹² said that they were victims of child sexual assault. More than 40% also said that they had been sexually assaulted as adults. The study found that the women who had been sexually assaulted were more likely to use drugs, particularly heroin, and that drug-related crime was the main reason for their imprisonment.

Participants also suggested that those who had experienced child sexual assault were vulnerable to becoming involved in violent relationships as an adult. As one participant reports:

'My mum was assaulted as a young girl and – and that's, you know, she's always been in these relationships where she has been abused either like physically, sexually, whatever' *Transcript 23*

Some participants believed it was likely that many perpetrators of child sexual assault had been victims themselves, either within their communities or while they had been removed from their families and placed in an institution or foster care. They also expressed a concern that the Aboriginal children and young people of today were at risk of becoming perpetrators, either as adolescents or when they became adults. They described situations where children were experiencing and witnessing violence from a young age. These children saw violence being used to cope with a range of situations and as a way of relating to others. They get the message that this is an acceptable way to behave. Participants believed that they might believe the same for sexual violence, especially if they are seeing it or are aware of it happening around them.

In addition, if a child was also experiencing family violence, they may see their mum or carer being abused on a regular basis which can have devastating psychological effects for the child. In the absence of any alternative healthy models of living life, the children may start to use violence themselves. This can lead to expulsion from schools and incarceration, further separating children from their communities and ensuring that the violence continues into the next generation.

Again, research supports these concerns. One study found that more than half the perpetrators of child sexual assault it interviewed had themselves been sexually abused as young boys.¹³ This same study also suggested that girls who were sexually abused were at greater risk of entering marriages or associations with an abusive partner.

¹¹ The findings of this study can be found in the Aboriginal Justice Advisory Council (2003), *Speak Out, Speak Strong: An Inquiry into the Needs of Aboriginal Women in Custody* report.

¹² This study surveyed 45% of all Aboriginal women in prison in NSW over a period of a week.

¹³ Hunter (2003) cited in Atkinson, J. (2001), *Trauma trails, Recreating Song lines: the Transgenerational Effects of Trauma in Indigenous Australia*, p. 84-85

Factors influencing the incidence of child sexual assault in Aboriginal communities

Communities identified a number of factors, which they believed influenced the incidence of child sexual assault in Aboriginal communities. However, they also stated adamantly that suggesting reasons as to why assaults might occur in no way gave offenders an excuse for their behaviour. As one participant said:

‘...once we start to go down that track, what we’re doing is giving the perpetrator an excuse and there’s no excuse. There is no excuse for sexual assault. There is no excuse for violence.’
Transcript 33

Factors mentioned in consultations include:

Substance abuse

Substance abuse was a major concern for most Aboriginal communities across NSW and it was seen as a contributing factor to escalating levels of child sexual assault and family violence.¹⁴

Most community members spoken to during consultations acknowledged that many people used alcohol and other drugs as a way of coping with the traumas of the past. However, they also stated very strongly that they no longer saw this as an excuse for the violence that so often followed. As one community member said:

‘To claim substance abuse as a reason for child sexual assault is offensive and trying to take the blame away from what they have done. The fact is they would have decided to do that before substances affected them.’ *Transcript 34*

In some instances, substance abuse by the perpetrator or the primary carer of a child was associated with child sexual assault because:

- The perpetrator was affected by alcohol or other drugs at the time of offence
- The primary carer of the child was effected by alcohol or other drugs at the time their child was abused, therefore they were not available to protect the child and may not have even been aware the abuse had happened or
- The children were sent to a ‘safe place’ with a relative or respected community member because there was going to be drinking or drug taking happening at the house and the sexual abuse occurred at the ‘safe place’

As one participant reports:

‘.. because of the drugs and alcohol in our community a lot of these sexual assaults occur with the mum may be stoned or faced with adult people within the household and a lot of time they are not even aware that this child has been abused, so it’s really a barrier that we have because a lot of time they get like captives...’ *Transcript 10*

In other instances, participants described situations where the child’s substance abuse was resulting in them being sexually assaulted. Participants reported that an increasing number of Aboriginal children are using alcohol and cannabis at a very early age. The community believed that the children and young people used drugs and alcohol to escape from things such as the

¹⁴ Research has consistently demonstrated an association between substance abuse and violence in Indigenous communities such as in Atkinson, J. (2001), *Trauma trails, Recreating Song lines: the Transgenerational Effects of Trauma in Indigenous Australia*.

sexual abuse they are suffering or have suffered. One Aboriginal worker said that the young girls in her community:

'are so reliant on drugs to get through a day, that if they do not have any money to buy some, they will prostitute themselves to the drug dealer in order to score.' *Transcript 31*

And in another community:

'You know some of the kids they get a stick for a suck job, so they're giving blowjobs for marijuana. They're all getting hooked on the drugs. And that's on all along the truckie routes and its also the older men that bring the drugs into town and they're selling – they're not selling it to the girls; they're asking the girls to give them a root and then they'll get their stick...and this is twelve year olds.' *Transcript 15*

This trend will profoundly affect another generation of Aboriginal children and the effects will continue to resonate through communities in anti-social behaviour and repeated self-destruction.

Social and economic disadvantage

Social and economic disadvantage was identified as a significant factor in the incidence of child sexual assault in Aboriginal communities. As participant report:

'Whole family units. Chronic unemployment, serious illiteracy problems, even within adults and that flows into unemployment. We're talking about drastic, drastic family units that would make you cry and you wonder how any kid actually gets through it.' *Transcript 11*

'You get women who are very vulnerable and very needy in those sorts of situations, and they do take on unknown partners, and those partners cleverly groom and they are predators, they sit around looking for those types of vulnerable women and in fact is it not that they are looking for the women, they are looking for the children, which is how perpetrators work.' *Transcript 10*

It is well documented that most Aboriginal communities are disadvantaged socially and economically. For example, most communities experience¹⁵:

- An inadequate and poorly maintained infrastructure associated with water, sewerage and housing
- Poor educational outcomes, with one-third of Indigenous children leaving school before 15 years of age (compared to 15% for all other Australian children)
- High levels of unemployment. In February 2000, 17.6% of Indigenous people were unemployed¹⁶ (compared to 7.3 per cent of the non-Indigenous population)
- Poor physical and mental health
- High levels of homelessness, with Indigenous people 20 times more likely to be homeless than non-Indigenous people
- A lower life expectancy, with the life expectancy for an Indigenous male being 56 years (compared to 76 for non-Indigenous males) and being 63 years for Indigenous females (compared to 82 years for non-Indigenous females)

¹⁵ Outlined in Stanley, J., Tomison, A.M. and Pocock, J. (2003), *Child abuse prevention issues no. 19: Child abuse and neglect in Indigenous Australian communities*, Australian Institute of Family Studies, Melbourne and supported by the Australian Institute of Health and Welfare (2005), *Overcoming Disadvantage Report*

¹⁶ This figure does not include the 26 per cent of Indigenous people 'employed' in the Community Development Project Scheme, which is a 'work for the dole' scheme provided through ATSIC (Australian Bureau of Statistics, 2000)

In many Aboriginal communities, factors such as poverty, unemployment, poor housing and an under-resourced education system, combined with the damage caused by unresolved grief and trauma of the past, lead to an increased potential for crime and violence, including family violence and sexual assault. As a number of researchers say, damaged communities become self-perpetuating.¹⁷

Exposure to pornography and a sexualised society

'...pornographic material in houses is totally accepted between people... and I think if a young person is subjected to that every day of their life they think it's normal.' *Transcript 22*

Participants suggested that viewing of pornography is commonplace in most communities and that children were being exposed to it both directly and indirectly. Exposing children to pornography is sexual assault. In addition, some communities reported that pornography was being used (by perpetrators) to barter access to sex with children and young people.

Communities were also concerned about the impact that pornography has on those who are viewing it regularly. Pornography was seen to display distorted, and sometimes destructive, representations of how men and women behave and relate to each other sexually. Many participants considered the impact of these representations to be particularly powerful when there were few, or no, role models of healthy male behaviour or healthy sexual relationships.

Similarly, in the absence of healthy models of relating sexually, use of some pornography seemed to be normalising violent sexual behaviour. For example, the Aboriginal women spoken to in one study said they had been asked to watch pornography and then to imitate the sexual acts, many of which were offensive and distressing to them. In addition, they reported that 'assaults on young children, infants, and animals by young males, sometimes roving in gangs, escalated after shipments of pornographic videos arrived.'¹⁸

Some participants described communities as sexualised and they believed that the prevalence of pornography was contributing to that. They said that many people talked openly about sex and sexual acts in front of children and observed some men talking to young boys and girls in a very sexual way. They implied this was considered quite acceptable. As one participant reports:

'We are really pushing the fact that this shouldn't be happening, it's wrong, you know, the men shouldn't even be talking to the girls the way they do, you know, let alone doing sexual acts on them and stuff like that, and the boys.' *Transcript 32*

It was also reported that access to the Internet was making this problem worse.

¹⁷ Garbarino, J. (1995), *Raising children in a socially toxic environment* San Francisco: Jossey-Bass Publishers and Stanley, J., Tomison, A.M. and Pocock, J. (2003), *Child abuse prevention issues no. 19: Child abuse and neglect in Indigenous Australian communities*, Spring 2003, Australian Institute of Family Studies, Melbourne

¹⁸ Atkinson, J. (ed.)(1990), *Beyond violence: Finding the dream*, Aboriginal & Islander Sub-Program, National Domestic Violence Education Program, Office of the Status of Women, Canberra cited in Hazelhurst, K. (1994), *A Healing Place* Rockhampton: Central Queensland University Press, p. 27

'Normalisation' of violence (or intergenerational cycle of violence)

Participants reported that in most communities, violence of all kinds had been going on for generations, was minimised and had become 'normal'. As one participant stated:

'The trauma of child sexual assault makes it very difficult for people to develop healthy relationships... because you've got, you know, children being raised like three generations in a row where sexual and family violence has been part of their life...' *Transcript 24*

As a result of this normalisation process, violence was often seen by communities themselves, and by some service providers, as 'just part of the culture' or a 'rite of passage'. As one participant reported:

'We do have perps out there in our community who are saying it is rites of passage, its rites of initiation.' *Transcript 5*

Participants stressed that violence was not part of traditional culture and that these attitudes were enabling the violence to continue unchecked and needed to be addressed.

The presence of family violence

Consultations and research suggest that the presence of family violence results in a number of factors that can contribute to the incidence of child sexual assault. (See page 76 of this report for further detail on the relationship between family violence and child sexual assault.)

Unresolved trauma and grief

'I think that one of the big problems that we have got out there as to identifying what is happening with child sexual assault within our communities is the under-reporting, given the history ... and the people who were sexually assaulted as a result of being removed. They were removed, you know, and we are talking about parents and grandparents now who in the past had been removed, placed into an institution or in other forms of care, suffered sexual abuse who are now parents and grandparents... who feel you know there is still that feeling out there that if the kid is being sexually abused in the home, being the parent not responsible but someone else, that they are going to lose their kids because they weren't able to protect their kids...'

'Unfortunately the mistrust against the new government agency by the communities goes back a long time to the first settlement and its hard for these women to come out and speak about their own pain and injury and therefore there is a lot of child sexual abuse going on that we are not aware of unless you hear anything or someone tells you.'

'There are two things: (a) it is going to be very very difficult for people to come forward and talk about it within their communities.... and (b) it is very difficult for people to come forward to open up wounds and hurts that they are trying to put in the back of their mind...' *Transcript 10*

During consultations, participants continually mentioned the historical experiences of Aboriginal communities and expressed the view that the levels of violence and child sexual assault in Aboriginal communities today cannot be separated from the effects of colonisation.

Participants regularly referred to the devastating government practice of removing Aboriginal children from their families and the inability of communities to cope with the associated stress. In addition, many of the children who were removed (now mothers and grandmothers, fathers and grandfathers) experienced sexual abuse while they were in institutions or foster care.

They talked about their historical experiences of government service providers such as DoCS and Police as being oppressive and destructive. They also stated, that in most instances, distrust of these mainstream service providers continues today, making it extremely difficult for Aboriginal

people to speak out about child sexual assault and receive the help to which they are entitled.

Researchers who have explored the reasons for the high levels of violence in Aboriginal communities today agree. They assert that present dysfunctional behaviour, including the sexual assault of children and overt family violence, is grounded in unresolved grief associated with many layers of trauma that has been passed on from generation to generation.¹⁹

For over 200 years, Aboriginal communities have endured violence, dispossession and racism associated with the practices of colonisation, including:

- Violent dispossession of land by Europeans since the early contact period
- On-going cultural dispossession through white Australian policies that restricted, or prohibited, Aboriginal cultural practices and the use of Aboriginal languages
- Forced removal of Aboriginal children from their families and communities
- Policies that isolated Aboriginal people from their own communities and from the broader non-Indigenous community
- Exposure to a culture of violence and sexual violence that existed among the colonisers²⁰
- Imposed social and economic disadvantage

These practices have devastated communities and individuals alike. Whole communities suffer from multiple losses that are both historical and present and there have been many long-term consequences. These include the:

- Breakdown of Aboriginal culture and traditional family ways of life
- Breakdown of traditional Aboriginal laws and moral codes
- Separation of families and loss of parenting abilities
- Loss of male role models and healthy models for boys to progress into manhood
- Loss of self-esteem at both an individual and community level, leading to despair and a sense of hopelessness
- Loss of skills with traditional skills not valued or needed but no access to new skills via education or employment

Aboriginal communities today are traumatised by their past, with few coping skills and few opportunities for change. As stated in the report prepared by the Aboriginal and Torres Strait Islander Women's Taskforce on Violence, many Indigenous people have suffered:

'profound violations in their childhood.. and ... have endured decades of oppression and neglect. The massacres and inhumane treatment of their families remain fresh in their minds. Many members of contemporary Indigenous communities can still remember the policies that isolated them from the broader community, that exempted them from associating with family and kin, that forcibly removed them as children and subjected them to treatment that breached even the most basic human rights'.²¹

¹⁹ Atkinson, J. (1994), 'Recreating the circle with We AL-Li' *Aboriginal and Islander Health Worker Journal*, 18(6), p. 8-13

²⁰ Aboriginal people maintain that sexual violence was introduced into their culture by white colonisers and was not part of their traditional way. Recorded evidence supports this claim. In 1987, the Queensland Department of Community Services funded a court-based 'expert study', engaging anthropologists, social welfare researchers and others, to explore the myth that sexual contact with minors was part of traditional cultural practice. After consultation with elders from various communities, the report determined that such behaviour was not traditional cultural practice (cited in Atkinson 1994, p. 6). Another researcher observes that the early missionaries themselves came to realize that, in their traditional state, Aborigines were a moral people. That is, they had an exceptionally strict code of sexual behaviour and stern punishment for those who broke the code (Harris cited in Atkinson 2001, p. 61-62).

²¹ Cited in Robertson, B. (2000), *The Aboriginal and Torres Strait Islander women's task force on violence report*. Brisbane: Queensland Department of Aboriginal and Torres Strait Islander Policy and Development p. xiii and 31

One researcher suggests that Aboriginal communities are suffering a kind of Post Traumatic Stress Disorder. In the context of understanding violence in these communities, this researcher suggests that feelings of grief or loss, that may have been suppressed or denied by individuals or communities in order to survive, are now being expressed in destructive behaviours such as family violence, alcohol and drug abuse, sexual assault, and suicide²².

Some researchers argue that some communities are so damaged as a result of colonisation that they are a breeding ground for incidences of social ills. They refer to these communities as 'toxic' and describe the pattern of behaviour evident in them as 'dysfunctional community syndrome'.²³

Breakdown of family and community structures

The practices of colonisation have broken down traditional Aboriginal family and community structures and destroyed the roles of men and women within it. This issue is both historical, through forced separation of children from their families and the subsequent breakdown of parenting abilities, and on-going through separations caused by substance abuse and spending time in prison.

In addition, unemployment and lack of employment opportunity encourage passive welfare, meaning there are few models for change in social or economic circumstances and little hope.

Lack of community engagement with the issue

Participants regularly talked about the lack of awareness of child sexual assault among community members leading to a culture of silence and denial and a lack of community engagement with the issue. This was seen as contributing to the incidence of child sexual assault.

Those who held this view believed that it was crucial that whole communities come to understand the ramifications of child sexual assault, engage with the issue and begin to address it. In particular, they stressed the importance of non-offending men engaging with the issue, both as advocates to stop the violence and as positive role models for Aboriginal boys.

Lack of support for community driven solutions

Aboriginal communities believe that if they are to tackle child sexual assault in their communities, the response will need to be driven by the communities themselves at a state, regional and local level. Given the complexities of the issue, coupled with the diversity of communities, a response that works in one area, may not work in another.

Each community needs to be supported to take the lead role in developing their own strategies and initiatives to address child sexual assault. Many participants suggested that, to date, effective support for community driven solutions has not been provided. As one community member pointed out:

'It's the community that has to make the change. They can do it, but not without the support of the Government agencies, we need the services to back us up. If the community aren't involved, it just won't work.' *Non- audio recorded consultation 2*

²² Atkinson, J. (1994), 'Recreating the circle with We AL-Li' *Aboriginal and Islander Health Worker Journal*, 18(6), p. 8-13

²³ Garbarino, J. (1995), *Raising children in a socially toxic environment*. San Francisco: Jossey-Bass Publishers; and, Stanley, J., Tomison, A.M. and Pocock, J. (2003), *Child abuse prevention issues no. 19: Child abuse and neglect in Indigenous Australian communities*, Australian Institute of Family Studies, Melbourne.

Inadequate responses from service providers

As mentioned in the section on under-reporting on page 54 of this report, communities repeatedly said that whenever someone in the community received a poor response from service providers, the culture of mistrust in mainstream services was reinforced. In some instances, perceptions that services will not respond were creating situations where people would rather endure the abuse than try to get help.

In many instances, perpetrators are aware that their victims cannot get help from anywhere, even if they wanted to. Therefore, an inadequate service response can directly contribute to the incidence of child sexual assault.

Some factors that can contribute to an inadequate response from service providers include²⁴:

- Racism
- Confusion among service providers over what is the 'right response', (arising from the legacy of the 'stolen generation' and the inappropriate practice of removing children) and a fear of 'getting it wrong'. This is particularly relevant for child protection services who are often uncertain of what is best for the child, ie should they remain in the community with some level of risk or face the adverse impact of cultural dislocation
- Overwhelm at the size, complexity and number of problems associated with Indigenous communities and a lack of resources to address the issues that arise

²⁴ Stanley, J., Tomison, A.M., Pocock, J. (2003), *The issue of child abuse and neglect for Indigenous Australian communities*, National Child Protection Clearing House, Australian Institute of Family Studies, Issues Paper no 18, p. 4-5

PART 2: CHILD SEXUAL ASSAULT AND FAMILY VIOLENCE

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Overview of findings

- There is little research that considers the relationship between child sexual assault and family violence
- The research that does exist suggests there is a strong link between the two forms of violence
- Communities and research suggest that the presence of family violence in Aboriginal communities has a number of consequences that can influence the incidence of child sexual assault

The relationship between child sexual assault and family violence

Historically, research into family violence and child sexual assault has been conducted in different spheres and there is little research that explores the relationship between these types of violence. However, the research that does exist suggests a strong link between the presence of family violence and the incidence of child sexual assault.

For example an Australian study examined 206 cases of assault on children and found that domestic violence was present in just under half (40%) of the cases involving sexual abuse and in just over half (55%) of the cases involving physical abuse.²⁵ Another study found that of 30 women attending a treatment program at a child welfare department for mothers of children who have experienced incest, 73% had experienced some form of physical and psychological abuse from their partner and 23% had suffered 'life threatening' violence.²⁶ A British study of 20 women whose children had been sexually assaulted by their partner found that family violence existed in all cases, 17 of which involved physical violence.²⁷

Some researchers have identified a 'double level of intentionality' in the behaviour of some abusive men where there is both domestic violence and child sexual assault²⁸. This refers to instances where an act towards one individual is, at the same time, intended to affect another or others. For example, child sexual assault may be used as a form of domestic violence where children are used as a vehicle to abuse mothers²⁹. Alternatively, men may abuse the mothers to hide their sexual abuse of children. In these instances, they isolate or incapacitate the mother so she is not available to the child as a source of help³⁰.

²⁵ Goddard, C. & Hiller, P. (1993), 'Child sexual abuse: Assault in a violent context', *Australian Journal of Social Issues*, vol 28, no. 1, p. 20-33

²⁶ Truesdale, D., McNeil, J. & Deschner, J. (1986), 'Incidence of wife abuse in incestuous families', *Social Work*, March-April, p.138-140

²⁷ Forman, as cited in Mullender, Audrey / Morley, Rebecca (1994), *Children living with domestic violence. Putting men's abuse of women on the child care agenda*, London.

²⁸ Kelley, S.J. (1994), 'Abuse of children in day care centres: characteristics and consequences', *Child Abuse Review*, vol.3, p.15-25

²⁹ For example, McCloskey, Figuerdo, and Koss (1995) cite the work of Williams-Meyer and Finklehor (1992) when they interviewed 100 incestuous fathers and found that 9% of men reported that their sole motivation for molesting their daughter was to retaliate against her mother.

³⁰ Kelley, S.J. (1994), 'Abuse of children in day care centres: characteristics and consequences', *Child Abuse Review*, vol.3.

The impact of family violence on the incidence of child sexual assault

Consultations reported that family violence in Aboriginal communities has a number of consequences that can influence the incidence of child sexual assault.

As discussed in relation to substance abuse, when family violence was occurring in the home, children were often sent to a 'safe place' where they were being sexually abused. In these circumstances children are extremely vulnerable and reporting the incident to their parent would likely only exacerbate the violence.

Women experiencing family violence may experience depression, anxiety and shame, chronic or on-going physical pain, even death. They may feel suicidal and some may even carry this out. All these factors can prevent a mother from being able to meet the emotional and physical needs of her children and from being able to protect them, leaving them more vulnerable to sexual abuse.

Family violence can result in poverty for women if they try to leave the violent situation. Housing may be overcrowded and inadequate, with doors and windows that cannot be locked. In addition, children are vulnerable to offers of money and/or gifts from perpetrators, often used as a way of 'grooming' a child for abuse or bartering for sex.

The high levels of violence children are exposed to, and the absence of any effective means of reducing it, desensitises children to it. This leads them to accept violent behaviour as normal, rather than as something that needs to be challenged and changed.

High levels of family and other violence in Aboriginal communities can result in the perpetrators (usually Aboriginal men) being sent to prison. This further breaks down the family and ensures there are few male role models for young Aboriginal boys to learn from.

It is clear to ACSAT that there is a link between family violence and child sexual assault. However, due to time and resource constraints ACSAT was not able to research this relationship further. ACSAT believes that more extensive research needs to be done to determine the exact nature and extent of this relationship.

ACSAT is aware that the Commonwealth Department of Family and Community Services and Indigenous Affairs are currently conducting longitudinal research into Aboriginal children. *Footprints in Time: A Longitudinal Study of Indigenous Children* is gathering information on Indigenous children, young people, their families and service providers to help children get the best start in life. ACSAT suggests that this study may also be able to examine the relationship between family violence and child sexual assault for Indigenous children across Australia.

ACSAT recommendation 1

Comprehensively research the relationship between family violence and child sexual assault in Aboriginal communities to develop policies and strategies that can address the issues in a holistic way

PART 3: THE STATISTICS ABOUT CHILD SEXUAL ASSAULT IN ABORIGINAL COMMUNITIES

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 - Data collection methods and practices
 - Recording Aboriginality*
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 - Categories used*
 - Some key information is not being collected*

Overview of findings

- Data collected by NSW government agencies can only reflect reported incidents of child sexual assault in Aboriginal communities and many incidents are not reported
- Reported incidents where the Aboriginality of the victim is known suggest that Aboriginal females are almost two and half times more likely to be victims of child sexual assault than non-Aboriginal females
- There are a number of issues with the way data is collected by NSW government agencies, including: inconsistent recording of Aboriginality; use of different key definitions across agencies; agencies recording data across different time periods; information being lost because the categories used to collect data are sometimes ambiguous. These issues result in data being less useful than it could be and also makes it difficult to correlate and compare data across agencies.

Data collected by NSW government agencies about child sexual assault in Aboriginal communities

The government agencies that were asked to provide submissions responding to ACSAT's terms of reference were also asked to provide any statistics they had on the prevalence of child sexual assault in Aboriginal communities in NSW.

As well as providing ACSAT with this data, all government departments were careful to note that data collected only represented incidents that were reported to a government department. The data does not reflect the actual incidence of child sexual assault as many incidents go unreported. Community consultations and research into other methods of assessing incidence of offences such as child sexual assault suggest that the actual incidence is likely to be much higher than the statistics suggest.

The statistics provided are as follows: ³¹

Notifications of abuse and neglect

- During 2002/03, the Department of Community Services received 109 498 notifications of child abuse and neglect for children and young people aged 0-17 years. Of these, 15.3% (16 765) were substantiated with 68% (11 434) of these substantiated cases involving a child aged 16 years or under
- Of substantiated cases involving children aged 16 years and under, 17% were Aboriginal (Aboriginal children from this age group make up only 4% of the total NSW population for this age group³²)
- Of substantiated cases of abuse or neglect of Aboriginal children, 32% involved physical abuse, 9% involved sexual abuse, 33% involved emotional abuse and 25% involved neglect
- Of all children in out-of-home care in 2002/03, 24% (1067) were Aboriginal³³

³¹ Statistics were received from Australian Institute of Health and Welfare (AIHW), Bureau of Crime Statistics and Research (BOCSAR), Criminal Law Division of NSW, NSW Department of Community Services (DoCS), NSW Department of Juvenile Justice (DJJ), NSW Health, NSW Minister for Justice, NSW Police

³² BOCSAR (2005)

³³ Department of Community Services submission to ACSAT (2005), p. 6

Recorded incidents of child sexual assault³⁴

- In 2004 in NSW, 1995 incidents of sexual assault against a child younger than 16 years were recorded by NSW Police³⁵. When considered as a rate of victimisation of the general population, this represents 142.3 per 100 000 people
- Of these recorded incidents, 82% of victims were female
- Of those whose Aboriginality is known, the rate of victimisation of Aboriginal females under the age of 16 years in 2004 was 468.7 per 100 000 compared to 192.1 per 100 000 for non-Indigenous females who were the same age

Figure 1 illustrates the over-representation of both Aboriginal females and males as victims of child sexual assault.

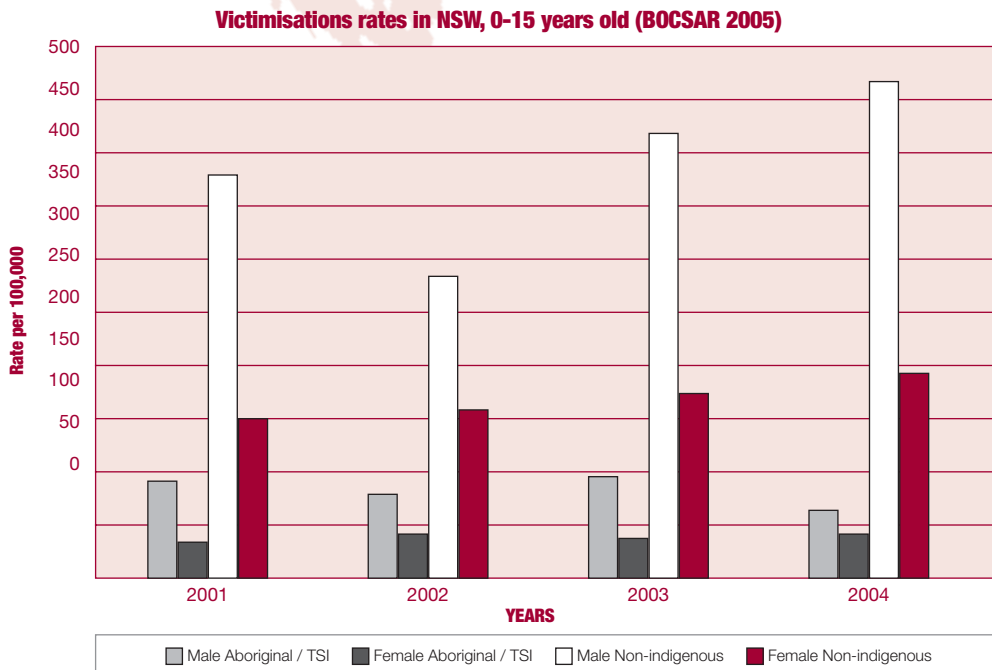


Figure 1 - Child sexual assault victimisation

Use of sexual assault services

- Of all children who accessed sexual assault services in NSW during 2003/04, 11% were Aboriginal³⁶

Age of victims of child sexual assault

- Between 2000-2004, NSW Police recorded a total of 8 619 incidents of child sexual assault. In 80% of incidents, the victim was a female³⁷
- Of the incidents where the victim was a female, the assault was most likely to occur when the victim was between 11-15 years (68% of all sexual assaults where the victim was female and 60.4% of all sexual assaults where the victim was an Aboriginal female). The next most common age was 6-10 years (17.7% of all sexual assaults where the victim was female and 22.2% of all

³⁴ Statistics provided by BOCSAR (2005)

³⁵ This represents an increase in the number of reported assaults of approximately 24% since 2000.

³⁶ NSW Health submission to ACSAT (2005)

³⁷ BOCSAR (2005)

sexual assaults where the victim was an Aboriginal female) followed by 0-5 years (14.3% of all sexual assaults where the victim was female and 17.3% of all sexual assaults where the victim was an Aboriginal female) (See Figure 2)

- Of the incidents where the victim was a male, the assault was more likely to occur when the victim was younger, particularly when the victim was Aboriginal. In incidents where the victim was an Aboriginal male, 36.7% were aged between 0-5 years, 35% were aged 6-10 years and 28.3% were aged 11-15 years (See Figure 3)

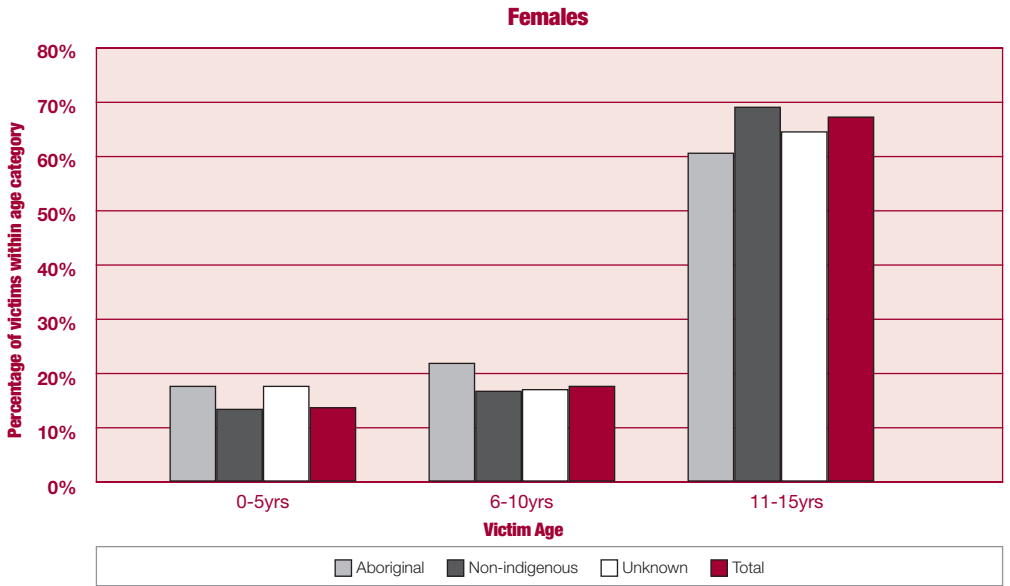


Figure 2 – Percentage of sexual assault victims in NSW, 2000-2004, Females

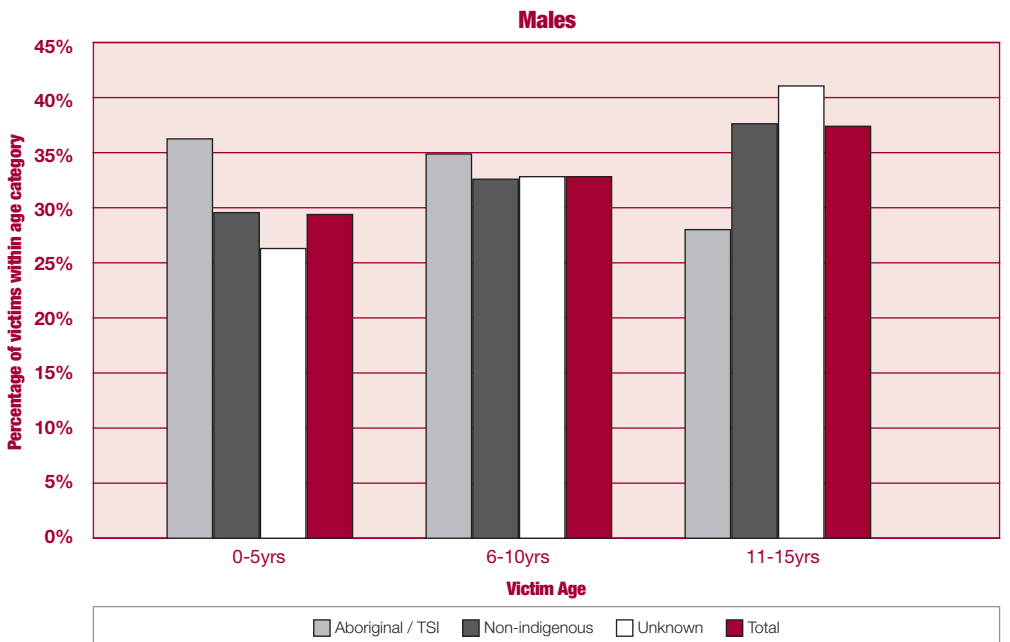


Figure 3 – Percentage of sexual assault victims in NSW, 2000-2004, Males

Geographic areas recording the highest incidence of child sexual assault

- In NSW, the majority of child sexual assaults occurred in four geographical areas: the Sydney; Hunter; Northern; and North Western regions³⁸
- In 2004, the highest number of recorded child sexual assaults occurred in the Sydney division (44% of all 870 recorded incidents). The rate of victimisation of the Aboriginal population living in this division was 54.2 per 100 000 compared to 20.9 per 100 000 for the non-Indigenous population
- In the Northern division, the rate of victimisation for the Aboriginal population is 164.3 per 100 000 and in the North Western division, it is 186.3 per 100 000. These areas also record high Aboriginal populations

Detail of offenders

Age of offender at the time of the offence

- Of defendants at court for child sex offences between 2000 and 2004, 13% were Aboriginal³⁹
- Data provided by NSW Police suggest that where a Person of Interest (POI) in a child sexual assault incident is Aboriginal, they are mostly over 18 years of age (71% of all identified Aboriginal POIs in sexual assault offences)⁴⁰
- This data also suggests that when a POI in a sexual assault case is Aboriginal, the victim is mostly under 18 years (in 65% of all incidents)

Relationship of the offender to the victim

NSW Police only began reliably recording information about the relationship between the offender and the victim in 2003. This information is collected by asking the victim of the assault to describe their relationship to the offender by selecting one of a list of options. During the 2000-04 period, the most common category selected was 'other known person, no relationship'. The next most common categories selected were 'member of family-other' and 'parent/guardian (include step/foster)'.⁴¹

³⁸ BOCSAR (2005). These regions are defined according to ABS 'statistical divisions'. Full details of these divisions are described in ABS (2002) and can be found online at [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/Lookup/A134BCF4F86CC027CA256C320000283B/\\$File/2015.1_2001.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/Lookup/A134BCF4F86CC027CA256C320000283B/$File/2015.1_2001.pdf)

³⁹ BOCSAR (2005)

⁴⁰ There is little information available about the age of offenders who commit child sexual assault offences. For example, there is no similar data about the age on non-Aboriginal POIs nor the typical age of their victims. Nor is there sufficient data available to indicate the relationship between the Aboriginality of the offender and of the victim. As most of the offences, where the victim and/or offender are recorded as being Aboriginal occur in areas known to have large Aboriginal populations it seems likely that the majority of Aboriginal offenders are committing offences against victims of the same background.

⁴¹ Care needs to be taken when interpreting this data. As a large number of people often live in Aboriginal houses, there can be crossover between the categories of relationship. For example, an offender could be a 'household member' and a 'member of family – other'. In addition, people may be more likely to report if the offender is not related to them, so recorded data may not be representative of what is actually occurring.

Progress of child sexual assault cases through the judicial system

- According to figures recorded by BOSCAR for the calendar year of 2003, there were 1794 recorded incidents of child sexual assault in NSW where the victim was under 16 years of age. Of these, charges were brought against offenders in 58% (1046) of cases. Of those who were charged, 43% (454) were found guilty. Of those who were found guilty, 24% (108) were sentenced to prison terms. Therefore 16% of recorded incidents resulted in prison sentences⁴²
- One significant barrier to successful prosecution of child sex offenders are the often lengthy delays between the arrest of the offender and the finalisation of the case. For example, during 2003-04, of a sample of 45 child sexual assault cases in the Sydney District court, the median number of days from the arrest of an alleged offender to case outcome was 406 days (In this sample, the shortest period of time from arrest to outcome was 166 days and the longest was 1523 days)⁴³

Prison sentences

- Court data from 2003 indicate that child sex offenders from Aboriginal backgrounds have received a prison sentence more frequently than non-Aboriginal offenders (39% of Aboriginal offenders who were found guilty of child sexual assault offences compared with 22% of non-Aboriginal offenders who were found guilty of similar offences)⁴⁴
- Data provided by BOSCAR suggest that when custodial sentences were given, the length of the sentence tended to be similar for Aboriginal and non-Aboriginal offenders
- Only 11.5% (11) of all Indigenous sex offenders who are in prisons in NSW are in custody for sexual offences involving children (compared to 33% of all non-Indigenous sex offenders who are in NSW prisons for sex offences involving children)⁴⁵

Barriers to effective collection and use of data

Data collected is not an accurate picture of the true incidence of child sexual assault

It is widely recognised that child sexual assault in Aboriginal communities, as with the broader community, is an under-reported crime. Many Aboriginal people experience social and cultural pressure from members of their own families and communities not to report incidents of abuse and violence. If they do report, they are often made to feel as though they are betraying their community and culture.⁴⁶ This is especially true in cases where the offender is a member of the victim's extended family. Coupled with a history of inappropriate service providers' responses, racism and personal factors of shame, guilt and/or fear, many incidents of sexual assault are never reported.

In addition, the length of time it takes for complaints of child sexual assault to be resolved means that many reported cases are withdrawn at some stage of the legal process.

⁴² No detail is available as to why there are so few convictions, i.e. whether the victim withdrew the charges or there was insufficient evidence to proceed or find a guilty verdict.

⁴³ Cashmore unpublished in Criminal Law Division submission to ACSAT (2005)

⁴⁴ BOSCAR (2005). Care needs to be taken interpreting this data because: the number of convicted Aboriginal offenders referred to is very low (9 people).

⁴⁵ Inmate Census in Minister for Justice submission to ACSAT (2005)

⁴⁶ Lievore, D. (2003), *Non-reporting and Hidden Recording of Sexual Assault: An international literature review* Commonwealth Office of the Status of Women, Canberra, Australia

Statistics that are recorded by agencies such as police and the justice system can only reflect assaults that are actually reported and therefore cannot give a complete picture of the problem. All communities consulted by ACSAT acknowledged that Aboriginal child sexual assault had reached epidemic proportions. In 2003, researcher Dr Denise Lievore reviewed all available statistics on reported and unreported sexual assaults including anecdotal evidence, case studies and submissions to inquiries and found that sexual violence in Indigenous communities occurs at rates that far exceed those for non-Indigenous Australians.⁴⁷ Therefore statistics that may suggest low levels of victimisation and offending within Aboriginal communities should be read as evidence of under-reporting rather than evidence that no problem exists.

Data collection methods and practices

When reviewing the data provided by government agencies, ACSAT identified a number of concerns with the way data is collected in NSW. These are as follows:

Recording Aboriginality

A number of agencies are not recording the Aboriginality of the victim or the offender, or are not recording it consistently. For example, the submission by NSW Police indicates that between 2002 and 2004, the Indigenous status of recorded 'Persons Of Interest' in sexual assault cases was unknown in 15% of recorded cases. Data from BOSCAR indicated that the Indigenous status of the victim was 'unknown' in 19% of recorded cases of child sexual assault against persons under the age of 16 years. This issue was also noted in a number of other agencies including the Departments of Corrective Services and Juvenile Justice.

Aboriginality may not be recorded because: the question is not being asked; or the answer is not being recorded; or the question is being asked but Aboriginal people do not want to disclose their Aboriginality for fear of racism and unfair treatment or they have been advised not to by a legal service.

Agencies use different definitions

Agencies use different definitions of key terms so data collected by one agency cannot be compared to the data collected by another agency. For example, most agencies define a child as being under 16 years of age. NSW Police define a child as being under 17 years of age.

BOSCAR defines sexual assault in terms of the statutory offences of 'sexual assault', 'aggravated sexual assault', and 'assault with intent to have sexual intercourse'. NSW Police includes these offences and adds the offences of 'indecent assault' and 'aggravated indecent assault' to make up a category of 'Sexual offence – assault'. The Department of Corrective Services records sexual assaults under the categories of 'rape' and 'serious sexual assault' without providing conceptual definitions of these two categories.

Financial versus calendar year

Some agencies collect, and report on, data on a financial year basis (AIHW and DoCS) while others collect, and report on, data on a calendar year basis (NSW Police).

⁴⁷ Ibid, p. 56

Categories used

Information was being lost because of a collapsing of some categories when data was being collected. For example, when BOSCAR records the relationship between the victim and the offender in cases of child sexual assault, one category available is 'parent/guardian' and this is used to record biological parents, step-parents and foster parents in one group. However, ACSAT believes it could be useful, in terms of responding to the abuse, to understand the patterns of abuse of each group separately.

Similarly, there can be cross-over in category options when people are asked to provide information such as their relationship to the offender. For example, NSW Police ask victims of child sexual assault to describe their relationship to the offender by selecting one of a list of options. However, as a large number of people often live in Aboriginal houses, there can be crossover between the categories of relationship that can distort the picture of the offender. An offender could be a 'household member' *and* a 'member of family – other'.

Some key information is not being collected

When reviewing the court processes in NSW, ACSAT found little data that identified how many people started the court process but then decided not to continue. The absence of data means it is impossible to find out where people choose to drop out and why. ACSAT believes this information is essential to understanding Aboriginal experiences of going to court for child sexual assault matters and therefore to government being able to respond in an effective way.

ACSAT recommendation 2

Develop a framework for collecting data about child sexual assault that is adopted by all relevant agencies to clearly establish prevalence, patterns and trends relating to the incidence of child sexual assault and the outcomes of intervention in order to continuously identify gaps and improve service delivery.



CHAPTER 3

Overarching government responses to child sexual assault in Aboriginal communities



PART 1: OVERARCHING POLICY FRAMEWORKS FOR WORKING WITH ABORIGINAL PEOPLE



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Implementation

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Aboriginal Justice Advisory Council

Overview of findings

- The Commonwealth and NSW Governments have agreed frameworks for working together to provide services to Aboriginal communities and improve outcomes for Indigenous Australians
- These frameworks commit both governments to working together with each other, and in partnership with Aboriginal communities, to: address disadvantage; improve access to services; provide services the community identifies it needs in ways that are appropriate; improve accountability of government services; and tackle agreed priority areas
- The specific detail of how the governments will work together, and on what, are enshrined in Bilateral Agreements between the two governments
- NSW has developed the *Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012)* to guide how the NSW Government will work with Aboriginal communities to address disadvantage

Commonwealth Government policies

The following policies guide the way the Commonwealth and NSW Governments work with Aboriginal people.

National Framework of Principles for Service Delivery to Indigenous Australians

The *National Framework of Principles for Service Delivery to Indigenous Australians*, endorsed at the Council of Australian Governments (COAG) meeting on 25 June 2004, underpins the way state and federal governments work together in Aboriginal affairs.

The principles of the *National Framework* include:

- **Sharing responsibility:** Committing to cooperative approaches on policy and service delivery between agencies at all levels of government and maintaining and strengthening government effort to address Indigenous disadvantage, as well as building partnerships with Indigenous people based on participation and mutual obligation
- **Harnessing the mainstream:** Ensuring that Indigenous-specific and mainstream programs and services are complementary, improving access to services and jointly identifying priority issues
- **Streamlining service delivery:** Delivering services and programs that are appropriate, coordinated, flexible and avoid duplication; Recognising the need for services to take account of local circumstances and be informed by appropriate consultations and negotiations with local representatives
- **Establishing transparency and accountability:** Strengthening the accountability of governments and funded organisations for the effectiveness of their programs and services through regular performance review, evaluation and reporting
- **Developing a learning framework:** Information sharing and striving for best practice in the delivery of services to Indigenous people, families and communities.
- **Focussing on priority areas:** Tackling agreed priority issues, including those identified in the *Overcoming Indigenous Disadvantage Report*⁴⁸

⁴⁸ Commonwealth of Australia (2005), *Overcoming Indigenous Disadvantage Key Indicators Report*

Bilateral Agreements

The *National Framework of Principles for Government Service Delivery to Indigenous Australians* provides for the negotiation of Bilateral Agreements between the Australian and each of the state/territory governments. These agreements are a way of providing a consistent approach that clarifies the roles and responsibilities of all parties and identifies gaps and overlaps in the way services are provided.⁴⁹

A Bilateral Agreement has been developed between the Commonwealth and NSW Governments that outlines how they will work together to provide services to Aboriginal people. The Agreement provides:

- Mechanisms that promote joint planning
- Ways to improve Aboriginal Australian's access to services
- Strategic approaches for joint and innovative action by the Governments in partnership with communities

The Agreement provides for the governments to work together to establish priority areas, including areas identified for strategic change in the *Overcoming Indigenous Disadvantage Report*. Priority areas identified in this report include:

- Reducing incarceration and breaking the cycle of family violence
- Improving living conditions
- Early childhood intervention, a key focus of which is improving mental and physical health, and in particular primary health, and early educational outcomes
- Safer communities
- Building Indigenous wealth, employment and entrepreneurial culture, as these are integral to boosting economic development and reducing poverty and dependence on passive welfare

The *Two Ways Together (TWT)*, *NSW Aboriginal Affairs Plan (2003-2012)* is the foundation upon which the governments will work together and the Agreement builds on and complements it.

Managing Indigenous affairs at a national level

In January 2006, the responsibility for managing Indigenous affairs moved from the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) to the Department of Family, Community Services and Indigenous Affairs (FaCSIA).

As well as managing Indigenous affairs, FaCSIA is also responsible for social policies and support affecting Australian society and the living standard of Australian families.

Prior to its move to FaCSIA, DIMIA established the Office of Indigenous Policy Coordination (OIPC) to coordinate a whole of government approach to programs and services, as well as develop and oversee national policy frameworks for Indigenous Australians. The responsibility for this unit moved to FaCSIA in January 2006.

⁴⁹ http://www.oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/8WorkingWithStatesTerritories.asp as at 24 October 2005.

Indigenous Policy Branch

FaCSIA has an Indigenous Policy Branch⁵⁰, which has an Indigenous Policy Framework that aims to:⁵¹

- Reduce the gaps in key social and economic indicators between Indigenous and non-Indigenous Australians
- Build the capacities of Indigenous individuals and families to increase choice and participation, and enhance self-reliance and
- Build the capacities of Indigenous communities to ensure sustainable and prosperous futures

The objective of the Indigenous Policy Branch is to integrate the work of FaCSIA for urban, rural and remote Indigenous people and co-ordinate FaCSIA's Indigenous research effort.

Shared Responsibility Agreements

A major role of the OIPC is to develop, implement, establish, support and monitor Shared Responsibility Agreements (SRAs). These are agreements that spell out what all partners, including communities, governments and others, will do to bring about long-term changes that improve outcomes for Indigenous communities.

This new arrangement in Indigenous affairs was implemented by the Australian Government from 1 July 2004 and is linked to the wider Indigenous reforms being pursued by the Council of Australian Governments (COAG). 'Shared responsibility' is the key philosophy that underlies this way of working and recognises that:

- Governments alone cannot bring about all the changes necessary to overcome Indigenous disadvantage
- Indigenous people and communities must be involved in planning and building their own future

SRAs involve only the discretionary funding that governments provide through specific Indigenous programs. In agreeing to enter into an SRA, communities make commitments and governments undertake to provide services or investment tailored to the identified needs of the community.⁵²

SRAs will not put any additional conditions on Indigenous people's access to benefits or services that are available to all Australians, such as services responding to child sexual assault.

Indigenous Coordination Centres

Indigenous Coordination Centres (ICCs) operate in 29 locations around Australia, five of which are in NSW. They look after the Australian Government's Indigenous programs and negotiate Shared Responsibility Agreements with local Indigenous people and communities. Essentially, ICCs have been established to identify, develop and assist in regional planning at a state, regional and local level.

⁵⁰ Given that the responsibility for Indigenous Affairs has so recently moved to FaCSIA, it is expected that the OIPC and the Indigenous Policy Branch will work closely together to address Indigenous policy issues. It is unknown if there will be any sort of restructure at this stage.

⁵¹ http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/indigenous_policy.htm

⁵² http://www.indigenous.gov.au/sra/kit/what_are.pdf as at 24 October 2005

NSW Government policies

The following policy guides the way the NSW Government work with Aboriginal people.

Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012)

The *Two Ways Together (TWT), NSW Aboriginal Affairs Plan (2003-2012)* was developed to lessen, and eventually remove, social disadvantage in Aboriginal communities. The plan outlines a partnership between Aboriginal people and the NSW Government that recognises Aboriginal people as the experts in identifying the needs of their community.

The NSW Government will liaise with Aboriginal people as to how government services will be delivered at a local and regional level. It is a coordinated plan that aims to eliminate duplication, and fill in gaps, in service delivery. The plan also aims to change the way that government works with Aboriginal people. It aims to:

- Make sure the 'whole of government' approach is effective
- Ensure that agencies are sensitive, flexible and responsive in the way they deliver services to Aboriginal people
- Build the capacity of government agencies to work with Aboriginal people
- Identify how governments can help to build the capacity of communities
- Inform communities about what government is doing, or should be doing, and facilitate negotiations between communities and government services
- Implement accountability processes to ensure the plan is implemented at local, regional and state levels

A number of socio-economic indicators have been developed to measure the progress of the plan and all government agencies are required to report on these indicators on a regular basis.

Priority areas

Two Ways Together addresses seven broad priority areas identified by Aboriginal communities and the NSW Government, including:

- Culture and Heritage
- Economic Development
- Education
- Families and Young People
- Health
- Housing and Infrastructure
- Justice

These priority areas are broad to reflect the holistic nature of the plan that addresses all aspects of disadvantage. Both the community and the government have the ability to identify areas that need to be addressed. This can occur at a state, local or regional level. Then a plan can be developed that responds while keeping in line with state and national objectives.

Implementation

Four 'cluster groups' have been established consisting of Aboriginal representative bodies and government agencies so that they can provide more coordinated and responsive planning of services. These are:

- Justice
- Families and Communities
- Culture and Heritage
- Economic Development

There is also a Data Working Group that is focusing on how to measure and report on outcomes under *TWT*.

The cluster groups report to the CEOs Group on Aboriginal Affairs through the Aboriginal Affairs Policy Coordination Committee.

TWT is being rolled out regionally through Regional Engagement Groups (REGs). In each region, these consist of the DAA Regional Manager, the ICC Manager, local community representatives such as land councils, the Regional Coordination Management Groups (RMCG)⁵³ Chair and a Regional Coordinator. REGs provide a local and regional perspective on planning for services.

NSW Aboriginal Justice Plan

The *NSW Aboriginal Justice Plan – Beyond Justice 2004-2014* (AJP) was developed by the Aboriginal Justice Advisory Council in 2003 as a holistic framework to address the causes of crime across NSW. It is based on the principles that:

- Aboriginal people are best placed to find ways to address their issues
- Connection to culture, family and the wider community is essential in protecting and supporting all members of the community
- The responsibility for addressing causes of crime in Aboriginal communities is shared by Aboriginal communities, government and the broader community
- Improved access to opportunities and services for Aboriginal people promotes choices that reduce the likelihood of contact with the criminal justice system
- The negative impact of past government policies, practices and philosophies on Aboriginal people will be acknowledged
- Aboriginal people have a right to be equal before the law, a right to self-determination and to live free from discrimination

The plan was developed in consultation with Aboriginal communities and government and non-government service providers. All parties have agreed to work together over the ten year period to meet the objectives set out in the plan.⁵⁴ The plan is overseen by the AJAC.

⁵³ RCMG is a regional based group of Senior Officers, who meet regularly to discuss and address issues relating to each region. This group is managed by the NSW Premiers Department.

⁵⁴ Aboriginal Justice Advisory Council (2003), *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014*

Aboriginal Justice Advisory Council

The Aboriginal Justice Advisory Council (AJAC) is an independent body established to provide advice to the NSW Government on criminal justice issues as they relate to Aboriginal people in NSW. AJAC plays a vital role in assisting criminal justice agencies to develop more effective ways of working with Aboriginal people. The roles of AJAC include:

- Developing and coordinating partnerships to address the underlying causes of crime, anti-social behaviour and improving the operation of the criminal justice system
- Advising government and local communities on ways to reduce the number of Aboriginal people in contact with the criminal justice system
- Providing advice to the Attorney General, Minister of Police, Minister of Corrective Services and the Minister for Juvenile Justice on developing and implementing fair and equitable law and justice services to Aboriginal people
- Commissioning research reports on issues effecting Aboriginal contact with the criminal justice system
- Developing proposals for change to criminal justice system policies, programs and practices
- Identifying and advising on issues effecting Aboriginal people, as victims of crime and as offenders
- Negotiating and monitoring targets and performance indicators for programs to reduce Aboriginal offending, arrest and imprisonment rates
- Advising government on the implementation of the criminal justice recommendations of the Royal Commission into Aboriginal Deaths in Custody
- Coordinating the implementation, monitoring and evaluation of the NSW Aboriginal Justice Plan
- Monitoring and assisting in the development of local initiatives which address criminal justice issues, including those aimed at preventing crime and encouraging Aboriginal self management
- Advising on improving relationships between Aboriginal and non-Aboriginal people, advising on the development of programs which increase the employment of Aboriginal people at all levels in criminal justice agencies.

PART 2: COMMONWEALTH GOVERNMENT RESPONSES TO CHILD SEXUAL ASSAULT

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Overview of findings

In reviewing the Commonwealth Government's overarching response to child sexual assault in Aboriginal communities, ACSAT found that:

- While the Commonwealth Government has developed a policy framework for preventing child abuse in Indigenous communities, it does not specifically address child sexual assault
- Child sexual assault has not been included in the Bilateral Agreement currently being finalised between the Commonwealth and NSW Government
- The Commonwealth Family Violence Prevention Units are a well-received service in Aboriginal communities and this program should be expanded
- The Commonwealth Government can help to get child sexual assault onto Aboriginal regional and community plans via its Indigenous Coordination Centres
- The Commonwealth Government needs to provide a funding stream for local initiatives to address child sexual assault projects in Aboriginal communities

Commonwealth Government responses to child sexual assault

Under the Australian Constitution, child protection intervention services are the responsibility of the community services department in each state and territory. However, the Commonwealth Government does have some policy frameworks and services that address child protection issues. In Commonwealth Government policies, child sexual assault is addressed as part of child protection and in initiatives to reduce child abuse.

Council of Australian Governments National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities

This framework was developed because all jurisdictions agreed that preventing family violence and child abuse in Indigenous families was a priority for action that required a national effort.

Jurisdictions agreed to work cooperatively to improve the way they engage with each other, and with Indigenous communities, to prevent family violence and child abuse in Indigenous families. This framework is based on the following principles:

- **Safety:** Everyone has a right to be safe from family violence and abuse
- **Partnerships:** Preventing family violence and child abuse in Indigenous families is best achieved by families, communities, community organisations and different levels of government working together as partners
- **Support:** Preventing family violence and child abuse in Indigenous families relies on strong leadership from governments and Indigenous community leaders and sustained resources
- **Strong, resilient families:** Successful strategies to prevent family violence and child abuse in Indigenous families enable Indigenous people to take control of their lives, regain responsibility for their families and communities and to enhance individual and family wellbeing
- **Local solutions:** Successful strategies to prevent family violence and child abuse in Indigenous families are flexible, work across jurisdictional and administrative boundaries, enable communities and governments to work together in new and innovative ways and enable local Indigenous communities to set priorities and work with governments to develop solutions and implement them

- **Address the cause:** Successful strategies to prevent family violence and child abuse in Indigenous families address the underlying causes of violence and abuse, including alcohol and drug abuse, generational disadvantage, poverty and unemployment

Services provided by the Department of Family, Community Services and Indigenous Affairs

The Australian Government, through Department of Family, Community Services and Indigenous Affairs (FaCSIA), promotes best practice nationally in the areas of child protection and early intervention and prevention.

Indigenous Policy Branch

The Indigenous Policy Branch is responsible for developing policy solutions that will lead to strengthening Indigenous families and communities to increase self-reliance and reduce welfare dependency and passivity.

Responsibilities include:

- Support alignment of FaCSIA policies, programs and service delivery to contribute to the whole of government Indigenous agenda
- Manage Indigenous programs and projects, including Family and Community Networks Initiative, National Indigenous Money Management Agenda, National Stores Project, Centre for Aboriginal Economic Policy Research and the Strengthening Indigenous Communities Local Government Award

Funding for measures to prevent child abuse

Across FaCSIA, funding is provided for a range of programs, projects and/or measures that directly or indirectly assist in the prevention of child abuse. Funding is usually directed to time-limited projects that support and strengthen parenting roles, contribute to the development and well-being of children in the early years and assist in the prevention of child abuse.

The projects may increase awareness or provide practical advice, resources or strategies to deal with particular issues.

When new funding becomes available it is usually allocated through a tendering process where the final approval is at the relevant Minister's discretion. Funding opportunities are listed on the FaCSIA web pages and advertised in the national press.⁵⁵

Responding Early to Assist Children

The *Responding Early to Assist Children* (REACH) program aims to improve the capacity of families and caregivers to respond appropriately to children's needs for care, stimulation and safety through timely access to community resources that can support them in their parenting role. REACH has an emphasis on ensuring the best possible start to life and promoting successful transitions for children in vulnerable families.

REACH aims to improve access to support services and will encourage families to engage with their community through partnership approaches. The program is about child-centred, family focused and community connected responses.

⁵⁵ http://www.facs.gov.au/internet/facsinternet.nsf/family/parenting-child_abuse_prevention.htm

Currently there is only one REACH program targeting Aboriginal communities. That is an Aboriginal mentor program based at Coffs Harbour that aims to improve access to services and support and to foster coordination between services for Aboriginal people.

Family Violence Partnership Program

The Australian Government provides funding for projects and initiatives that aim to reduce, and prevent, Indigenous family violence and child abuse by enhancing existing, or establishing new, initiatives in partnership with states and territories throughout Australia.⁵⁶

Family Violence Regional Activities Program

Family Violence Regional Activities Program (FVRAP) aims to provide practical and flexible support for grassroots projects that have been identified by Indigenous communities as a local priority and that address family violence, sexual assault and child abuse.⁵⁷

It also seeks to trial new and innovative approaches to reducing family violence in Indigenous communities by:

- Promoting and supporting community-based organisations to develop community-based ways of reducing and preventing family violence in Indigenous communities
- Supporting projects which take a holistic approach to addressing the social, emotional and cultural wellbeing of the whole community and include, where appropriate, traditional approaches to family relationships and /or traditional lore
- Supporting effective solutions which involve all elements of the community, reflecting the important roles of men, women, children, elders and community leaders
- Increasing the skills of community members in understanding, preventing and responding to family violence, ultimately leading to stronger communities that will be able to respond effectively to family violence, beyond the life of the project
- Fostering collaboration between local agencies and community-based organisations in the prevention of family violence, including through mentoring and evaluation
- Developing, supporting and/or maintaining community capacity and social capital building initiatives
- Gathering information on a range of innovative and culturally appropriate responses to family violence that can inform government policy and help community organisation working to reduce family violence

Projects that reflect the importance of protecting women and children, and breaking the cycle of violence, are a particular focus of the Program. This includes initiatives to address issues such as recognition, healing, grieving and/or perpetrator programs.

Examples of activities funded under this program include night patrols, coordinators for safe houses and the development of support initiatives to assist perpetrators to break the cycle of family violence.

⁵⁶ <http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-fvp.htm>

⁵⁷ *ibid*

Services provided by the Commonwealth Attorney General's Department

The Commonwealth Attorney General's Department provides funding for the Family Violence Prevention Legal Service (FVPLS). These are community-controlled justice, advisory and referral centres for Indigenous victims of family violence.⁵⁸

The FVPLS provides (in priority order):

1. Legal advice and casework assistance
2. Counselling to victims of family violence and sexual assault
3. Assistance and support to victims of sexual assault
4. Child protection and support
5. Information, support and referral services
6. Community awareness and prevention initiatives
7. Referral to mediation services
8. Referral to perpetrator programs

In NSW, FVPLS services are currently operating in:

- Walgett
- Moree
- Kempsey
- Forbes
- Bourke/Brewarrina (newly established and not yet operational)

Barriers to the Commonwealth Government effectively responding to evidence of child sexual assault in Aboriginal communities

ACSAT recommendation 3
Develop a national statement addressing child sexual assault in conjunction with states and territories

National policy framework

In reviewing the Commonwealth Government's policy frameworks, ACSAT found that the Commonwealth has committed in policy to working in partnership with state and territory governments to achieve better outcomes for Indigenous Australians, improve the delivery of services, build greater opportunities and help Indigenous families and individuals to become self-sufficient.

ACSAT also found the Commonwealth has committed in policy to working in partnership with state and territory governments on child protection in Indigenous communities. However, ACSAT found that while the Commonwealth did have a policy statement outlining its position on child abuse, this statement did not specify child sexual assault.

⁵⁸ Attorney Generals Department (2004), *Family Violence Prevention Legal Services, Operational Framework*, Australian Government

ACSAT believes that the extent of child sexual assault in Aboriginal communities Australia-wide⁵⁹, and the devastating impact it is having on these communities, warrants a national policy statement from the Commonwealth Government. This statement would outline the Commonwealth Government's position on child sexual assault in Aboriginal communities and how it will work with states and territories to address the issue.

Including child sexual assault in the Bilateral Agreement

A Bilateral Agreement has recently been finalised between the Commonwealth and NSW Governments. A number of priority areas have been identified for both governments to address. ACSAT notes that child sexual assault is not one of the included priorities and believes that this is a lost opportunity.

The Bilateral Agreement states that any issue raised by the community can be addressed within this protocol. Consultations found that child sexual assault is endemic within NSW and the Aboriginal community wants help to address it. ACSAT recommends that child sexual assault be included in the Bilateral Agreement and any other formal agreements negotiated between the NSW and Commonwealth Governments. This would provide a framework for how the governments can work in partnership to address child sexual assault.

Family Violence Prevention Legal Services

During consultations, ACSAT found that the communities where there was a Family Violence Prevention Legal Service (FVPLS) operating felt supported by these services and therefore more empowered to address child sexual assault issues. Participants from these communities said they would go to a FVPLS if they needed advice or assistance.

While these services are primarily legal services, they also provide support, information and referrals to other services as required. Some FVPLS also support a sexual assault worker, which communities said was very effective. Communities saw this service as taking a holistic approach. As one community member notes:

'...like the legal matter's one part, like you know, they might do a letter of support to the Department of Housing; they might do liaisons with DoCS or other services, you know. So, the legal bit is one tip of the iceberg.'

Transcript 31

ACSAT recommendation 4

- a) Include strategies to address child sexual assault in the Bilateral Agreement through Key Focus Areas
- b) All relevant NSW and Commonwealth agreements include a statement addressing Aboriginal child sexual assault

⁵⁹ Inquiries and research conducted in other states and territories, for example the Gordon Inquiry in Western Australia suggest that the incidence of child sexual assault is high in Indigenous communities across Australia.

ACSAT recommendation 5

- a) The Commonwealth Government funds Family Violence Prevention Legal Service so that they are accessible to every community in the state
- b) Every Family Violence Prevention Legal Service includes a specialist child sexual assault position

Those consultation participants who also worked for these services indicated that people often disclosed that their children were being abused, as they felt safe in that environment and they knew that the service would support them in doing something about it.

ACSAT strongly believes that, as this is a model that is clearly working for communities, it should be expanded so that every community can access the services it provides. It is important that, as recognised by the Commonwealth Attorney Generals Department, a sexual assault worker is employed in these services to ensure that the appropriate supports are provided.

ACSAT recommendation 6

The Commonwealth Government to work jointly with communities and NSW Department of Aboriginal Affairs to ensure child sexual assault is included in all regional and local plans

Assistance with community planning

The Commonwealth Government's ICCs coordinate a planning mechanism that helps Indigenous communities identify local issues and develop a community response. ACSAT believes that this mechanism can be used to ensure that child sexual assault is included in local community plans.

A number of local planning groups, as well as some staff from ICC's, were involved in ACSAT's consultations. Members of these groups were asked if child sexual assault was an issue and if so was it on the local community planning agenda. Every community said that child sexual assault was an issue, but not one community had the issue on their local agenda or a plan to begin addressing it.

To ensure continuity across regional and community plans, ACSAT believes that the Commonwealth Government needs to work closely with DAA and other relevant NSW government agencies. See page 102 for more information on local, regional and state planning.

Funding for local initiatives

When communities talked about local strategies to address child sexual assault, they often spoke of the difficulty they had in getting funding for these strategies. Often child sexual assault initiatives require a significant funding commitment because they must either employ trained people or provide training so they can be effectively implemented. Using volunteers is not appropriate for child sexual assault projects as one community member notes:

'Funding's the drama because there is so much more you can do if you've got more funding and then we know that but part of our drama if we've got a few CDEP people and the rest are volunteers and I'm not comfortable with volunteers dealing with issues like this because of confidentiality, and anyone that worked on an issue like this would have to sign a confidentiality agreement and all sorts of stuff like that with us'. *Transcript 1*

The Commonwealth Government provides a number of funding streams for projects that aim to reduce family and child abuse in Australia. These include REACh, the Family Violence Partnership Program and the Family Violence Regional Activities Program. These programs could address child sexual assault as it occurs within a broader family violence and/or child abuse context.

Currently there are few (if any) programs specifically targeted at addressing child sexual assault issues in Aboriginal communities.

ACSAT believes it is important that funding is made available for local community initiatives to address child sexual assault so that Aboriginal communities are empowered to respond in ways that are effective for them. It believes the Commonwealth Government (and the NSW Government, see page 108) should provide this funding stream. These funds should be untied, to ensure that local communities can access the funding more easily and should not have to be attached to another issue such as family violence. Funds could be made available for programs that include but are not limited to: education programs for children and young people; education programs for community members and/or workers; healing programs; and early intervention and prevention programs.

ACSAT recommendation 7

- a) The Commonwealth Government develops an economic strategy/funding strand to fund Aboriginal child sexual assault prevention initiatives
- b) Provide untied funds to child sexual assault programs

PART 3: WHOLE OF NSW GOVERNMENT RESPONSES TO CHILD SEXUAL ASSAULT

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Overview of findings

When examining NSW Governments policy frameworks and overarching response to Aboriginal child sexual assault, ACSAT found:

- There is no state-wide policy framework that specifically addresses child sexual assault in Aboriginal communities
- Child sexual assault is not explicit in *Two Ways Together – NSW Aboriginal Affairs Plan (2003-2012)*
- The way the NSW and Commonwealth Governments work together to address child sexual assault needs to be clarified and the links strengthened
- Service responses to child sexual assault need to be provided in a holistic way that is effectively coordinated and this includes: understanding Aboriginal families and communities as interlinked networks; providing coordinated service responses; reviewing interagency guidelines; unifying definitions of child sexual assault across agencies; addressing child sexual assault at the same time as addressing social and economic disadvantage; and an appropriate physical location for services
- The Commission for Children and Young People currently has no programs that specifically address the safety and well-being of Aboriginal children and young people
- There is limited government leadership of the issue of child sexual assault in Aboriginal communities at the political or the agency level
- Child sexual assault is currently not on the agenda of local community plans and the NSW Government, via its Department for Aboriginal Affairs, has a role in helping communities to put it on the agenda and develop local strategies to address it
- There is not enough funding and support for local Aboriginal initiatives to address child sexual assault
- There is a lack of awareness and understanding about child sexual assault among Aboriginal communities and among service providers and this is impacting on the levels of reporting and on the way services respond
- Some communities expressed concern that the findings of ACSAT won't be published and that the recommendations won't be implemented. They felt that they had contributed to many government inquiries in the past that had not been acted on. ACSAT believes that an implementation strategy needs to be developed to ensure a coordinated and timely government response to its findings
- ACSAT noted the success of having the NSW Police *Aboriginal Strategic Direction* policy audited by the NSW Ombudsman. It believes it would be useful to have the NSW Ombudsman conduct a similar audit of the implementation of ACSAT recommendations across the whole of NSW Government and each of the relevant government agencies

NSW Government responses to child sexual assault

In NSW Government policies, child sexual assault is addressed as part of child protection and in initiatives to reduce child abuse. NSW endorses an interagency response to the care and protection of children and young people. Through a number of policy frameworks NSW aims to create an effective service system to address child protection.

Statutory obligations

Child sexual assault is a crime in NSW and as such is governed by Division 10 of the *Crimes Act (NSW) 1900*. It is a crime to conduct any behaviour of indecency or sexual act (including intercourse) with a child under the age of 16, with or without consent.⁶⁰

The *Summary Offences Act 1998* also has applications to child sexual assault for offences such as pornography, prostitution and indecent exposure.

The *Children and Young Persons (Care and Protection) Act 1998* provides the statutory basis for collaborative work in child protection between government and non-government agencies and families in NSW. It has implications for the policies and practices of all institutions, services and facilities working with children, young people and their families.⁶¹

Guidelines for interagency intervention in child protection

The NSW government has recognised the need for a holistic approach to address child protection issues and that agencies need to work together. The *NSW Interagency Guidelines for Child Protection Intervention* (Interagency Guidelines) were developed in 2000 to help professionals and agencies work together on the care and protection of children, young people and their families, and to identify good practice standards.

The *NSW Interagency Guidelines for Child Protection Intervention 2000* states:

'Child protection is the responsibility of the whole community and one specifically shared by those government and non-government agencies which provide any form of care for children, young people and their families or which come into contact with them in the course of their work.

No single agency has all the knowledge, skills or authority to safeguard a child or young person from abuse or neglect and to prosecute an alleged offender. Child protection requires the best expertise and resources available and this is only achieved by coordination. In child protection the emphasis is on the child, young person or family receiving a service so that the child or young person is safe. It is the task of agencies to coordinate their efforts to achieve a good outcome for the child and young person.

All such agencies have a responsibility to protect children and young people and to work collaboratively with other agencies to ensure a coordinated and comprehensive response to their needs.'⁶²

⁶⁰ *NSW Crimes Act 1900*

⁶¹ *NSW Children and Young Persons (Care and Protection) Act 1998*

⁶² NSW Government (2005), *NSW Guidelines for Child Protection Intervention, revised edition*, p.15

The Interagency Guidelines recognise the range of skills and professional perspectives that are vital in protecting children and young people who are at risk of harm. They are based on a set of principles that place the child's safety, welfare and wellbeing as paramount. These principles include:

- Children and young people must be given an opportunity to participate in decisions which significantly affect their lives
- Child protection decisions must take into account the culture, disability, language, religion and sexuality of a child and their family
- Families must be given an opportunity to participate in decisions which affect the safety, welfare and well being of a child or young person
- Acting to protect a child or young person, practitioners or agencies should maintain the child's, or young person's, relationships and sense of identity and should intervene only as far as required to secure their safety, welfare and well-being
- Children and young people who are unable to live with their families will be provided with an environment which meets their care, support, education and health needs
- Government agencies will work in partnership with each other, with non-government organizations and with the child or young person and their family to secure and sustain their safety, welfare and well-being
- Government and non-government agencies will follow policies and practices, that are qualified, trained and supervised and the working with children check is conducted
- The guidelines also identify roles and responsibilities for government and non-government agencies involved in child protection⁶³

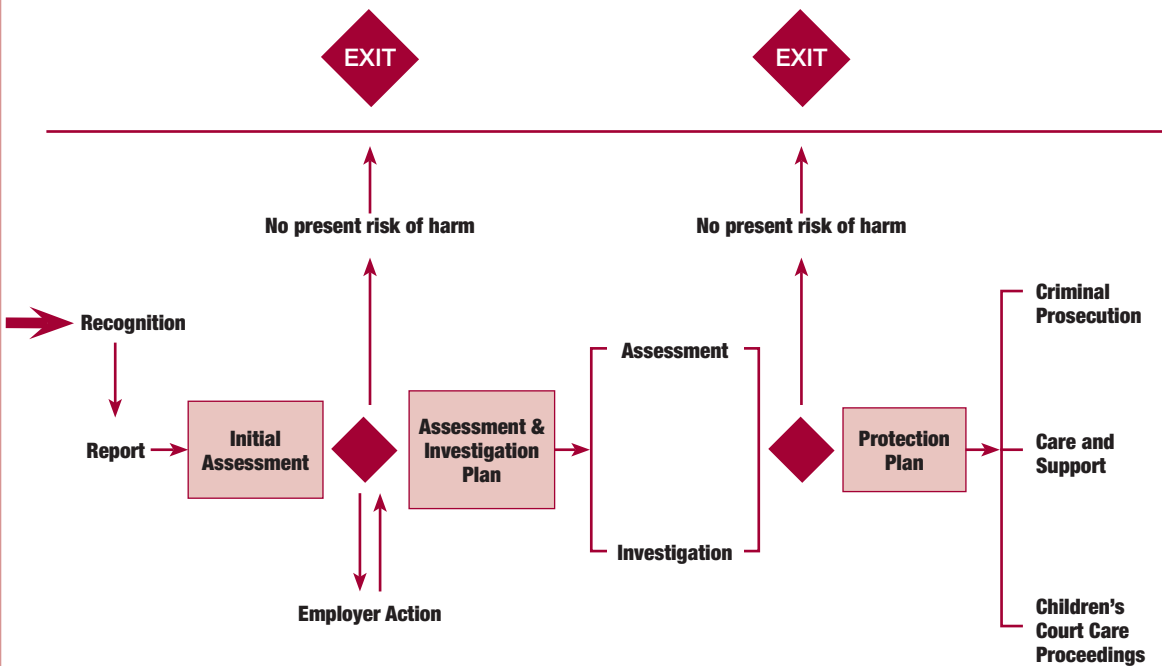
Diagram 1 shows the roles and responsibilities of agencies throughout the child protection intervention, under the Interagency Guidelines⁶⁴

⁶³ The role of non-government agencies in the guidelines is generally limited to responding to requests for services, providing information and reporting risk of harm.

⁶⁴ NSW Government (2005), *NSW Guidelines for Child Protection Intervention, revised edition*, p. 72-73

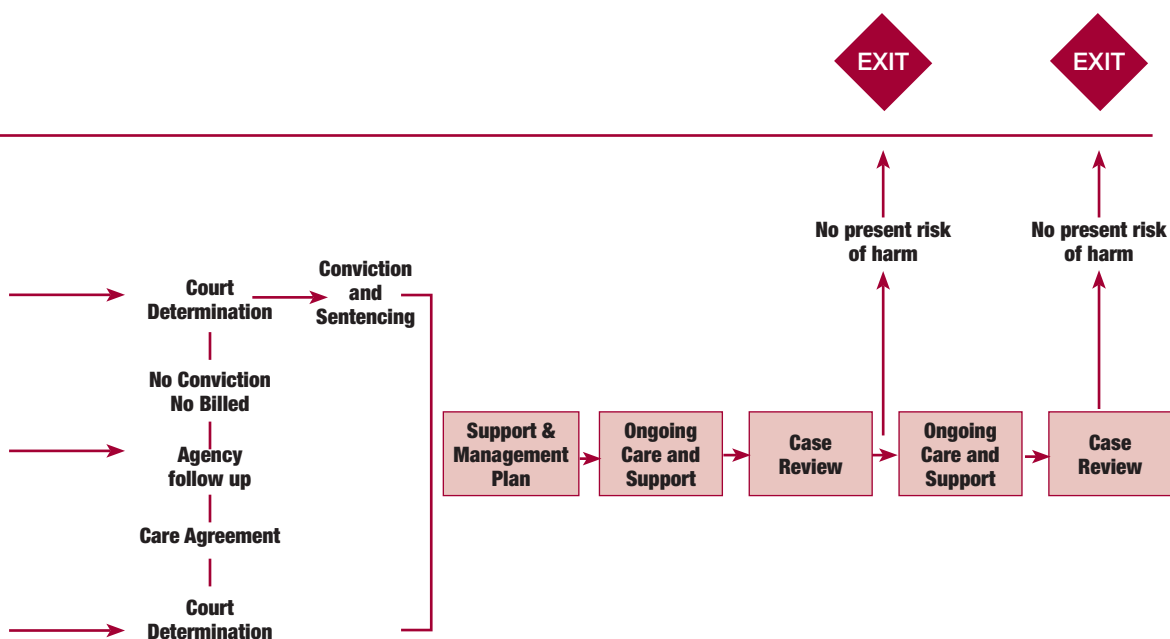
Interagency guidelines for child protection intervention revised 2005

Interagency approach in practice



Recognition	Report	Assessment & Investigation	Protective Intervention
Department of Community Services	Department of Community Services	Department of Community Services	Department of Community Services
NSW Police Services	NSW Police Services	NSW Police Services	NSW Police Services
NSW Health	NSW Health	Office of the Ombudsman	NSW Health
Department of Education and Training	Department of Education and Training		Department of Education and Training
Non-Government Organisations	Non-Government Organisations		Courts
Department of Juvenile Justice	Department of Juvenile Justice		Non-Government Organisations
Office of the Ombudsman	Office of the Ombudsman		Office of the Director of Public Prosecutions
			Department of Juvenile Justice

practice framework



Protective Intervention	Ongoing Care & Support	Case Closure
Department of Community Services	Department of Community Services	Department of Community Services
NSW Police Services	NSW Police Services	NSW Health
NSW Health	NSW Health	Department of Education and Training
Department of Education and Training	Department of Education and Training	Non-Government Organisations
Courts	Non-Government Organisations	Department of Juvenile Justice
Non-Government Organisations	Department of Juvenile Justice	
Office of the Director of Public Prosecutions		
Department of Juvenile Justice		

NSW Commission for Children and Young People

The NSW Commission for Children and Young People (CCYP) was set up after the Wood Royal Commission's investigation into the NSW Police Service in 1997 identified a need for a strategy to protect children who are involved in community activities and organisations.

The Commission is governed by the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*.⁶⁵ The principles of the legislations are:

- The safety, welfare and well-being of children are the paramount considerations
- The views of children and young people are to be taken into account and given serious consideration
- A co-operative relationship between children and their families, and between children and their community is important for the safety, welfare and well-being of children

The objectives of CCYP are to:

- Promote ways for children and young people to participate in issues that affect them
- Have input into laws and policies that affect children and young people
- Undertake research, including research for the NSW Child Death Review Team
- Promote awareness and understanding about children and young people's issues
- Building child safe and child friendly organisations
- Implementing and monitoring the Working With Children Check
- Administering the Child Sex Offender Counsellor Accreditation Scheme⁶⁶
- Producing publications and resources about children and young people's issues

Working with Children Check

The CCYP has developed a screening procedure, known as the *Working with Children Check* (WWCC), to check the background of anyone who is seeking employment at any organization that is involved with the care of children. The WWCC has two components:

- The prohibited employment declaration to prohibit convicted sex offenders and people convicted of kidnapping or murdering a child from working in paid or unpaid child-related work; and
- A process for checking the backgrounds and assessing the risks posed by preferred applicants for paid child-related positions

Whole of government strategies to promote child protection

Community Solutions & Crime Prevention Strategy

The *Community Solutions & Crime Prevention Strategy* (CSCPS), being managed by DoCS, aims to provide an innovative multi-agency response to issues, particularly crime prevention, that affect targeted priority communities. It aims to:

- Reduce crime and anti-social behaviour and increase community safety
- Improve health and community resilience (including reducing drug and alcohol abuse)
- Improve educational and employment opportunities
- Improve local coordination and infrastructure
- Improve agency coordination and information sharing

⁶⁵ Review of the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*

⁶⁶ This is a voluntary accreditation scheme for programs as well as persons working with those who have committed sexual offences against children.

A Government Working Group oversees the implementation of the strategy, requiring a new approach to improve outcomes and to ensure the coordination and alignment of existing initiatives in crime prevention related areas. Agencies provide statewide line agency information on locations, existing services and initiatives.

Child sexual assault could be addressed directly or indirectly in some initiatives funded under this Strategy.

Families First

Families First is a whole of government prevention and early intervention strategy to help parents give their children a good start in life. It provides support to families during pregnancy and in the early years of a child's life, when development is rapid. Research suggests that supporting families during these early years has a lasting influence on children in later life. *Families First* builds on this research⁶⁷.

Families First is delivered jointly by five NSW Government agencies – NSW Health and Area Health Services, DoCS, DET, DoH and Ageing, Disability and Home Care. It relies on government and non-government services working differently together and with communities to plan and develop more responsive and coordinated services. *Families First* helps to improve children's health and well-being by:

- Helping parents to build their skills and confidence in their parenting
- Supporting parents so they can respond to problems early
- Building communities that support families
- Improving the way agencies work together to make sure families get the services and support they need

Families First has developed a wide range of strategies that aim to support families and improve outcomes for children. While strategies and services vary from region to region in response to local needs, there are a number of key models that have been implemented widely, including:

- Family Worker Services
- Schools as Community Centres
- Supported Playgroups
- Universal Health Home Visiting
- Volunteer Home Visiting Services

Barriers to NSW Government effectively responding to evidence of child sexual assault in Aboriginal communities

Policy frameworks for addressing child sexual assault

The NSW Government is committed to achieving better outcomes for Indigenous Australians, improving the delivery of services, building greater opportunities and helping Indigenous families and individuals to become self-sufficient. It is also committed to addressing child protection in Indigenous communities.

⁶⁷ http://203.147.192.57/public/s26_homepage/default.aspx as at 7 November 2005

ACSAT recommendation 8

Develop a state-wide evaluation policy framework to address child sexual assault in Aboriginal communities. It would include:

- a) A continuum of NSW Government service delivery to ensure efficient and effective service delivery to Aboriginal children, young people, families and communities who have experienced child sexual assault
- b) An evaluation framework that is agreed to by Government and community in line with:
 - i. Child Protection Interagency Guidelines
 - ii. *Children and Young People's (Care and Protection) Act 1998*
 - iii. *NSW Crimes Act 1900*

ACSAT recommendation 9

Negotiate policy and service provision with the Commonwealth, regarding child sexual assault in Aboriginal communities, through the *Two Ways Together – Aboriginal Affairs Plan, Bilateral Agreement, Indigenous Coordination Centres and Regional Coordination Management Groups*

These commitments are reflected in various policies and strategies at the whole of government, departmental, regional and local levels. However, in reviewing the NSW Government policy frameworks, ACSAT found no overarching policy that specifically addressed child sexual assault in Aboriginal communities.

ACSAT believes that while experiences of child sexual assault in Aboriginal communities have similarities to all experiences of child sexual assault, there are also some important differences that can render existing service responses less effective. Factors such as complex extended family and community networks; geographic isolation; community-wide mistrust of the service system; and poor responses by current service providers further complicate Aboriginal experiences of child sexual assault and mean that a specific response is necessary.

The relationship between NSW and Commonwealth Governments when responding to child sexual assault

While the NSW and Commonwealth Governments have agreed on frameworks for providing general services and for preventing child abuse in Indigenous communities, there is no formal agreement as to how the jurisdictions will work together to address child sexual assault specifically.

A number of frameworks have been established to allow coordinated planning to occur. These include, the *Two Ways Together – Aboriginal Affairs Plan, Bilateral Agreement, Indigenous Coordination Centres and Regional Coordination Management Groups (RCMG)*⁶⁸. ACSAT believes that these frameworks should be used to strengthen the relationship between the Governments and enhance the capacity of both to effectively address child sexual assault in Aboriginal communities.

Coordinating a holistic response to child sexual assault in Aboriginal communities

Communities consulted for this project stressed over and over the need for child sexual assault services to be provided to them in holistic way. Current research agrees with this approach. It suggests that interconnected and multifaceted approaches to child sexual assault get better results. These approaches are able to respond to the many factors that influence the way families and communities function. They also ensure that continuums of care and support are entrenched in the policy and protocols of agencies that respond to child sexual assault.

⁶⁸ RCMGs are forums for senior officers within a region that meet regularly to discuss issues and develop regional and local plans to address them. RCMGs are managed by NSW Premiers Department

The dimensions of a holistic service

As ACSAT reviewed the responses from communities, and information from government submissions and research, it became clear that ‘providing services in a holistic way’ has a number of dimensions. These are outlined below.

Understanding Aboriginal communities in a holistic way

One of the most common perceptions revealed in consultations was that service providers didn’t understand Aboriginal culture or communities. Often this perception seemed to arise because service providers kept trying to respond to Aboriginal people in ways that weren’t relevant to the way they lived and the way their community operated.

Communities consistently stressed the importance of understanding Aboriginal families and communities in a holistic way. Aboriginal families and communities are interlinked and one family or child cannot be treated in isolation from this environment.

Providing a coordinated service response

The NSW Government is committed to providing child protection services in a coordinated way. This is reflected in the *NSW Interagency Guidelines for Child Protection Intervention 2000*.

All government and non-government agencies in NSW have recognised these guidelines and incorporated them into their own protocols for responding to child protection situations. However, community comments about the service responses they were getting suggested to ACSAT that in practice, interagency responses were not always functioning very well. During one consultation, a participant described the following situation as an example of how children who have experienced child sexual assault can fall the cracks of the service system. See *text Box 1*.

Text Box 1

A number of girls, who were around 15 years old, had disclosed to someone at their school that an uncle had sexually assaulted them. The girls were cousins and did not live with the uncle.

The school reported the assault to DoCS. DoCS reviewed the case, considered the parents of the girls to be protective and decided there were no further care and protection issues. DoCS referred the matter to the police for investigation, however, as far as the community could see, no investigation took place.

The young people wanted to access counselling, however NSW Health said they couldn’t provide counselling until the police had interviewed the girls. Neither DoCS nor NSW Health spoke to the police about the investigation so the case remained stagnate. The girls received no formal support and began using drugs and acting out at school.

A community member was then entrusted by the community to provide support and advocacy to the girls so they could get the help they needed. However each service they approached, including DoCS, Police, Health and even the school said it was ‘not their responsibility’ and they could not talk about it with the community member anyway because she was not from an organisation involved with the girls, nor was she the girl’s parents.

Communities consistently reported instances, such as the example above, where they believed that services weren't communicating with each other and were 'passing the buck' from one service type to another. In addition, participants said that it was common for service providers to not recognise a local community protocol such as allowing a delegated person to advocate on behalf on the girls or the families.

It also became clear during consultations that many Aboriginal communities, and often service providers, were not aware of the role and responsibilities of each of the services available.

Review of interagency guidelines

Many Aboriginal workers were involved in ACSAT's consultations and they said that the way their service responds to child protection is guided by the NSW *Interagency Guidelines*. These workers also reported that, in their view, these guidelines didn't take account of the complex dynamics of Aboriginal communities and culture and therefore were not helping services to provide an effective coordinated response to Aboriginal communities.

In addition, they noted that the guidelines were all about communication and cooperation between services and could not accommodate community involvement in the exchange of information and agency collaboration.

The NSW *Interagency Guidelines* have recently been reviewed as part of regular policy evaluation. Consultations have been held with government and non-government agencies and with consumers of child protection services. A range of practice issues have been identified that require resolution prior to drafting the new edition.⁶⁹ However, it appears that this review did not specifically consider issues pertaining to Aboriginal people.

Definitions of child sexual assault

When ACSAT reviewed the legislation and policies that determine how government agencies in NSW respond to child sexual assault, it found a number of inconsistencies in some key definitions. For example the *NSW Crimes Act 1900*, that includes the crime of child sexual assault, defines a child as a person who is under 18 years of age whereas the *Children and Young Persons (Care and Protection) Act 1998* defines a child as a person under 16 years of age.

Inconsistent definitions can create gaps in the services provided to survivors of child sexual assault. For example NSW Police, whose policies are informed by the *NSW Crimes Act 1900*, may refer a person who is 17 years old, and who has been sexually assaulted by a family member, to Department of Community Services (DoCS), whose policies are informed by the *Children and Young Persons (Care and Protection) Act 1998*. DoCS may choose not to provide a service to this person because according to their legislation, this person is no longer a child.

Inconsistent definitions also impacts on the data about child sexual assault that is collected by government agencies and how this data can be used. (For more information about the way data is collected, see discussion on page 69.)

Addressing child sexual assault at the same time as addressing social and economic disadvantage

Many participants believed that it was futile to try and address child sexual assault in Aboriginal communities without addressing issues such as health, substance abuse, housing, education

⁶⁹ http://www.community.nsw.gov.au/html/comm_partners/childprotection_guidelines.htm

etc at the same time. They suggested that all these issues were interlinked and 'fed into' each other, each one compounding the complexity of the other.

The Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012) aims to address disadvantage in Aboriginal communities and in so doing, will consider these factors. It will not however, specifically address child sexual assault. In the TWT plan, one goal of the Families and Young People priority area is to achieve 'strong and safe children, families and young people'. The indicator that measures the success of TWT in meeting this goal is the number of substantiated child protection reports made. As child sexual assault is one of the reasons why a report may be made, it may be addressed, along with other forms of child abuse and neglect, in initiatives that are working towards this goal. It is unlikely however, that it will receive the specific attention that ACSAT believes it requires.

To ensure that child sexual assault is addressed effectively, and in unison with social and economic disadvantage, ACSAT recommends the issue be explicitly incorporated into the *Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012)* in the Justice and the Families and Communities clusters.

The physical location of services

Providing services in a holistic way also included the physical location of the service. In a number of consultations, participants said that most people found it easier to walk into a community health centre, Aboriginal Medical Service or a generic non-government service than a service that everyone knew was a sexual assault service, such as DoCS or a police station. For example, one community member said an agency in her community that responds to family violence had auspiced a branch of the Smith Family and the Smith Family service was run out of the same premise. She said that the number of people coming to the service for help increased, stating that:

'It gave people an excuse to walk in the door, because they'd be like, "I'm going in there to get something", or "I'm going in there to see the Smith Family" and then once they're in there, they go, "Oh by the way, is there a worker around? Can I have a chat?"' *Transcript 15*

Participants believed that, where possible, services for child sexual assault should be co-located with more general services and that this should be considered when strategically planning government responses to child sexual assault.

ACSAT recommendation 10

Include child sexual assault explicitly in *Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012)* through the Justice and the Families and Communities Cluster groups and develop indicators to measure success in addressing Aboriginal child sexual assault in it

ACSAT recommendation 11

Establish an Aboriginal Child Sexual Assault Coordination Unit to:

- a) Liaise with Government, NGO's and communities on Aboriginal child sexual assault policies and programs
- b) Develop and implement State wide Aboriginal child sexual assault evaluation policy framework
- c) Coordinate, monitor, review and advise on services provision for Aboriginal child sexual assault across the state
- d) Ensure that programs that address child sexual assault are developed within a holistic context accessible by the local community it services
- e) Comprehensively review the Child Protection Interagency Guidelines to specifically address issues relating to child sexual assault in Aboriginal

ACSAT recommendation 12

Establish partnerships and formal protocols between Government and peak bodies to address child sexual assault including:

- Aboriginal Health and Medical Research Council
- NSW Council of Social Services
- Aboriginal Child, Family and Community Care State Secretariat
- NSW Family Services Incorporated
- Aboriginal Education Consultative Group
- NSW Aboriginal Land Councils
- Aboriginal Justice Advisory Council
- Association of Children's Welfare Agencies

Coordinating the dimensions of a holistic response

ACSAT believes that a holistic response to the needs of Indigenous communities and families includes:

- A focus on affirming and supporting participants identities and healing
- Input from, and coordination between, communities and the non-government and government sectors
- Successful community ownership and sustained engagement in addressing community issues and
- Genuine partnerships with a strong commitment of time and resources

ACSAT believes that bringing together all the dimensions of a holistic response to addressing child sexual assault in Aboriginal communities is both essential and complex. It believes it requires a focused and coordinated effort that is able to operate on many fronts and do so as a matter of urgency.

Responding to child sexual assault requires a whole of government effort. Three government agencies (DoCS, NSW Health and NSW Police) provide a direct response to an incident of child sexual assault and another five may respond indirectly. ACSAT does not believe that any one of these is currently in a position to coordinate a holistic response to child sexual assault in Aboriginal communities.

ACSAT recommends that the NSW Government establish an Aboriginal Child Sexual Assault Coordination Unit that can take responsibility for coordinating the government's response across all its many facets. This would include developing the overarching NSW Government policy framework and building relationships with communities and non-government organisations to address child sexual assault in Aboriginal communities.

Protecting the interests of Aboriginal children and young people

The NSW Commission for Children and Young People was set up to, among other things, promote the interests of children, particularly in regard to their safety, welfare and well-being. In addition, the CCYP is meant to 'give the interests and needs of vulnerable children priority attention'.

However, when ACSAT talked to communities about CCYP, it found that most Aboriginal people had little involvement with it or even knew what it was supposed to do.

When ACSAT asked CCYP what it was doing for Aboriginal children, CCYP indicated that it currently consults with a range of Aboriginal children and organisations on issues that may affect Aboriginal

children. However, CCYP also indicated that no Aboriginal people are currently employed within the Commission nor are there any specific programs to promote the well-being of Aboriginal children and young people.

ACSAT recognises an imperative need for a government department to promote the well-being and safety of Aboriginal children and young people and to improve the capacity of government agencies to provide adequate services to ensure their protection. ACSAT believes that the CCYP is the ideal body to fulfil this role and that the Commission should be properly resourced so that it can appoint a high level Indigenous person (an Assistant Commissioner) and a team of Aboriginal people to support this person's role.

This view is supported by the Committee on the Rights of the Child⁷⁰ and the 2002 Western Australian inquiry into family violence and child abuse in Aboriginal communities⁷¹. The Committee on the Rights of the Child welcomes the establishment of specific commissioners for children, as well as the existence of the federal Human Rights and Equality Opportunity Commission (HREOC), and states that governments should:

'...ensure implementation of the economic, social and cultural rights of children, in particular those belonging to disadvantaged groups, such as indigenous children, "to the maximum extent of... available resources"⁷².

The Western Australian inquiry argued that:

'The complexity of the service system coupled with the levels of child abuse, and the significant problems facing Aboriginal communities require mechanisms to oversight the delivery of services to children, and to advocate on their behalf.'

The Working with Children Check

Consultations revealed a lack of understanding among community members of the Working with Children Check (WWCC) and a perception that it was not being carried out by agencies when it should have been. Aboriginal community members expressed regular concern that people were being employed in government and non-government organisations without the appropriate checks being done.

There was also a concern in the community that people were still being employed by these organisations, even though they had been charged with a child sex offence. Few community members knew

⁷⁰ CRC/C/15/Add.268, Concluding Observations, Committee on the Rights of the child, Australia, 40th session, consideration of reports submitted by state parties under article 44 of the convention, 30 September 2005

⁷¹ Gordon, S Hallahan, K, Henry, D (2002) *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.

⁷² Ibid – Section 16

ACSAT recommendation 13

A team is established within CCYP which includes:

- An Assistant Commissioner to provide leadership for the Commission's work with Aboriginal children and young people and communities
- 4 Aboriginal team members

The role of this team would be to:

- i. Promote the wellbeing of Aboriginal children and young people
- ii. Improve the capacity of Aboriginal and mainstream services to involve Aboriginal children and young people in their organisations, particularly at a regional level.
- iii. Raise awareness and improve the WWCC for Aboriginal people and organisations.
- iv. Build safer Aboriginal organisations for children and young people.
- v. Advocate for adequate service provision in mainstream organisations for Aboriginal children and young people

that there had to be a conviction for such an offence to remain on record and subsequently be picked up by the WWCC.

ACSAT believes that one role for the proposed Aboriginal CCYP Team would be to raise awareness of the WWCC among communities and ensure that agencies are conducting the check as required.

Government leadership

In reviewing government responses to child sexual assault in Aboriginal communities, ACSAT found there was limited government leadership. There was no one agency or individual driving the issue, so it remains off community and interagency agendas.

ACSAT recommendation 14

Appoint a political figurehead to lead issue of child sexual assault in Aboriginal communities

At the political level

In ACSAT's experience, when a political figurehead leads an issue, it is consistently placed on government agendas and is responded to more proactively and effectively.

The NSW Attorney General, the Honourable Mr Bob Debus, took up this role when he made a bid to reduce Aboriginal people's involvement in the criminal justice system. When examining criminally offending behaviour among Aboriginal people, experiences of child sexual assault victimisation were found to be common among many offenders. As a result of this link, child sexual assault was placed on the political agenda, ACSAT was established and the NSW Government began to examine its response to child sexual assault in Aboriginal communities.

ACSAT recommends that an on-going political figurehead be appointed to ensure that child sexual assault remains on the NSW Government's agenda.

ACSAT recommendation 15

Agency Chief Executive Officers are appointed to champion the issue of child sexual assault and advocate for communities who may be in crisis

At the agency level

During its research, ACSAT identified a 'government champions' strategy at the agency level that had been successfully implemented in Queensland and believes this would be a useful strategy for NSW to help address child sexual assault in Aboriginal communities. Details of the strategy are as follows:

In 2002, the Queensland Government appointed Chief Executive Officers (CEOs) from key government agencies to act as 'champions' for particular communities⁷³. The key roles of these champions include:

- Being familiar with local decision-making, interagency and governance processes and being able to add value
- Developing effective working partnerships and positive

⁷³ http://www.mcmc.qld.gov.au/resources/documents/government_champions.doc

relationships with community leaders and key community stakeholders

- Becoming familiar with the social, cultural and historical aspects of the community and the agreed outcomes and opportunities to be achieved with the community
- Assisting communities in their processes with other agencies
- Personally visiting the community at least twice per year to establish trust and a positive working relationship with community leaders and key stakeholders

The outcomes of this ‘government champion’ strategy include:

- More effective relationships between government, business and community leaders resulting in greater community engagement and development planning
- Agencies remain action and outcome focussed in meeting community needs and priorities to promote improved flexible, responsive government service delivery
- Improved effectiveness of local interagency processes by providing communities and government officers with high-level support, commitment and advice for removing any blockages or barriers. This will mean CEOs making commitments and then following up on their commitments
- CEOs will be directly informed by communities in shaping departmental policies, programs and initiatives and will gain a community-level insight into departmental operations within all Aboriginal communities
- Strengthened communities through CEOs transferring skills, information, knowledge, networks and mentoring

ACSAT believes that this strategy could be effectively implemented in NSW. A CEO from a government agency could be appointed as a ‘champion’ for a particular community or region. Communities would then be offered access to this ‘government champion’ if they want to raise an issue at a senior level or if they are in crisis. This ‘champion’ would then work with the community and other relevant agencies to respond to the community’s concerns. ACSAT believes that this would help communities to feel empowered as well as ensuring their concerns are heard and responded to effectively.

Local planning and support

All communities consulted by ACSAT were asked if child sexual assault was a problem in their community and the answer was always ‘yes’. When ACSAT then asked what strategies were being included in local community plans and agendas to address it, the answer was ‘we don’t know what to do about it’.

Overwhelmingly, communities wanted child sexual assault in their communities to stop. They wanted solutions developed at all levels

ACSAT recommendation 16

- a) Make child sexual assault a priority on the agenda of every Aboriginal community plan and include local strategies to address it
- b) Ensure that Aboriginal child sexual assault is a standing agenda item on regional planning and management meetings

to be in partnership with Aboriginal communities and they wanted to include strategies for their local community. However, they acknowledged that they needed some support to be able to do this.

ACSAT noted that the Department of Aboriginal Affairs has already made some inroads in helping communities to develop plans and strategies to address local and regional issues. This has been conducted in partnership with the Regional Management Coordination Groups (led by NSW Premier's Department) and Community Working Parties (developed by the Commonwealth). As one community member reports:

'DAA are now actually coming out to the regions and they have been based at the Indigenous Coordination Centres and I think that's a fabulous first move by this state government ... And I think that's a really good first step that DAA is coming out here; they're going to have indigenous staff or people who are really interested in working that area. They can get out and actually consult with the community, find out ... what the issues are and work with other agencies such as DoCS and the community about better ways for people to report, a better reporting mechanism that's more appropriate for Aboriginal people, that they feel more comfortable with.' *Transcript 29*

ACSAT believes that this existing mechanism could also be used to help communities to get child sexual assault on local agendas and to develop strategies to address it.

Funding and support for local initiatives

Local initiatives

During consultations and research, ACSAT identified a number of local initiatives that were successful in providing information and support to Aboriginal community members and in exchanging information between communities and service providers. These initiatives include:

Negotiating tables

A negotiating table is a forum where local government agencies and Aboriginal communities sit down together on a regular basis and discuss current issues for the community. The community can raise its concerns and a strategy can be developed to address them. This forum provides the government with an opportunity to feed appropriate information back to the community. Negotiating tables are being used successfully in the Cherbourg community in South Queensland to tackle issues such as child sexual assault, and are now also being used in other communities across Queensland⁷⁴.

Community advocates (Rocks)

This describes a situation that already exists within Aboriginal communities in NSW where one or more people in a community become 'champions' for the protection of children within that community. Usually these people are respected members of the community with a passion for Aboriginal cultural life and the children. It is often these people that community members approach when there is a disclosure or crisis in relation to child sexual assault. They are often the ones who hold communities together and help families to get through the situation. They are not in a paid role and usually have no formal training.

⁷⁴ ACSAT acknowledges that there are a number of things to consider in developing negotiating tables, such as: Are communities empowered enough to participate in addressing child sexual assault in this way?; Who should be part of the group from the Aboriginal community, and who decides on its membership?; How does the group feed into the existing community, non-government and government structures?; Who is responsible for the maintenance of the group??. All of these issues would need to be addressed in the development of clear policies and protocols for the negotiating tables.

Community camps

In a community camp, participants return to a cultural setting where they feel safe and talk /exchange information about sensitive issues such as child sexual assault or sexual health or family violence etc. Camps are conducted by Aboriginal people/service providers (sometimes in partnership with non-Aboriginal service providers where appropriate) for Aboriginal men and/or women and/or children and young people, or sometimes for the community as a whole.

One community member with an experience of camps described how it helped them to provide information about sexual health to young people:

We ran a girl's and we took girls that had been identified as – well a lot of them were like 12 or 13 year olds who were highly sexually active and we took them down...and then there were health workers who came in and we had safe sex education, like you know, giving out condoms and all these sort of like education things. Looking at – remember all those photos of sexually transmitted diseases...but I tell you, one good thing I can say for those camps is that they did listen to us...about 40 girls and not one of those girls are pregnant. (2 years later)

This community also ran another camp for the community to consider child protection. As one of the organizers recalls:

'That was the idea of these camps, because we bundled these little ones up. The Women's in Sydney have sent me a whole lot of stuff, like toiletry stuff and you know for them to behave themselves, we would give that to them and we already had our rules and everything all sketched out: if you mucked up there was a work car there, you'd go back home, but that was a way of buttering them up, to let us in their lives, you know, to let us know what's really going on. That's how you do it. You don't just walk straight in and say, "What's going on?"

It's a very touchy thing for them to come out with things like that, and they knew that we were there for their purpose, to let us know and then we were going to target it, you know, as soon as we could. So, that's a really good professional way of trying to get to these little Aboriginal girls, to open up. You've got to give them your trust first, before they give you what you need to know.' *Transcript 15*

Another example of how camps can facilitate information exchange is the 2004 Indigenous Women's Program and Women's Legal Service NSW jointly conducted camp titled: *Partnerships. Prevention and Rural Action II: A Conference on Child Sexual Assault in Aboriginal communities*. This conference brought together community members, policy makers and service providers to talk about child sexual assault and to develop strategies to reduce it, create links and networks between women and communities and develop models of best practice. Over 230 women and children attended the conference from across NSW and one third of the participants were Aboriginal women. This initiative was successful in assisting Aboriginal women to discuss the issues in a secure and supported environment and share information on how to address child sexual assault.

ACSAT recommendation 17

NSW Government to establish funding stream to develop regional/local initiatives to address or respond to child sexual assault issues in Aboriginal communities in a culturally effective manner. This may include, but is not limited to:

- a) The establishment of negotiating tables whereby government, non-government agencies and the local Aboriginal community meet on a regular basis to address emerging issues and local child sexual assault responses
- b) Develop/empower “community champions” to advocate for child sexual assault in the local community
- c) Develop community protocols to address child sexual assault for each community
- d) Men, women, children and family cultural camps

Funding and support

ACSAT found that communities felt positive about these and other local initiatives, sometimes because they could see that the idea could work well for their community and sometimes because they had had a personal experience of the strategy being successfully implemented. However, communities consistently reported that they had difficulty securing funding and support for these initiatives.

ACSAT believes it is crucial for the NSW Government to provide support for local initiatives that have been, or could be, effective in Aboriginal communities. Support could include funding, and help with organisation (if required), for initiatives such as: camps and negotiating tables; local awareness campaigns; family days; art groups; etc. It could also include education and training. For example, providing formal training and support for those community members (Rocks) who are protecting children in their community and helping families when there is a crisis.

Understanding of child sexual assault among communities, service providers and governments

One of the greatest barriers to communities and government providing an effective response to child sexual assault in Aboriginal communities is a lack of understanding of the issue and the long-term impact it has on individuals who experience it and communities. ACSAT believes that this is one of the most important issues raised in consultations and addressing it should be given immediate priority by the NSW Government.

Awareness of child sexual assault among communities

During consultations, participants acknowledged that there was a general lack of awareness in Aboriginal communities about the dynamics of child sexual assault – what it was, how it occurs, the indicators of child sexual assault, the way it impacts on individuals, families and communities and that it is a crime, not a normal way of life. Many community members spoke of the need to raise awareness in the community and among service providers. As one participant stated:

‘...We have got the world war every night in our faces, we have got other political issues from around the world in our faces, we have got our own Aboriginal kids being sexually abused and our women being shoved in gaols, suffering years of abuse, not spoken about. It needs to be put in everybody’s faces, not just black faces in a community, and governments can take a hold of that and do a national campaign.’

Transcript 10

Participants recognised that this lack of awareness was one factor that enabled child sexual assault in their communities to continue unchecked. Abusive behaviours, such as 'grooming' a victim, were not being identified because people have not been educated to look out for them. The behavioural indicators often seen in children and young people who have been sexually abused, such as acting out and behaving in anti-social ways, are seen as naughty rather than a sign that a child is being abused. As one community member points out:

'Kids are acting out, behaving badly and are seen as naughty. One of the reasons they are probably doing that is because of sexual abuse.' *Transcript 37*

Communities also believed that a lack of understanding of child sexual assault could lead to inappropriate community responses such as siding with the perpetrator instead of protecting the children.

It was common in consultations for participants to say that many Aboriginal people didn't know they could get help if they or a family member or someone they knew was experiencing child sexual assault. If they were aware of a service such as DoCS or Health, they weren't clear about what the service did, nor understood the different roles of the workers within it.

Communities also stated that there is a need for education and training to be provided to Aboriginal children that can help them to identify risky situations and develop strategies for keeping safe. While it is important that this occurs in the school system, it is also important that it happens in a community context, as some children and young people do not attend school. As one community member said:

'...schools do protective behaviours, but I think there's kids falling through the safety net, if you like, and it's important that we maintain community based programs as well because some kids actually don't go to school too often or at all.' *Transcript 24*

For more information about child protection education taught in schools, see page 254 of this report.

Awareness of child sexual assault in Aboriginal communities among service providers

Some things that participants said about the way services responded suggested that many service providers also lacked an understanding of the issues, particularly the experience and impacts of child sexual assault in Aboriginal communities. This often resulted in service providers not responding at all or responding in a way that was considered inappropriate for the community.

ACSAT recommendation 18

Develop a comprehensive education strategy for NSW that will make training available to government and non-government agencies, communities and children. (Each agency is responsible for their involvement in the development of this cross government strategy and is to also ensure that training of their staff is consistent with the strategy.) The issues to be addressed in this competency based education/training strategy include:

- a) For government agencies
 - i. Racism/stereotypes, cultural dynamics around Aboriginal child sexual assault, Indigenous parenting techniques, local community issues/local context, importance of the Aboriginal community's involvement in addressing child sexual assault
- b) For non-government agencies
 - i. Child sexual assault dynamics, indicators, impacts and reporting, confidentiality issues, criminal Justice and government agency procedures
- c) For communities
 - i. Child sexual assault dynamics, indicators, impacts and reporting, criminal Justice and government agency procedures, public awareness
- d) For children and young people
 - i. Protective behaviours, positive relationships/mentoring, self-awareness

Education and training

ACSAT believes that an education and training program needs to be developed for both communities and service providers. This program needs to contain information about: the dynamics of child sexual assault as it is experienced in Aboriginal communities; what help is available; the role of each service provider; and what communities and service providers can do to address the issue and stop the abuse. It also believes that programs for service providers and for communities need to be developed and delivered simultaneously to ensure the information is consistent.

Building on existing training programs

ACSAT is aware that a number of training courses about child sexual assault have already been developed. For example, some government agencies provide training to their staff about child sexual assault, although these programs don't specifically address child sexual assault in Aboriginal communities. The Education Centre Against Violence (ECAV) has developed a number of courses on child sexual assault for various service provider types and for Aboriginal workers⁷⁵ and they can provide child protection training to communities if requested and resources permit it (usually only a couple of communities a year)⁷⁶. The Centre for Community Welfare Training has also developed child protection training for welfare workers.

ACSAT recommends that the NSW Government, with involvement from the Aboriginal Child, Family and Community Care State Secretariat (AbSEC) as peak body for a number of Aboriginal children's services, build on these existing programs and develop a comprehensive education strategy that is properly resourced to deliver training to relevant service providers and communities as soon as possible.

ACSAT recommendation 19

Employ education/policy officers to identify gaps, develop, coordinate and evaluate this strategy in consultation with:

- i. Government agencies including the Education Centre Against Violence (ECAV)
- ii. Centre for Community Welfare Training (CCWT)
- iii. Aboriginal Child, Family and Community Care State Secretariat (AbSEC)

⁷⁵ Consultation participants who had been involved in ECAV training courses said these course/s had been effective and had given them an understanding of the issues related to child sexual assault and what indicators to look for. They also said that doing the course made them more confident in raising the issue in the community and reporting to DoCS. As they were training with fellow Aboriginal community workers, they felt supported and that after the course they were able to help each other to talk about the issue within their own communities.

⁷⁶ See Appendix 5 for detail of relevant ECAV courses.

Implementing ACSAT's recommendations

Throughout the consultations, ACSAT detected an 'inquiry weariness' among some participants. These participants said that they had been involved in many inquiries, and given many government departments information about what was happening in their communities, and yet they had seen no obvious changes occurring once the inquiry was finished. In some instances, they said they just never heard anything about the inquiry again.

Community feelings about this ranged from disappointment to anger to scepticism to absolute cynicism and a belief that government inquiries were pointless anyway because nothing would change as a result of them. Often, some of the first questions asked by consultation participants were 'what will happen with this report?', 'is it actually going to go anywhere?', 'is the government going to do anything about it' etc. As one submission from a service working with Aboriginal people noted:

'The Indigenous population is one of the most over researched groups in Australia and yet the community sees little that comes out of these research projects, reports, forums and consultations. Many Aboriginal women have expressed their frustrations and concerns to our service. As one community elder said "we are sick to death of talking to these government people and helping them with their research and getting nothing back out of it". It is time that the substantial amounts of money that are put into these programs within government departments are put to work in the community.' *Submission 5*

Communities made it very clear to ACSAT that what they wanted from this inquiry was action. On more than one occasion, ACSAT was required to provide assurances to communities that the results of the inquiry would be acted on by the government. Specifically, communities wanted to be sure that:

- The results of the inquiry would be publicly released and made available to all communities
- The recommendations would be acted on and communities would be involved in implementing them
- Any changes put in place as a result of the inquiry would be evaluated in partnership with communities and amended as required so best practice responses can be developed

The findings of ACSAT are comprehensive and it makes recommendations to many government departments, NGOs and communities. ACSAT believes that for it to be effectively implemented, a comprehensive plan needs to be developed that will guide and coordinate the responses of each department and provide a mechanism for evaluation.

The implementation strategy will also need to include a way to communicate with communities, letting them know what is happening and seeking their involvement.

ACSAT recommendation 20

- a) Develop an implementation strategy within three months of release of the report and ensure that is endorsed by government. The strategy is to include:
 - i. Formal responses by each government department to the recommendations
 - ii. An evaluation framework to measure impacts of implementation including definitive time frames
 - iii. A plan for public release of the report
 - iv. A strategy for communicating with communities
 - v. An independent evaluation mechanism.
- b) Establish a steering committee to guide the implementation that includes Aboriginal community members

ACSAT recommendation 21

Legislate the NSW Ombudsman to conduct a review/audit of the implementation of the Aboriginal Child Sexual Assault Taskforce Recommendations in a holistic context. This review would consider whole of government responses as well as the responses of:

- i. NSW Police
- ii. Department of Community Services
- iii. NSW Health
- iv. Joint Investigative Response Teams
- v. Department of Education and Training
- vi. Department of Corrective Services
- vii. Department of Juvenile Justice

Role of the NSW Ombudsman

As ACSAT was reviewing the response of NSW Police to child sexual assault, it noted the effectiveness of having the NSW Ombudsman audit the implementation of the NSW Police strategy for working with Aboriginal communities Aboriginal Strategic Direction. In particular, ACSAT was attracted to the principle of ‘holding NSW Police to account against its own policy’⁷⁷.

ACSAT believes that the NSW Ombudsman, in its role as reviewer of government services, could also audit the implementation of ACSAT recommendations. This would provide an independent mechanism of reviewing government actions in response to the inquiry and identify areas where work still needed to be done. The results of an audit of implementation could also be provided to Aboriginal communities, highlighting where changes had been made to government services, what changes were still to be made and what they could expect.

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to the whole of NSW and Commonwealth Government work towards achieving the following outcomes:

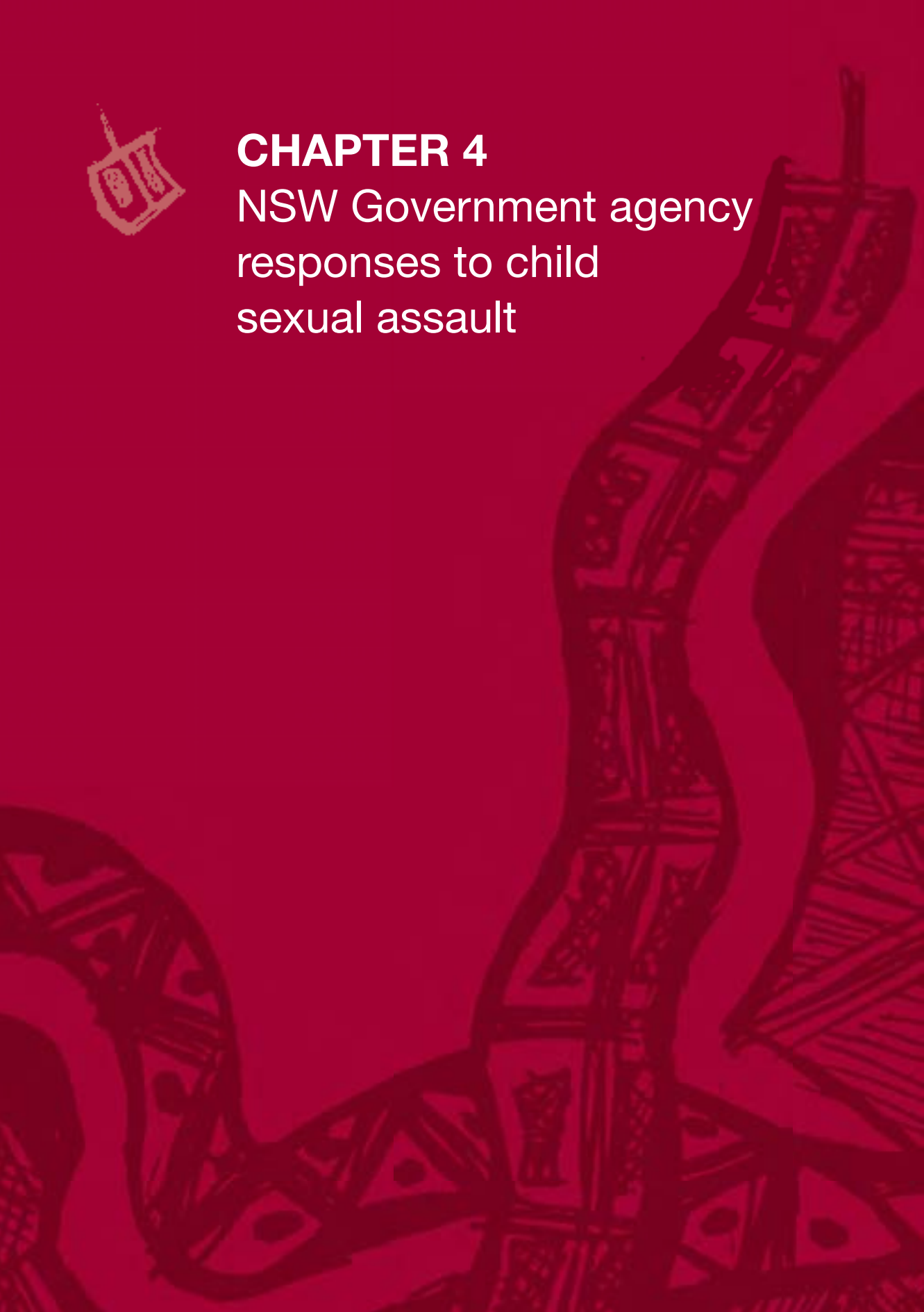
- The NSW Government has an overarching policy to address the incidence and impact of child sexual assault in Aboriginal communities
- NSW Government provides efficient, effective, empathic and seamless service responses to Aboriginal children, young people, families and communities who have experienced child sexual assault
- Aboriginal communities are empowered to respond to child sexual assault occurring in their community via education and support for local initiatives
- A proactive NSW Government works in partnership with Aboriginal communities and the Commonwealth Government to address child sexual assault
- Addressing child sexual assault in Aboriginal communities is a priority on all local, regional, state and national agendas
- ACSAT recommendations are strategically and effectively implemented
- NSW Government continues to research and develop new evidence-based initiatives to address child sexual assault in Aboriginal communities more effectively

⁷⁷ NSW Ombudsman (2005), *Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction* (2003-2006), p. 4



CHAPTER 4

NSW Government agency responses to child sexual assault



PART 1: DEPARTMENT OF COMMUNITY SERVICES

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Overview of findings

When examining NSW Department of Community Services (DoCS) response to child sexual assault in Aboriginal communities, ACSAT found that:

- Communities understood that there was considerable pressure placed on DoCS staff, and the agency as a whole, to provide effective child protection services. Some participants reported that the DoCS workers in their area were doing a good job and really making efforts to work with the community
- At present, DoCS does not have a strategic plan that coordinates the way DoCS work with, and provide services to, Aboriginal communities. As a result, services are being provided inconsistently across the state. DoCS reports that it is in the final stage of developing an Aboriginal Strategic Plan. ACSAT believes that the NSW Ombudsman should audit the implementation of this plan in a similar way to its audit of NSW Police's *Aboriginal Strategic Direction*
- Inappropriate past practices continue to impact on Aboriginal people's perceptions of DoCS and on current working relationships. DoCS acknowledge this and have made a commitment to 'encourage positive relationships and bridge cultures'
- An inappropriate or inconsistent response by DoCS today reinforces negative perceptions and affirms the community's reluctance to report incidents of child sexual assault. Some inappropriate responses were reported with some communities suggesting that DoCS takes little or no action to a report of child sexual assault, while others suggested that DoCS became too involved, checking on the family all the time and not letting them be involved in decision-making about their own children
- Many communities didn't understand the role of DoCS, the breadth of services it provides or how these services can help
- DoCS staff need to improve their understandings of Aboriginal culture and the impact of colonising practices such as forcibly removing children from their families. They also need to engage with the local communities they are working with and provide information to communities about child sexual assault and DoCS and how DoCS can help
- Aboriginal communities stressed the importance of acting early to support families and children at risk. However, they consistently reported difficulties accessing DoCS early intervention or prevention programs
- Non-Aboriginal Helpline and intake staff are not always aware of Aboriginal communication styles so information is sometimes being lost or misinterpreted
- Communities report instances where DoCS have interviewed a child and then removed them from their home because they considered the child to be at risk but they have left other children of similar ages living in the house without even interviewing them or assessing their safety
- DoCS is not always providing appropriate referrals for support to families when incidents of child sexual assault are reported, particularly if the report gets closed without assessment
- DoCS is not providing adequate feedback to people who make a report of harm or risk of harm, about what is happening with the matter reported
- If a report is made to DoCS after hours, DoCS does not always respond with enough urgency
- It is difficult to access crisis and supported accommodation, particularly for women and children living in rural and remote areas
- There are few stable out-of-home care placements available for Aboriginal children and young people. In some instances children have been placed in out-of-home 'kinship' care but have remained exposed to risk of violence and sexual assault from someone within this care

environment. DoCS need to thoroughly assess and monitor out-of-home care placements to ensure they are safe for children *before* a child is placed there. Where a stable 'kinship' out-of-home care placement exists, DoCS need to provide adequate financial and other supports to enable it to continue

- The *Negotiating Consent* package produced by the NSW Violence Against Women Unit could be made more effective by including an Aboriginal specific strand
- Many Aboriginal workers employed by DoCS report feeling overworked and overwhelmed and not properly supported by DoCS. As a result, DoCS has difficulty attracting and retaining Aboriginal staff
- Sexually transmitted infections (STI's) are not being reported to DoCS
- Young people aged 16-18 years are falling through a services gap, with many communities not aware that DoCS are supposed to provide support to this age group

The discussion of the response by DoCS to Aboriginal child sexual assault draws on consultations with Aboriginal communities, submissions provided to ACSAT by DOCS and relevant research.

Overview of services provided by DoCS

The Department of Community Services (DoCS) is a lead agency in NSW for protecting children and young people. DoCS help children, young people, families and communities by ⁷⁸:

- Promoting the safety and wellbeing of children and young people
- Helping keep families together
- Providing safe and appropriate care for children and young people who cannot live at home
- Delivering a range of programs to build and strengthen communities
- Funding and regulating children's services
- Funding and regulating adoption services
- Helping people affected by natural and other disasters
- Offering support services to assist homeless people

Together with partners in government, business and the community, DoCS:

- Assess the strengths and needs of families and communities
- Develop and deliver a range of services
- Educate, support, inform and advise individuals and families
- Monitor, evaluate, research and analyse to improve policy and service development

Statutory obligations in child protection

DoCS have a statutory responsibility under the *Children and Young Persons (Care and Protection) Act 1998* to respond to reports of child abuse and requests for assistance in NSW. DoCS is authorised to act on behalf of a child when parents or carers are unable or unwilling to do so.

The circumstances for making a report are described in section 23 of the Act and include where a person has concerns that a child or young person has been harmed (including sexually assaulted) or is at risk of being harmed.

Part 2, Sections 11 through to 12 of the *Children and Young Persons (Care and Protection) Act 1998* legislate that the principles of self-determination and participation in decision-making are to

⁷⁸ NSW Department of Community Services, *Annual Report 2005*

be applied when working with Aboriginal and Torres Strait Islander children, young people, their families and communities. Sections 13 govern how Aboriginal children are to be placed if they are can no longer live in their biological home. These sections of the legislation were developed to ensure that DoCS undertakes 'best practice' principles when working with Aboriginal children, families and communities. (See Appendix 6 for a copy of these sections of the legislation.)

All services provided by DoCS are governed by its statutory obligations in child protection.

Policy framework for providing services to Aboriginal communities

The Right to Better Service – Aboriginal Policy Directions 1999

The *Right to Better Service – Aboriginal Policy Directions 1999 (the Directions)* was developed to establish a vision for DOCS to improve its services to Aboriginal families and communities.⁷⁹

The vision of the *Direction* is that DoCS will 'work in partnership with Aboriginal people and families to improve the lives of our children'. This was to be achieved through the following four key result areas:

- Strong partnerships between Aboriginal communities and DoCS
- Positive awareness in Aboriginal communities of DoCS
- Aboriginal people's needs are met by the DOCS service system
- Service use by Aboriginal people is reflected in DOCS funding

The *Directions* acknowledges the historical mistrust of welfare institutions and exclusion of Aboriginal people from mainstream services and programs and stresses the importance of positive change throughout the Department.

Based on the principles of equity, access, participation and rights, it reflects the principles of Aboriginal self-determination and participation in decision-making.

DoCS response to evidence of child sexual assault in Aboriginal communities

DoCS statement regarding its recent funding injection

The DoCS submission to ACSAT states that:

'It is a matter of public record that the growth in demand for child protection services far exceeds DoCS' capacity. This was the basis for DoCS receiving significant funding boost of \$1.2 billion in 2002, which is rolling out over five full financial years (2003/04 – 2007/08).

This funding boost will enable DoCS to increase caseworker numbers significantly, reduce the demand on the child protection system through early intervention and prevention programs and introduce new systems and efficiencies in DoCS.⁸⁰

⁷⁹ http://www.community.nsw.gov.au/documents/policy_aborig.pdf

⁸⁰ DoCS submission to ACSAT (2005), p. 8.

DoCS states that any issues relating to the current capacity of DoCS need to be considered in light of the significant building program it is undertaking.

When ACSAT asked DoCS if any of the additional funding was earmarked specifically for child protection in Aboriginal communities, DoCS responded by outlining significant funding increases to the overall areas of community services, prevention and early intervention, child protection and out-of-home care and stating that spending related to Aboriginal clients was already a significant part of DoCS funding and service delivery.

DoCS also stated that the DoCS Executive has made a clear commitment to make Aboriginal child protection one of the organisations top priorities over the next few years.⁸¹

Child protection services

Accepting reports about children and young people who are being harmed or at risk of being harmed

Any person can make a report to DoCS if they are concerned about a child's well-being. However, certain professions that work with children (such as teachers, health care workers, police) are mandated, under section 27 of the Children and Young Persons (Care and Protection) Act, to report to DoCS if they are concerned that a child is being abused (including sexually assaulted) or is at risk of being abused.

DoCS operate a telephone Helpline that is available 24 hours a day, seven days a week. All reports to DoCS are either faxed or phoned to this Helpline.

DoCS report that a number of Aboriginal staff have been recruited to the Helpline and are available to respond to Aboriginal callers if requested and to assist their non-Aboriginal co-workers on how to respond to issues in a culturally appropriate way.

If an Aboriginal person presents in person at a DoCS Community Services Centre (CSC) and expresses concern about a child, or wants to make a report, they can make the report directly to the CSC rather than having to contact the Helpline. DoCS have implemented this strategy to facilitate and encourage Aboriginal people to report.

DoCS response to a report of harm or risk of harm

When a report of harm or risk of harm is made, DoCS investigates the report and makes an assessment of the risk. DoCS uses a *Risk of Harm Assessment Framework* to provide clear guidance and support to caseworkers. The risk of harm assessment process is made up of three distinct but complementary stages, including:

1. Initial assessment of harm, usually undertaken by DoCS Helpline and the first stage in gathering and analysing information. This assessment is supported by prompts that assist the caseworker in the decision-making.
2. Secondary risk of harm assessment, usually undertaken in a CSC or by a DoCS/Police Joint Investigative Response Team (JIRT). This stage of the assessment starts when a report is allocated for action and builds on the initial assessment.
3. Ongoing risk of harm assessment during the delivery of care and protection services. When children are assessed as being in need of care and protection, DoCS develop case plans and provide on-going casework services with the goal of decreasing the risk of harm. During this

⁸¹ DoCS follow-up responses to ACSAT queries January 2006, point 2, p. 1.

stage, DoCS continues to assess the risk of harm until the issues leading to the need for care and protection are alleviated.

During each of these stages, DoCS works closely with other agencies, both government and non-government, to ensure that children, young people and families receive support. Based on the results of this assessment, DoCS decides what should be done to reduce the risk, including ensuring the immediate safety of the child.

The paramount consideration of DoCS is the safety, welfare and well-being of the child or young person. Priority is given to keeping families together. However, there are certain circumstances when the children or young people may not be able to live with their families. For example if a child is at immediate risk of being physically or sexually assaulted.

The DoCS submission did not suggest that any specific response procedures were used if a report indicated that child sexual assault was occurring in an Aboriginal community. However, if the report of harm or risk of harm concerns an Aboriginal child or young person, the principles of self-determination and participation in decision-making are to be applied during all aspects of case management.

DoCS reports that it is currently developing a communication framework for working with Aboriginal people which will help it to put these principles in practice.

Making referrals to JIRT

If DoCS receives a report of child sexual assault (a criminal offence), it refers the matter to JIRT. (See page 179 for details of the JIRT response.) DoCS then continues its risk assessment and protective intervention work in partnership with the criminal investigation of NSW Police, and the services provided by NSW Health, such as medical examinations, crisis counselling and therapy services, to provide a co-ordinated and timely response.

Joint investigation occurs when a DoCS child protection caseworker and a police officer investigate a report of child abuse that meets the JIRT criteria. The process includes completing a risk assessment and determining the need for Children's Court action and/or criminal charges. The police team leader consults with the DoCS manager casework and together they make the final decision about whether a report is accepted or rejected as a JIRT case. Not all matters referred to JIRT are accepted at which point they are referred back to the local CSC for investigation/response.

Ensuring safety and security of children, families or workers who report incidents of child sexual assault

Section 29 of the *Children and Young Persons (Care and Protection) Act 1998* provides protection to anyone who makes a report to DoCS, or to any person who has the power or responsibility to protect the child or young person, in good faith. The Act states that:

- The identity of the reporter cannot be disclosed to anyone without the reporter's consent unless a magistrate directs that the disclosure is crucial to a court proceeding (deemed 'a rare event' in the DoCS submission)
- When a report is made on reasonable grounds, the law protects the reporter from any civil action such as defamation
- The reporter cannot be prosecuted if anything in the report is found to be untrue
- Making a report to DoCS does not constitute a breach of professional etiquette, ethics, standards or codes of conduct

Reports can be made anonymously. However, this means DoCS would not be able to contact the person again to talk about what they reported or give any feedback about their report.

DoCS operates 'protective planning' through its intervention process – which includes planning, assessment of risk for children/young people, strongly reinforcing confidentiality, supporting families and, where appropriate, supporting other action such as Apprehended Violence Orders and liaising with police.

Out-of-home care for Aboriginal children and young people

Sometimes, children and young people aren't able to live with their families for a period of time. They may have experienced abuse or be at risk of abuse, or their families may be unable to care for them due to illness, drug and alcohol abuse, domestic violence or poverty. When children and young people can't live with their parents for a time, DoCS may provide, or help arrange, alternative accommodation, care or other forms of support. Placements range from kinship care to living with foster carers or living in residential care.

The overall goal of the out-of-home care system in NSW is to provide children and young people who can't live with their birth families a safe and nurturing environment for a period of time or permanently. This environment should promote contact with birth families. The aim is to achieve the earliest possible permanent and stable resolution of the child's living situation, whether that be restoration, permanent care with a relative/kin, foster care including Sole Parental Responsibility Orders or adoption.

The priorities of the DoCS' out-of-home care system is to:

- work with families to help them regain care of their children
- provide care in a family-like environment, for example with other relatives or kin, foster carers or adoptive parents
- maintain the existing ties that children and young people have with their family and their community

A range of care, accommodation and support services are provided to children and young people across NSW. This is undertaken jointly by DoCS and non-government agencies that receive DoCS funding.

Placement principles for Aboriginal children and young people who are in need of care and protection

To ensure best practice when working with Aboriginal people, and in recognition of past inappropriate policies and practices, section 13 of the NSW *Children and Young Persons (Care and Protection) Act 1998* provides principles for the placement of Aboriginal children and young people who are in need of care and protection.

In summary, the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles states the Aboriginal children and young people who are in need of care should be placed in the first instance, with a member of their extended family or kinship group. If this is not possible or appropriate, they should be placed with someone from their community. If neither of these two options are possible or appropriate, then the next priority is given to placing the child or young person with an Aboriginal family close to their home community. If none of these options are available or appropriate, a suitable person will be approved by the Director-General in consultation with the child or young person's extended family or an appropriate Aboriginal organisation.

The section of the Act that outlines these principles can be found in Appendix 6. DoCS is held accountable to these principles through mechanisms such as the Australian Government Productivity Commission and the Australian Institute of Health and Welfare who measure adherence to these principles annually.

Family safety and support services and programs

In addition to directly responding to reports of harm, DoCS provides or funds a range of programs that provide support services and assistance to families across NSW. Some of these programs and funding streams provide support specifically for Aboriginal families and communities, for example Intensive Family Based Services (IFBS) and initiatives funded under the Aboriginal Children, Youth and Family Strategy (ACYFS).

Other programs and funding streams are more general and provide services that can be accessed by Aboriginal and non-Aboriginal families, for example Early Intervention Program (EIP). (However, DoCS acknowledges in its submission that this mainstream program requires more effective modelling if it is to be truly accessible to Aboriginal families.)

Overall, DoCS reports that through its Aboriginal specific and general funding streams it provides funding to 278 Aboriginal non-government organizations to provide services to Aboriginal communities on its behalf.⁸² These organisations may provide direct or indirect support to children who have been sexually assaulted and their families.

DoCS programs that may respond directly or indirectly to child sexual assault in Aboriginal communities include:

Intensive Family Based Services (IFBS) for Aboriginal families

Intensive Family Based Services (IFBSs) provide intensive, home-based programs for Aboriginal families in crisis where DoCS assesses the children to be at risk of being removed. Referrals come from DoCS only.

Families referred to IFBS could be in crisis because of child sexual assault and its consequences. However, no detail is provided in the submission as to whether such a referral has actually been made or whether the service response was effective.

Aboriginal IFBS caseworkers work with families intensively for up to three months, teaching skills in child management, communication, negotiation and mediation. IFBS aims to help families stay together. The service is available to families 24 hours a day, seven days a week to help defuse any new crisis that occurs during the intervention.

IFBSs also help to develop culturally appropriate services and activities to meet the needs of the families and children they assist.⁸³ IFBSs are currently operating in Redfern, Casino, Bourke and Dapto and another IFBS is being established in Campbelltown.

The Aboriginal Child, Youth and Family Strategy

DoCS developed the Aboriginal Child, Youth and Family Strategy (ACYFS) to improve the support provided to Aboriginal children and young people, their families and communities by:

- Improving the coordination and targeting of existing services
- Ensuring that mainstream services are meeting the needs of Aboriginal communities and
- Testing new ways of support

⁸² DoCS follow-up responses to ACSAT queries January 2006, point 4, p. 2.

⁸³ DoCS reports that the model is based on the successful Homebuilders program from the USA.

Each of the seven DoCS regions are required to develop a regional implementation plan that identifies the current needs of Aboriginal people in its region and uses this information to guide the services and activities developed for Aboriginal children, young people and their families.

These plans are developed in partnership with communities and are flexible. Plans can be amended at the community's request if its priorities change. A key aim of the Strategy is to work in ways that empower Aboriginal communities to have ownership of the issues they may face, be the leaders in finding solutions and work in partnership with government to develop appropriate responses. This requires government agencies to have Aboriginal stakeholders at local and regional decision-making forums and to develop real partnerships rather than the normal process of 'consulting' with Aboriginal communities.

DoCS regions are working to develop effective partnerships with the Aboriginal community and that this is taking time. Where possible, partnerships are being formed through existing community working parties or community organisations.

The ACYFS is targeted at the regional and local level. Funding is provided to community led initiatives, identified through the ACYFS workers employed in each area. These initiatives are localised and specific to each region. They have a direct impact on service delivery at the local level and help to build local relationships as communities have a direct input into the services provided.

DoCS report that during 2003/04, over \$2 million in funding was allocated to 74 projects across NSW to provide Aboriginal families with services such as: parenting programs; community workers; leadership courses; youth worker services; supported playgroups; women's support groups; and school transition.

Community Services Grants Program (CSGP)

Projects funded by CSGP grants are a critical part of DoCS work. The program provides funds to neighbourhood and community centres, child protection services, family support services, youth services, local government community workers and Aboriginal specific services to provide services such as: community information; sexual assault counselling; support to families in crisis; support to young people; and building social capital. During 2003/04, DoCS purchased general services to the value of \$69.72 million.

Child Protection and Child Sexual Assault Program (part of CSGP)

Under the Child Protection and Child Sexual Assault Program allocation of the CSGP funding, DoCS reports that, during 2004/05, it provided funding to the value of \$3.5 million to 31 projects that specifically target children and young people and their families who are under stress and in crisis due to child abuse and child sexual assault issues.

The type of service funded most often by this program is counselling, support and referral for families in crisis due to the effects of child sexual assault or other child protection concerns. For example DoCS provide funding for Child and Adolescent Sexual Assault Counselling (CASAC) services/workers in 18 locations in NSW.

Early Intervention Program

DoCS has developed the Early Intervention Program (EIP) to respond to issues related to family violence and child sexual assault. EIP is a targeted program for families who require more support to provide adequate parenting and protect children from potential and/or existing risks of harm.

The program aims to build resilience of vulnerable and 'at risk' families and children and provide them with support before their problems escalate.

The program targets families with children aged 0-8 years with priority given to families with children under 3 years of age. In addition to the age criteria, families must be experiencing one or more of the following vulnerabilities: family/domestic violence; parent drug and alcohol misuse; parental mental health issues; lack of extended family or social supports; parents with learning disabilities or intellectual disability; and/or child behaviour management problems.

Each family joining the program is linked with an early intervention worker who works with the family to identify their strengths and needs and develop a tailored support package. The worker will support the family throughout their involvement in the program and connect them with services and resources.

Funding has been provided over five years to recruit an additional 350 early intervention caseworkers to work directly with families and provide support and referrals to other services.

At present, this program targets the broader community and DoCS acknowledges that culturally appropriate models will need to be developed for it to be effective with Aboriginal communities. The submission reports that work is currently under way to ensure the needs of Aboriginal communities are addressed in the Program.

Better Futures Strategy

This strategy targets vulnerable young people aged 9-18 years and aims to reduce risk, reinforce protective behaviours and create opportunities to help young people achieve successful futures. DoCS reports that during 2003/04, it provided over \$1.3 million to 41 individual projects. Six DoCS regions developed Youth Plans as part of the Strategy.

Families First

DoCS is a partner in the whole of government Families First prevention and early intervention strategy which aims to help parents give their children a good start in life. (See page 99 of this report for more detail.)

Community Solutions and Crime Prevention Strategy

DoCS has lead agency responsibility for 16 projects funded under the whole of government CSCPS strategy. The types of issues being addressed by these projects include family and domestic violence, drug and alcohol abuse, families with complex needs and culturally specific needs experienced by Aboriginal and Pacific Island communities. (See page 99 of this report for more detail.)

Access to emergency accommodation

The DoCS Supported Accommodation Assistance Program (SAAP) provides homeless people (including women and children escaping domestic violence), and those at risk of being homeless, with emergency, short- and sometimes mid-term accommodation services and support while they are in these services. For example a woman and her children who are escaping domestic violence may go to a refuge for a period. During their stay, they would also receive information and help with deciding what to do next. SAAP includes:

- Housing solutions including crisis accommodation such as refuges
- Basic living skills programs
- Case management through direct support, advocacy or brokerage to secure specialist services

Interagency cooperation

The protection of children is a shared responsibility and the different roles and responsibilities of agencies responding to the needs of children are set out in the *NSW Interagency Guidelines for Child Protection Intervention*.

DoCS participates in a range of interagency forums at the local level as relevant. For example DoCS local CSCs often lead child protection interagency groups, to bring together agencies in the area to discuss current local issues.

Managing sex offenders on their release

DoCS is also taking part in the Child Protection Watch Team, which is a multi-agency response to managing high-risk child sex offenders on their release into the community. This is a trial program being led by the NSW Police.

Strengthening organisational capacity

The DoCS Aboriginal Services Branch (ASB)

This branch was set up to help DoCS be more responsive to the needs of its Aboriginal clients and is now part of the Corporate and Workforce Strategies Directorate of DoCS.

ASB is made up of three teams working on:

- Policy: This team develops and reviews DoCS policies to ensure that they meet the needs of Aboriginal children, young people and their families. It also ensures that whole of government and commonwealth issues are represented and addressed within a policy context
- Human resources: This team develops and implements strategies to recruit, retain and mentor Aboriginal caseworkers and other staff as well as raise cultural awareness among non-Aboriginal staff
- Operations: This team participates in the development and implementation of DoCS operational policies and programs to ensure that they meet the needs of Aboriginal children, young people and their families

Training provided to DoCS staff

All new DoCS caseworkers take part in a generic, five-day training course that provides information and skills about the dynamics, indicators and impacts of child abuse generally. This includes a component on child sexual assault, however this does not make specific reference to Aboriginal communities.

In addition, they take part in *Working with Aboriginal Children and Families* – a two-day course discussing the delivery of child protection and out-of-home care services to Aboriginal children, young people, families and communities. Some regions also deliver local training packages about working with Aboriginal children and families, however this is neither consistent nor mandatory.

People working within a policy context are not required to undertake cultural awareness training. However, DoCS reports that it is about to trial a program of *Cultural Awareness* training for these staff.

Employing Aboriginal staff

DoCS acknowledges that it has traditionally experienced difficulties in recruiting Aboriginal staff. Recently, it has put a number of strategies in place to attract more experienced and qualified Aboriginal staff, for example designated and identified positions in both policy and casework roles, and an Aboriginal Cadetship Program for psychology, social work and legal students. Aboriginal staff now represent over 6% of the DoCS workforce.

Conducting research

The DoCS Centre for Parenting and Research is conducting a number of research projects that could provide information about Aboriginal experiences of child sexual assault and inform future policies and programs. Two projects mentioned include:

- A research paper titled *Aboriginal families: the need for community based parent support* which considers the factors that place children at risk and discusses possible programs and policies to address these factors
- A research project being conducted within an Aboriginal community that is looking at the processes the community moves through as it addresses critical issues such sexual assault and family violence

Barriers to DoCS responding effectively to evidence of child sexual assault in Aboriginal communities

Aboriginal communities understood that there was considerable pressure placed on DoCS staff and on the agency as a whole. Participants in some consultations reported that the DoCS workers in their area were doing a great job and really making efforts to work with the community. However, consultations also identified a number of barriers to DoCS providing an effective response to Aboriginal experiences of child sexual assault.

Strategic planning to provide services to Aboriginal children, young people and families

DoCS data suggests that Aboriginal children and young people are grossly over-represented in the child protection system. In 2002/03, 17% of all substantiated cases of child abuse and neglect involved Aboriginal children and 24% of all children and young people in out-of-home care were Aboriginal.⁸⁴

⁸⁴ DoCS Submission to ACSAT (2005), p. 6

ACSAT recommendation 22

A strategic plan, vision or overrepresentation strategy is developed and effectively implemented to build effective working relationships with and improve service provision to Aboriginal communities

This means that a considerable proportion of DoCS clients are Aboriginal. Yet ACSAT found that past Departmental practices continues to impact on current working relationships with Aboriginal communities⁸⁵ and that service delivery to Aboriginal people appears to be inconsistent across the state.

ACSAT believes that DoCS needs to develop new ways of working with Aboriginal communities and that these ways of working need to be enshrined in a strategic policy or plan that guides how DoCS services are provided.

ACSAT acknowledges that DoCS developed the *Right to Better Service – Aboriginal Policy Directions 1999* to address the issues of over-representation and inappropriate and inconsistent service delivery to Aboriginal people. Some positive initiatives have been developed as a result of this policy, including strengthening partnerships with Aboriginal communities by supporting AbSec and establishing the Aboriginal Services Branch.

However, DoCS reports that this policy was not fully implemented and they are in the process of updating and replacing it. According to DoCS, it is now in the final stages of developing the DoCS *Aboriginal Strategic Plan (ASP)* that will formalise DoCS' commitment to providing more effective services to Aboriginal children, young people and their families.

The ASP will be implemented at the corporate level and will aim to build DoCS' capacity to work more effectively and holistically with Aboriginal people. Each Directorate in the Department will be asked to provide services which are more appropriate to Aboriginal culture, based on strong partnerships with Aboriginal communities, and which are supported by resources that match the level of need. Directorates will be held accountable for identifying the specific actions they will undertake to achieve the priorities of the DoCS *Aboriginal Strategic Plan* through annual business planning.

To begin building these relationships across the agency, as well as develop consistent ways of working with Aboriginal people, ACSAT recommends that DoCS develop a strategic Aboriginal plan or strategy to address over-representation of Aboriginal children and young people in the child protection system and that this is implemented across the agency.

Community perceptions of DoCS

Community perceptions of DoCS are complex and varied. They are formed in response to a combination of past and present DoCS practices. Consultations identified a number of instances where

⁸⁵ DoCS acknowledge this and in 2003, the Director General of DoCS issued a statement of apology to Aboriginal people and a commitment to encourage positive relationships and bridge cultures.

negative perceptions of DoCS resulted in Aboriginal communities being reluctant to report incidents of child sexual assault.

Many participants reported that, as a result of the way welfare agencies have treated Aboriginal people in the past, there is still a strong fear of 'the welfare' in the community. As one community member said:

'Nobody wants to roll up to DoCS, I mean really and say "Look, you know, my child's being sexually abused by" you know an uncle, a father or whatever and I mean the reality is DoCS historically hasn't dealt with those notifications...Historically it just hasn't been handled well for Aboriginal people.' *Transcript29*

This fear is compounded by the knowledge that many children who were removed by 'the welfare' in earlier times often experienced sexual abuse while in the care of welfare agencies, services or placements. Participants reported that some community members still feared that if DoCS are notified that child sexual assault has occurred, their children will be taken away, even if they have taken action to protect the child (such as removing the offender from the home) and placed at risk of being abused whilst in care.

In other communities however, the fear is that DoCS would take no action in response to a report of child sexual assault, even in circumstances where communities believe action is required. In these instances, communities didn't report because they believed there was no point as DoCS wouldn't do anything anyway.

Community understandings of DoCSs

Consultations revealed a lack of understanding of the role of DoCS, the breadth of services that DoCS provides and how these services can help. Communities were aware that DoCS has the power to remove children and young people, however they were not aware of the more supportive roles such as early intervention and prevention. ACSAT found that this lack of understanding perpetuated the community's fear of DoCS.

ACSAT also found that unless community members were working for an agency, they had a limited understanding of the funding role of DoCS. Communities were unaware that the support they may have been getting from another agency was actually as a result of the work of DoCS and that DoCS funds most of the services provided to children, young people and families across NSW.

Where there was an Aboriginal Child, Youth and Family Strategy (ACYFS) worker, the Strategy was generally seen in a positive light and people recognised these were DoCS services. ACYFS workers build local partnerships and Aboriginal communities can have direct input into the services provided. As a result of this coordination work, regions visited by ACSAT that had an ACYFS worker were less

ACSAT recommendation 23

Develop a targeted, comprehensive communication strategy to inform Aboriginal communities and individuals of the roles and responsibilities of DoCS as an agency and of DoCS staff

critical of DoCS and felt that the ACFYS was providing an appropriate and fundamental service to the community. Communities where there was not an ACYFS worker in place, didn't know much about the Strategy.

ACSAT's findings on community understandings of DoCS are consistent with those of the Lake Burrendong Conference on child sexual assault in Aboriginal communities held in 2003. ACSAT, and the Conference, recommend that DOCS undertake an awareness campaign to educate communities on the roles, responsibilities and functions of DoCS. Community members believe improved understandings of DoCS would encourage more people to make reports.

Aboriginal cultural awareness among DoCS staff

Some participants perceived the DoCS response to child sexual assault in Aboriginal communities to be racist, suggesting that if the victim was white, the response was more immediate and more supportive. Such perceptions, and responses, replay historical experiences for Aboriginal people and reinforce their fear.

Consultations suggested a perception among many Aboriginal people that DoCS staff do not understand Aboriginal culture, particularly the impact of colonising practices such as forced separation of children from their families. This belief is reinforced by research. As researchers into the operation of the Department of Community Services, Cuneen and Leibman, state:

'Welfare officers often do not understand the affects of colonial policy on current generations. Factors such as the intergenerational impact of past separations, together with poor socio-economic conditions in communities, systemic racism and cultural difference between Indigenous people and the dominant society all combine to produce the conditions which underlie contemporary removals.'⁸⁶

ACSAT acknowledges that caseworkers do receive training about child sexual assault and about working with Aboriginal children and young people. ACSAT believes that this training needs to be provided on a regular basis, to ensure that caseworkers' understandings of Aboriginal communities, and their skills in working with Aboriginal families, continues to deepen and improve.

ACSAT also believes that cultural awareness training should be localised so that DoCS staff can get to know the communities they are working with. Members of the community should be involved in developing the local program and delivering it.

To supplement cultural awareness training, ACSAT also believes that DoCS staff should spend time with local Aboriginal community organisations, groups, elders, children and families. A couple of hours in the community each week, having a cup of tea and getting to know the people, is likely to save hours of work in the long run. Workers could learn how the community worked, whom they needed to speak with and who could provide families with what support. One consultation participant describes how well this informal contact was working in her community. She recalls:

'And I know a lot of white DOCS [workers] that calls in here all the time just to debrief and have a cuppa with us and go through things and, you know, it puts a lot of support in with our women.'

Transcript 1

A number of community members raised that a number of years ago, DoCS Aboriginal staff were given a set amount of hours per month (10) to spend in the community in a proactive way. They indicated that this meant they saw DoCS staff on a less formal basis and were able to build relationships and understand DoCS roles more effectively.

⁸⁶ Cuneen & Libesman (2001)

ACSAT recommends that the local Aboriginal awareness training program, and DoCS staff involvement with the community, is coordinated and mandatory. DoCS need to be proactive in building relationships with Aboriginal communities. As such, ACSAT believes it needs to, in partnership with the community, develop a plan about how the training and community involvement might take place. This will formalise the arrangement and ensure that the needs of the community and DoCS are both represented and the agreed outcomes are achievable.

A number of Aboriginal workers also raised the issue of people 'in Sydney sitting in an office' making policies that concern Aboriginal people. They believe that 'policy makers' need to understand how their policies impact on Aboriginal communities and therefore, they should also undertake cultural awareness training.

Community understandings of child sexual assault

Participants often talked about the lack of awareness of child sexual assault among communities. They suggested that many community members did not really know what it is or that it is a crime. They didn't know how to recognise it was happening or the dynamics of the abuse or the impact it had on the individual who was experiencing it or on the community as a whole. (This issue is also discussed in more detail on page 110 of this report.)

Many suggested that DoCS, as the lead agency charged with protecting children in NSW, should be working more proactively with communities, getting to know the people, letting them know about child sexual assault and how DoCS and other services can help.

DoCS, in its submission to ACSAT, acknowledges this important role. It suggests that, as well as getting to know communities and providing education, it could:

- Encourage communities to acknowledge the problem, break the silence and report child sexual abuse
- Encourage people to protect children rather than protect abusers
- Assist parents and adults to develop more open relationships with their children, where children are encouraged to raise their fears and safety issues
- Guarantee anonymity to reporters to ensure their safety
- Assist parents and children to avoid situations that place them at risk of child sexual assault
- Educate parents about the characteristics of offenders
- Educating children about what to do if they are in an unsafe situation

ACSAT recommendation 24

- a) Each CSC implements a plan to improve relationships with the local Aboriginal communities in its area
- b) Provide ongoing comprehensive cultural training for DoCS staff at from a policy maker through to caseworker level. Training on local Aboriginal issues for caseworkers must be undertaken a minimum of every two years.

ACSAT recommendation 25

Encourage and support all DoCS caseworkers to engage with the local Aboriginal communities for at least ten hours per month and provide proactive support to communities, explaining about child sexual assault and its indicators, dynamics and impacts and how DoCS can help

Accessible early intervention and prevention programs

During consultations, participants continually stressed the importance of acting early to support families and children at risk, thereby preventing the child sexual assault from occurring.

DoCS, and research, agrees with this view. ACSAT notes that DoCS sees early intervention and prevention as a way forward for the agency and as the best way to reduce pressure on the child protection system. In its submission to ACSAT, DoCS states the following:

'An increasing body of research, both from Australia and overseas, shows that investment in prevention and early intervention is a key way to support families and reduce child abuse and neglect.

International research clearly indicates links between all forms of child abuse and domestic violence, drug and alcohol abuse, mental illness and social disadvantage. Investing in prevention and early intervention programs reinforces family relationships, increases resilience in families and promotes healthy child development as well as preventing child abuse and neglect. These types of programs can also breakdown intergenerational cycles of disadvantage.

A significant part of DoCS enhancement funding (\$150mill) is being targeted at prevention and early intervention programs. The DoCS Early Intervention Program is being rolled out across NSW over 5 years (2003/04 – 2007/08) and will fund a range of government and non-government services. 350 new early intervention caseworkers are being appointed to support the implementation of the program. Programs such as Families First, Better Futures and the Aboriginal Child, Youth and Family Strategy provide a suite of programs aimed at better supporting families, earlier.'

However, consultations suggest that Aboriginal people are still having difficulty accessing these services and programs. DoCS acknowledges that its Early Intervention Program requires culturally appropriate models to be developed to make it accessible for Aboriginal people and states that it is in the process of doing this.

Other DoCS programs are offering early intervention initiatives such as parenting classes or supported playgroups, however these are often on an ad hoc basis or are not specifically targeting Aboriginal families.

ACSAT believes that DoCS needs to commit more resources to developing Aboriginal specific early intervention and prevention strategies that address child sexual assault. These programs need to be developed in partnership with Aboriginal communities and also need to include making funds available to local Aboriginal community initiatives such as camps or activities for young people.

ACSAT Recommendation 26

Provide more child protection early intervention and prevention services to Aboriginal communities that specifically include community development/empowerment models

Responding to reports of child sexual assault

Risk of harm assessments

A number of consultation participants reported incidents when DoCS assessed the risk of child sexual assault to a child who had disclosed but did not, at the same time, consider the risk to other children accessible to the offender. For example, one community told ACSAT of an instance where a child had disclosed child sexual assault to her parents and to DoCS. After investigation, DoCS had removed the child from the home because her parents did not believe her and DoCS did not consider the parents protective. The child's sister and her cousin also lived with the family but they were not interviewed by DoCS and were left living at the house despite being at considerable risk.

ACSAT believes that it is critical that DoCS assess the risk of harm to *all* children living in the same household where a child discloses child sexual assault or a report of sexual assault is investigated. This should include members of the child's immediate and extended family as well as any other children who may be living in the house at the time. They should also consider any children that the offender has access to given the communal living and care arrangements of Aboriginal communities.

Appropriate referrals for support

ACSAT and Aboriginal communities acknowledge that it can be difficult for DoCS to respond to all reports of harm or risk of harm and that many reports get closed⁸⁷. For example, a case may be closed if a child discloses they have been sexually assaulted but their non-offending parent/carer is considered protective and has removed the child from any risk and the child is considered too young to be interviewed for legal action.

However, if a case is closed without assessment, the child and their family cannot access counselling at a sexual assault service as this can only be accessed by a DoCS referral. In addition, the family may not be aware of the support services (for example emergency housing or family support) that are available.

ACSAT believes that upon receipt of a report, the DoCS Helpline should provide information to the family as soon as possible about what services are available to help and how they can access them. If it is not a family member making the report, DoCS should make every effort to contact the family and provide them with the relevant

⁸⁷ The DoCS *Priority One Policy* allows the manager at a CSC or JIRT to make decisions on what cases are to be allocated to staff. The highest priority work will be allocated first and all remaining work will be allocated in priority order until resources are exhausted. Reports can be closed at anytime that the manager is satisfied that no further action can be taken or the CSC/JIRT has not been able to get to the case after four weeks.

ACSAT recommendation 27

Ensure that risk of harm assessments acknowledge potential risk to other family members, extended family and community

ACSAT recommendation 28

- a) Make it a mandatory policy to provide information and refer victims and families to support services upon receipt of reports of Aboriginal child sexual assault
- b) Target intake caseworkers in all CSC's to ensure that all Aboriginal child sexual assault reports are provided with appropriate referrals and responses even no investigation takes place
- c) Helpline to provide callers with information on counselling and support services

information (unless to do so would increase the risk to the child/ren). While ACSAT acknowledges that this action would require additional caseworker resources, it believes it is crucial in supporting Aboriginal families and helping them to heal.

ACSAT recommendation 29

Contact is made with reporters and families within 48 hours indicating whether the concerns raised in the report are being investigated

Feedback on a report

Many consultation participants said that DoCS did not provide any feedback to reporters. They said that in many instances, they had made a report but then had not heard anything further about it so they didn't know whether anything was being done about the matter or not. Some participants had tried to contact DoCS to find out what was happening but they had been told it was a departmental issue and they could not discuss it with them. As one community member reports:

'Well I've done reports to the Department and you do the report and then basically you don't hear any more about it, and when you ring up and ask for feedback they tell you it's a departmental case, so they are not at liberty to discuss it with you. So basically once you do the mandatory report, that's it; end of story. They don't want you to know. You don't know of the outcomes, you don't know, you know, whether they're really looking into it or they won't even tell you whether its been investigated. So basically it's an open and a closed door. You report to us and then you basically piss off.' *Transcript 29*

This lack of feedback places some people in a very difficult situation. They may see the child regularly. They suspected the child was being abused so they made report to DoCS. But then they don't know any more. They don't know if the child is still at risk or if something has been done to alleviate the risk or what their on-going obligations are to the child and as a worker.

ACSAT believes that DoCS needs to respond to the person making the report and let them know what is happening with the matter so they can decide how best to provide on-going support to the child and their family.

ACSAT recommendation 30

Review after hours' responses to ensure that all Aboriginal child sexual assault reports are responded to immediately

After hours' responses

Many community members stressed the importance of an immediate DoCS response to reports of child sexual assault, even if the report is made after hours, and comments made to ACSAT suggested that that this was often not happening. Some participants said that the response was sometimes so delayed that the crisis had passed by the time DoCS made contact.

ACSAT recommends that DoCS respond immediately (within 24 hours) to all reports of child sexual assault in Aboriginal communities, regardless of the time of the report (unless to do so would place the child/ren at further risk of harm). The level of response required will vary depending on the situation. For example a visit to the child's home may be required or a DoCS worker may just need to contact

the family, advise them of the report and refer them to an appropriate service for immediate support.

Providing an immediate response, including an immediate after hours' response if required, will also help to reduce the chance of contaminating evidence should the family choose to take the matter to court. DoCS workers can tell the family how they can support the child and what they should and shouldn't talk to them about.

Crisis and supported accommodation

Physical access to crisis and supported accommodation is difficult for all women and children, particularly those living in rural and remote areas. Consultations reveal that this is no different for Aboriginal women. Many participants expressed frustration that there were so few alternative accommodation options available and that refuges were often hundreds of kilometres away. Women and children in crisis as a result of child sexual assault are often forced to remain in the house with the offender until they can find alternative accommodation or they are forced to up-root themselves and move to another town or area, away from their non-offending family, friends, community, schools and jobs.

ACSAT believes that access to crisis accommodation needs to be improved so that non-offending family members who want to protect their children by moving them to alternative accommodation are able to do so.

Awareness of communication styles

The DoCS Helpline staff are the first point of contact for most people wanting to make a report about child sexual assault. Aboriginal people can also make a report directly to an intake officer if they present at a CSC⁸⁸. ACSAT acknowledges that DoCS employs some Aboriginal staff at the Helpline and as intake officers and that every effort is made to make Aboriginal workers available to take reports from Aboriginal people if requested. However, ACSAT also acknowledges that this is not always possible and some reports will be taken by non-Aboriginal staff.

Consultation participants suggested that Aboriginal people may communicate differently from non-Aboriginal people, particularly if they are talking about a sensitive issue such as child sexual assault. For example most Aboriginal people do not respond well to direct questioning, which is usually the method used by non-Aboriginal service providers. If the person taking the report does not recognise the different styles, they may hear something quite different from

ACSAT recommendation 31

Improve access to crisis accommodation through the Supported Accommodation Assistance Program

⁸⁸ The majority of reports are made to DoCS via the Helpline. To improve access to this reporting facility, DoCS allows Aboriginal people to go to a CSC and make a report directly to an intake officer rather than having to go through the Helpline. Aboriginal people can still make a report to the Helpline if they choose to or if they are not able to get to a CSC.

ACSAT recommendation 32

Provide further targeted training to non-Aboriginal Helpline/Intake staff about Aboriginal communication styles

what the person reporting believes they are saying. One example that came up during consultations was that many Aboriginal people who had made a report to the Helpline felt that the (non-Aboriginal) person they spoke to had not understood the seriousness of the situation that was being reported. To the people who were reporting, this seriousness was obvious, as an Aboriginal person would be reluctant to report to DoCS if it was not a crisis situation. However, this may not have come across in the words they chose or the way they spoke.

ACSAT believes it is crucial that all non-Aboriginal Helpline and intake staff are aware of Aboriginal culture, including the different communication styles that may be used to talk about child sexual assault. An understanding of these communication styles will help the person taking the report to get the information they need to make a proper assessment.

Consistency in the way services are provided

Comments made during consultations suggest that there are inconsistencies in the way services are provided by DoCS across the state. Some participants reported an appropriate response from DoCS and good working relationships with DoCS staff. Others reported that DoCS did not respond well, if at all, to their child protection concerns with many community members saying that the local DoCS workers would never go out to the 'mission' to investigate a report. Others believed that DoCS responded too often and were not allowing families to be involved with addressing their own issues, with one participant saying that even though families were already working with other services, DoCS would continue to 'be on their doorstep everyday'.

One community member demonstrates these inconsistencies with her experiences of two different CSCs. She said that she had reported an incident of child sexual assault to DoCS and that staff from the local CSC had only come out once or twice and she had to keep ringing them to get any support or to find out what was happening with their case. She then moved to another location and began working with DoCS CSC there. Here, a local worker visited regularly and provided support without having to be asked or prompted.

Participants believed that these types of responses effected the likelihood of people making a report, as they believed they would either get no help from DoCS or conversly, DoCS would become too involved. ACSAT believes that all DoCS CSCs should follow the same standards of practice and that the process should be transparent, keeping families informed of what is happening with any case and how long they expect the process will take.

ACSAT recommendation 33

Establish standards of practice for casework processes to ensure transparency in casework and that family, community and relevant agencies are kept informed of progress

Out-of-home care

ACSAT and DoCS acknowledge that it is important to place Aboriginal children who cannot live at home due child sexual assault with a non-offending family member or community member if possible and appropriate. The Aboriginal Placement Principle of the *Children and Young Person's (Care and Protection) Act 1998* legislates that this is to occur in the first instance if possible and DoCS have implemented models of 'kinship' out-of-home care to implement this practice. For example extended family care arrangements.

However, there are some instances where the levels of violence in a community are so high that kinship care does not provide adequate safety for the children and they remain at risk even though they are no longer living with their immediate family. Consultation participants acknowledged that this does sometimes happens in NSW and it is a challenge for both communities and DoCS.

In other instances, communities report that kinship out-of-home care placements sometimes break down because of lack of support from DoCS. Extended family and community members may agree to provide care for children so that they can remain in their own community and kinship network, however they are unable to do this without financial and practical support. This support becomes even more critical once these children reach adolescence and begin to display some of the challenging behaviours associated with being sexually assaulted (like acting out, drug use, aggression).

DoCS acknowledges that there are few stable Aboriginal out-of-home care placements available and describes establishing a network of Aboriginal carers, who can provide ongoing care when no one else can guarantee the safety of the child, as a challenge for them. While ACSAT recognises that this issue is not easily solved, it believes that DoCS needs to implement a number of actions that will help to ensure that those out-of-home placements that are available are stable, safe and well-supported. ACSAT recommends that DoCS:

- Thoroughly assess any placement outside the child's birth family home, including conducting a *Working with Children Check*, to ensure that the home they will be placed in does not put them at risk of further sexual assault
- Closely monitor and review all out-of-home care placements, especially 'kinship' arrangements to ensure that children are safe on an on-going basis
- Provide adequate financial and practical support to out-of-home carers

ACSAT recommendation 34

- a) Develop and implement annual mandatory reviews of all DoCS supported placements. This includes:
 - i. Formal Out of Home Care arrangements;
 - ii. Kinship and extended family care arrangements and;
 - iii. Non Parental Care Allowance arrangements.
- b) A thorough placement assessment including the completion of the Working With Children Check must be undertaken for every DOCS supported placement

Community members suggested that these actions would also assist in reassuring them that a child was going to be safe while in out-of-home care.

ACSAT recommendation 35

- a) Include young people between 16-18 years in service delivery through the Youth Policy currently being developed by DoCS
- b) Provide community education to young people, families and communities on the services available to young people between 16-18 years

Services for young people aged 16-18 years

During consultations, a number of participants suggested that young people aged between 16 and 18 years were falling through a service gap and this was considered a serious concern. They indicated that most youth services set an upper age limit of 16 years and most services for adults were for people aged 18 years and over. Few were aware that DoCS are still legislated to provide a service to this age group.

Those that identified this service gap said that this group had very real support needs, for example it was common in many communities for girls in the 16-18 years group to abuse substances and/or become pregnant. Participants believed that child sexual assault was a likely causal factor in drug-taking and promiscuous behaviours that led to addiction and pregnancy in young people.

Clearly, young people in this age group need support to address child sexual assault as well as help to cope with the current circumstances of their lives.

ACSAT recommendation 36

Review and amend the Negotiating Consent package to include:

- i. An Aboriginal specific strand
- ii. Information on how to support and respond to friends who disclose sexual assault

Providing culturally appropriate information to Aboriginal young people about negotiating safe sexual relations

The NSW Violence Against Women Unit, now located within DoCS, has developed an educational package for young people about date rape and consent in sexual relationships titled *Negotiating Consent*. This package is run in NSW high schools at the school's discretion.

As discussed on page 110 of this report, participants who were from areas where this package had been taught to their young people said that these young people seemed to have more understanding of risk and how to protect themselves.

Whilst ACSAT acknowledges that this is an effective package, it believes it could be improved for Aboriginal young people by introducing an Aboriginal specific strand. Changing some language and using tools that are more 'Aboriginal friendly' could see more Aboriginal youth programs delivering, or participating in the delivery of, the package.

Treatment for children and young people who display sexually abusive behaviour

There is limited treatment for children and young people who display sexually abusive behaviour but are not implicated in the criminal justice system.

ACSAT has recommended that the NSW Government develop community-based sex offender programs for Aboriginal children and young people who display sexually abusive behaviour. As NSW Health, the Department of Juvenile Justice and DoCS have combined expertise in protecting children, managing and addressing difficult behaviours in children and working with sexual offenders, ACSAT recommends that these agencies develop these programs in partnership with each other and with communities.

See page 174 of this report for more information about these programs.

Reporting sexually transmitted infections in children and young people

Under the *Children and Young Persons (Care and Protection) Act 1998*, doctors and hospital staff are required to report sexually transmitted infections (STIs) in any child or young person under the age of consent (16years) as it may indicate child sexual assault.

Reporting is required even if the patient claims the sex was consensual (as it is illegal to have sex with someone under the age of 16 years) or it was between two young people of a similar age. If the sexual act was between two people of similar age, say both are 14 years old, DoCS or the Police may choose not provide a formal response. The young people should still be referred for sexual health counselling to ensure that they understand how to practice safe sex and remain infection free.

However, a number of participants spoke of children and young people in their communities, sometimes as young as five and six years old, who had contracted a STI. They suggested these children were being treated for the STI but they knew of no subsequent report being made to DoCS.

ACSAT recommends that DoCS, in conjunction with NSW Health, develop a strategy to get medical practitioners to report or enforce the legislation by imposing relevant penalties.

Supporting Aboriginal staff

During consultations, a number of workers who were employed by DoCS spoke of some of the difficulties they experienced as Aboriginal people working for DoCS. Most reported feeling

ACSAT recommendation 37

Participate in the development of community-based sex offender treatment programs for Aboriginal children and young people an age 10-17yo that is accessible through self and agency referral and not dependant of the criminal justice system. The development of this program is in partnership with NSW Health and Department of Juvenile Justice.

ACSAT recommendation 38

Lead the development of a strategy/awareness campaign in conjunction with NSW Health that encourages the reporting of STIs in children and young people under the age of 16

ACSAT recommendation 39

- a) Provide professional supervision and debriefing to all Aboriginal DoCS staff (rather than just case-planning issues)
- b) Develop a specific program to support to Aboriginal staff and help them to balance the expectations of community, family and the department. This would include mentoring, cultural supervision and support mechanisms and may be delivered through the Professional Supervision Framework

overworked and overwhelmed, with community members wanting to talk to them at all hours of the day, seven days a week. This was particularly so for those people who were providing a service to the communities in which they also lived. These pressures were compounded if only one or two Aboriginal workers were employed at the CSC. These workers were expected by DoCS and the Aboriginal community to service the whole area, which sometimes included many communities and covered hundreds of kilometres.

Many workers experienced tremendous, and conflicting, pressures from communities – for example, pressure to help the victim, pressure to protect the perpetrator, pressure if the child has to be removed etc.

Others reported a tension between their responsibilities at work and their commitment to their community. For example, some workers said that as community members, they were sometimes aware of abusive situations. However, as DoCS workers, they were obliged to take action on this knowledge. In some instances, they felt this action could compromise their safety if they were to make a decision, or were seen by the community to be making a decision, to remove a child or intervene in a family situation. As one worker recalls:

‘We walk a very fine line as DOCS workers, as black people working in DOCS, we walk a fine line between our responsibilities at work and our communities, our commitment to community and family. So it’s a very fine line, you know and people either trust you or don’t trust you.’
Transcript number withheld to prevent identification

Most Aboriginal DoCS workers involved in the consultations said they didn’t feel very supported by DoCS and that the expectations placed on them were unrealistic. As a result, Aboriginal workers burn-out quickly and there is a high worker turnover.

DoCS has a clear commitment to employing Aboriginal staff but reports that it has experienced difficulty recruiting experienced Aboriginal staff. Participants suggest that high expectations and the lack of adequate support mean that Aboriginal people don’t want to work for DoCS, or don’t stay long.

ACSAT believes it is critical that DoCS Aboriginal staff are provided with well structured support and supervision. This would help DOCS staff to manage community and work responsibilities and may reduce the rate of worker burnout. It may also encourage more Aboriginal workers to take jobs with DoCS if they know they will be adequately supported in the workplace.

Monitoring and review

Given the historical relationships, Aboriginal communities believe that it is important for DoCS to be held accountable for the way it works with them and provides services. ACSAT has noted that NSW Police is being held accountable against its *Aboriginal Strategic Direction* policy through regular audits by the NSW Ombudsman. This is proving effective and real improvements have been made in police relationships with Aboriginal communities and in service delivery.

ACSAT recommends that DoCS be audited in a similar way. This process would mean that an independent body holds the agency accountable for improving its relationship with Aboriginal communities and providing effective services. It would also help to address inconsistencies in the way services are delivered across the state.

ACSAT Recommendation 40

NSW Ombudsman to monitor and audit NSW Department of Community Services to improve their relationship with and service provision to Aboriginal people. This will include the area's of:

- i. Child Protection responses and intervention
- ii. Early Intervention and prevention
- iii. Out of Home Care Placements, including Kinship and other extended family and community care arrangements

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to DoCS work towards achieving the following outcomes:

- DoCS achieve a positive and effective working relationship with Aboriginal communities
- DoCS provide efficient and effective interventions to reports of child sexual assault within Aboriginal communities
- Aboriginal children, young people, families and communities are effectively supported, empowered and protected from child sexual assault
- DoCS is able to fulfil its legislative obligations in a culturally respectful and effective way

PART 2: NSW POLICE

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Overview of findings

When examining NSW Police response to child sexual assault in Aboriginal communities, ACSAT found:

- NSW Police has acknowledged the tensions between police and the Aboriginal community and has begun to make inroads into addressing it and building relationships with communities across NSW through its *Aboriginal Strategic Direction*
- When police are involved with the local Aboriginal community in a positive way, and respond appropriately to Aboriginal reports of crime, reports of child sexual assault from Aboriginal people increase
- Some positive relationships with police were reported. However, there are still a number of historical barriers that prevent Aboriginal people from reporting to police when they become victims of crime
- An inappropriate response by police reinforces these barriers, further alienating Aboriginal people from the police and preventing them from reporting child sexual assault
- Some inappropriate responses by police were reported
- Some police do not have the skills required to work effectively with Aboriginal people, nor to address child sexual assault
- There are not enough Aboriginal Police or Aboriginal Community Liaison Officers (ACLOs), particularly females

This discussion of the response by NSW Police to child sexual assault in Aboriginal communities draws on consultations with Aboriginal communities, a submission provided to ACSAT by NSW Police and the Ombudsman's audit of the *Aboriginal Strategic Direction* released in April 2005.

Overview of services provided by NSW Police

NSW Police secure the safety of the community, respond to crime, investigate offences and provide services to the judicial process. They are also involved in crime prevention activities and provide more general services such as assisting emergency services, mediating family and neighbourhood disputes, delivering messages regarding death or serious illness and advising on general policing and crimes issues.

Police services in NSW are delivered through Local Area Commands (of which there are 80 across the State) and Specialist Commands.

Statutory obligations in child protection

NSW Police, together with DoCS, are responsible for the care and protection of children and young people under the *Children & Young Persons (Care & Protection) Act 1998*.

Police are responsible for recognising, reporting and investigating child abuse and neglect, and initiating legal proceedings for child abuse and neglect offences under the *Crimes Act 1900* and the *Children & Young Persons (Care & Protection) Act 1998*.

In addition, police are authorised to apply for apprehended violence orders on behalf of children and young people as required and are authorised to remove children who have been harmed, or are at risk of being harmed, including child sexual assault.

Policy framework for providing services to Aboriginal communities

The Aboriginal Strategic Direction

NSW Police recognise that poor relationships between police and Aboriginal communities is a significant barrier that inhibits police from responding to evidence of child sexual assault in Aboriginal communities. NSW Police has begun to address this by developing a series of three-year strategic plans that aim to help it build relationships with the Aboriginal community. The latest of these is *Aboriginal Strategic Direction (2003-2006)* and it was released in June 2003⁸⁹.

The *Aboriginal Strategic Direction* has six key objectives⁹⁰ which fall into two areas: building better relationships; and reducing crime and Aboriginal people's contact with the criminal justice system. The Strategy has given rise to a number of initiatives that have been implemented state-wide, and some that are being implemented within local area commands, that aim to build better relationships between NSW Police and Aboriginal communities and improve Aboriginal people's access to NSW Police services.

Police response to evidence of child sexual assault in Aboriginal communities

Overview of procedures

If an incident of child abuse (including child sexual assault) or neglect is reported to police, they are required to:

- Ensure the immediate safety and protection of children and young people including, where appropriate, applying for an apprehended violence order and/or initiating criminal court proceedings
- Plan, conduct and manage, with the Department of Community Services (and with NSW Health if medical examinations are required), joint investigations of child sexual abuse and serious physical abuse reports, through Joint Investigative Response Teams (JIRT)
- Keep children, young people and their families informed about investigations and legal processes as required by the *Charter of Victims Rights* and make referrals to counselling and support services as required
- Provide information to arrested persons regarding the *Pre-Trial Diversion of Offenders (Child Sexual Assault) Program* where relevant⁹¹

⁸⁹ The detail on *Aboriginal Strategic Direction* is from NSW Ombudsman (2005), *Working with Local Aboriginal Communities, Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)*, pp. 3-4

⁹⁰ The six key objectives are: strengthen communication and understanding between Police and Aboriginal people; increase Aboriginal cultural awareness throughout NSW Police; improve community safety by reducing crime and violence within the Aboriginal community; reduce Aboriginal people's contact with the criminal justice system; divert Aboriginal youth from crime and anti-social behaviour; and target Aboriginal family violence and sexual abuse

⁹¹ In accordance with section 562C(3) of the *Crimes Act 1900 and the Pre-Trial Diversion Act 1985 No 153*

Police responses to child sexual assault are guided by a number of policies and procedural documents, including:

- *Adult Sexual Assault Policy & Standard Operating Procedures*
- *Investigation & Management of Sexual Assault Victims aged 16-18 years*
- *Procedures for Implementation of the Children and Young Persons (Care and Protection) Act 1998*
- *Police Handbook: Care of Children*

Other related policies and procedures include:

- *Code of Practice for Custody, Rights, Investigation management and Evidence: CRIME*
- *Victim Support Policy and Procedures*
- *Standard Operating Procedures for the Child Protection (Offenders Registration) Act 2000*

Investigating child sexual assault

Child Protection and Sex Crimes Squad

While all police have a role in child protection, clear areas of responsibility have been established for investigating child abuse matters. The Child Protection and Sex Crimes Squad (CP& SCS) was set up to provide a specialist child protection service across NSW. Reports of serial child sex offences and offenders in NSW, including offences of child sexual exploitation such as child pornography and child prostitution, are investigated by the CP& SCS.

The CP&SCS:

- Identifies crime trends and develops operational strategies, programs and policies, as well as investigating crimes
- Maintains the Child Protection Register in accordance with legislative and policy requirements
- Provides consultancy in local investigations if necessary

This squad compliments the work of JIRT and has overall command responsibility for NSW Police's involvement in JIRTs. The unit has now expanded and has responsibility for coordinating the registration and monitoring of convicted child sex offenders and investigating gang or serial adult sex offences through the Sex Crimes Team.

The Sex Crimes Teams investigates sexual assault matters, which are likely to be protracted, complex, serial and serious in nature. This includes:

- Serial sexual assault
- Serious sexual assault requiring a major crime response
- Multiple or networked offenders
- Organised child prostitution
- Sexual servitude
- Matters involving female genital mutilation
- Proactive investigation of high risk sexual offenders
- Historical matters which fit the above criteria

It also houses the Child Exploitation Internet Unit (CEIU). The CEIU investigates serial child sexual abuse and exploitation of children where the offence is linked to, or committed through, the Internet and related computer systems and prosecutes offenders committing such offences.

Joint Investigative Response Teams

JIRT investigates all reports of child sexual abuse and of serious physical abuse and neglect where the victim is under the age of 18 years. JIRTs are an inter-agency response involving NSW Police, DoCS and NSW Health. See page 179 for more information on JIRT's response.

Investigating child sexual assault where the victim is an adult at the time of reporting

LAC detectives investigate child sexual assault matters where the victim is an adult at the time of reporting the matter to the police. CP&SCS also investigates some reports of child sexual assault where the victim is an adult at the time of reporting if the matter is part of a serial offence.

Managing the Child Protection Register

The Child Protection Registry has been established to monitor and maintain the NSW Police Child Protection Register, as per the *Child Protection (Offenders Registration) Act 2000*.

Under this Act, persons convicted of a nominated violent or sexual offence against a child are required to register at the police station in the area in which they live within 28 days of sentencing, release from custody or entering NSW after being found guilty of a registrable offence in another jurisdiction.⁹²

Registrable persons are required to provide police with certain personal information, travel plans and any changes to this information. An adult offender will be required to register for eight years, while a juvenile offender will need to register for four years. It is an offence not to register or to provide police with false information.

Child Protection Watch Team

Child Protection Watch Teams (CPWTs) have been set up to monitor high-risk registered sex offenders. This is a new initiative being led by NSW Police and trialed in eight metropolitan locations. The teams operate on a regional basis and are made up of representatives from NSW Police; Department of Corrective Services; Department of Community Services; Department of Juvenile Justice; Department of Ageing, Disability and Home Care; Department of Health; Department of Education & Training; and Department of Housing. CPWTs:

- Provide a forum for sharing relevant information about referred offenders (formation of Region based CPWTs should also lead to improved inter-agency cooperation at a local level)
- Review and update assessments of offender risk, based on information held by participating agencies
- Develop case plans for referred offenders where appropriate, with agreed agency responsibilities and timeframes – case plans may include linking an offender with a particular service, controlled information disclosure or application for a Child Protection Prohibition Order (CPPO) and
- Review and modify case plans, as appropriate

⁹² http://www.police.nsw.gov.au/community_issues/children as at 6 February 2006

Interagency cooperation

NSW Police recognises interagency cooperation as a crucial part of its response to evidence of child sexual assault in Aboriginal communities. As with all government and non-government agencies, police interagency activities are guided by the principles of the *Interagency Guidelines for Child Protection Intervention 2000*.

As well as the specialist interagency response of JIRTs, NSW Police also participates in, or leads, a number of government interagency forums. For example, police participate in, or lead:

- The Sexual Assault Review Committee convened by Office of the Director of Public Prosecutions (ODPP)
- The Criminal Justice Sexual Offences Task Force convened by the Attorney General's Department
- Child Protection Senior Officer Group

At the local and regional level, NSW Police participate in, or lead, a number of formal committees that involve Aboriginal communities, including:

- Local Area Command Aboriginal Consultative Committee (LACACC);
- Regional Aboriginal Advisory Committee (RAAC); and
- Police Aboriginal Strategic Advisory Council (PASAC)

These committees aim to build relationships between police and Aboriginal people, provide a forum for Aboriginal people to work with police in making decisions, identify strategies and develop joint action plans and address Aboriginal issues at a local and regional level. In particular, NSW Police sees the LACACC as a forum that could be used to consider how police and Aboriginal communities could work in partnership to address child sexual assault.

In addition, Aboriginal community liaison officers (ACLOs) and police at the local level are also involved in, or attend, Aboriginal Men's Groups or Women's Groups. These groups have been set up by Aboriginal communities to identify problems, seek solutions and to support the community generally. Some Police have also set up Aboriginal Support Groups, which provide support to Aboriginal people in police custody or Aboriginal people who are victims of crime.

Barriers to police effectively addressing Aboriginal child sexual assault

Effectiveness of Aboriginal Strategic Direction

The *Aboriginal Strategic Direction* has been developed to guide the way police work with Aboriginal communities and respond to crimes including child sexual assault. The NSW Ombudsman's office has conducted an audit of the implementation and effectiveness of *Aboriginal Strategic Direction*, with the overall aim of holding NSW Police to account against its own policy.

In the audit *Working with Local Aboriginal Communities – Audit of the implementation of the Police NSW Aboriginal Strategic Direction (2003-2006)*, released in April 2005, 14 commands were audited. These were selected on the basis of the number of Aboriginal residents and the rate of police contact with Aboriginal people in these areas.

ACSAT recommendation 41

The Ombudsman continue to monitor and audit NSW Police to improve their service provision for Aboriginal people

The audit has identified some positive results and real improvements in the way some commands are relating to Aboriginal communities in their area. However, it also identified a number of inconsistencies in the way the strategy is being implemented and some recurring themes that require a more comprehensive response from NSW Police to assist police break down some of the barriers to effectively fighting crime in Aboriginal communities. These include:

- Building better relationships
- Frontline police
- ACLOs
- Fighting crime — young people and family violence

Police relationships with Aboriginal communities

Throughout the consultation process, it became clear to ACSAT that where police were providing an appropriate response, and making efforts to get to know the community and become involved, the relationship between police and Aboriginal communities improved and reporting of crimes such as child sexual assault had increased.

One example of how relationships had improved, and the differences this made to communities, was noted by ACSAT and is as follows:

In one community, two police officers enrolled in a chainsaw course with the local CDEP⁹³. Apparently, the officers didn't really need the skills in using a chainsaw but recognised that doing the course would be a good way to get to know members of the local Aboriginal community.

Once the course was finished, police continued to build relationships with the community by doing things such as helping the young people get their drivers licence and helping people out if they got bogged etc. Local people accepted these police officers into the community and reported that they had no fear or hesitation in reporting crime to the them, as they knew they would respond appropriately.

The police noted that since the relationship between police and the community had started to change, the levels of crime had dropped significantly. In fact, the police services to the community had actually been reduced in response to decreased incidence of crime. The police believe it was their decision to get involved with the community, and to always explain to the community why they responded the way they did, that had made the difference. *Non-audio recorded consultation 9*

⁹³ CDEP is the Community Development Employment Program for Aboriginal people who are on Centrelink benefits to enable them to gain skills in the workforce

However, it was also clear to ACSAT during consultations that there were still many communities where people did not want to involve the police when they became victims of crime. ACSAT noted that there were both past and present reasons for this.

The traumatic impact that colonisation, dispossession, marginalisation and the stolen generation has had on Aboriginal families and communities has resulted in a mistrust of the system and a reluctance to engage services that have in the past been so damaging to Aboriginal communities. Whenever police respond inappropriately to Aboriginal people, this mistrust is reinforced and the alienation of Aboriginal people from police continues.

Communities also identified barriers such as the fear of arrest, physical harm and racism as reasons why they would not report child sexual assault to police. One community member said that they would 'go to a different town if they were going to report a crime such as sexual assault' as they believed the police in their town were racist and would tell them to 'go away'.

In some communities, there was a perception that police only showed up in a crisis. Community members didn't know the police personally and didn't believe the police were really interested in Aboriginal concerns or culture, nor knew anything about how the community operated. The only interactions the community had with police were negative, involving arrest, racism or inaction on a matter that the community felt required a police response. All these factors contributed to a continued mistrust of police and a belief that there was no point in reporting child sexual assault to them because they wouldn't do anything anyway.

NSW Police initiatives to address barriers and build relationships

The findings of ACSAT, both positive and negative, are consistent with the findings of NSW Police own investigations and that of the Ombudsman's audit. In its submission to ACSAT, NSW Police agreed with communities, identifying poor relationships between police and Aboriginal communities (both as a result of past and current practices), inappropriate police responses and a lack of awareness of Aboriginal culture among police as being significant barriers to Aboriginal people accessing its services.

NSW Police has begun to address these barriers by developing and implementing *Aboriginal Strategic Direction*. The Ombudsman's audit has also identified a number of initiatives that police in a number of commands are using to build relationships and improve police understandings of Aboriginal communities.

However, the audit has also found that the strategies recommended by *Aboriginal Strategic Direction* are not being consistently

ACSAT recommendation 42

- a) Every LAC is to develop and implement a local plan for improving relationships with Aboriginal communities
- b) Officers are to proactively engage with the local community for at least 10 hours per month

implemented across local area commands and that implementation often seemed to rely on the drive of one or two individual officers rather than being taken up by a whole command. The audit found that in some areas, relationships between police and community members were still languishing. This was very much reflected in ACSAT consultations.

ACSAT believes that it is crucial for all police to engage proactively and regularly with the local Aboriginal communities in their command area and recommends a minimum time allocation of ten hours a month for each officer.⁹⁴ ACSAT also supports the objective of the *Aboriginal Strategic Direction* to develop local area plans.

Responding to child sexual assault in Aboriginal communities

When a report of child sexual assault in an Aboriginal community is made, NSW Police are required to investigate it in the same way they would any other child sexual assault investigation. However, comments made during consultations suggest that this does not always occur.

Response to initial complaint

Participants in some communities said that in some instances, parents or community members were going to the police station to support children and young people who were reporting child sexual assault, and were then being arrested for outstanding warrants. One participant recalled the following example:

A father went to the police station with his young daughter to support her in reporting child sexual assault. However, the father had outstanding warrants and when he went to the station, he was arrested. He was then gaoled and so wasn't able to provide support to his family. The perpetrator of the sexual assault was an uncle and following the report, he was removed from the community. The little girl was left feeling responsible for her dad and her uncle being removed from the community. *Non-audio Recorded consultation 11*

In other instances, police were dismissing complaints of historical child sexual assault made by adults based on their ongoing relationship with the person reporting. Participants said that people were often told to 'go home' or 'to come back another time' and they believed this kind of response was more common if the person reporting had previously been involved in antisocial behaviours such as drinking or in domestic violence incidents. They suggested that the police either did not believe the assault had actually happened or that the community member would not follow up with the report.

Responses that were perceived as racist were also reported. Some participants believed that in some instances, police didn't respond to Aboriginal reports of child sexual assault because they didn't think it warranted a response or because it was simply too hard. They also believed that non-Aboriginal families received a much more proactive and timely response. As one participant said:

⁹⁴ This time period is based on a strategy implemented, and found effective, by DoCS where CSC staff spent 10 hours per month engaging with the community.

'I'll give you a little scenario, just so you know that I've - I really believe that this is a black thing, that's why nothing's done because I reckon they're scared...here about two months ago I had a little white girl disclose to me. I did me procedure ...we did the notification and ... the detective was here the next afternoon - the next day he was here and he said - and that was Friday. He said, "We'll be picking him up tonight or over the weekend". They did the interview - they interviewed that little girl here.

...They're too gutless because it's a black fella, they don't want to deal with it. So how in the hell can you justify that?' *Transcript 32*

Communities often spoke of the damage caused to the person reporting child sexual assault when police took no action, for whatever reason. As one participant states:

'It's very hard for children to build up to give a direct disclosure, only to see nothing happen for such a long period of time, because that inaction, it's not so much what people are saying to them, it's their actions that mean more to them, so there's nothing happening. They feel nothing's happening, nothing's happening, nothing's changed.'

Transcript 33

Support for victims and referrals to support services

Many participants felt that victims of child sexual assault were not being properly supported by police. They said that victims were often not provided with any information about what would happen next, nor were they being given any referrals to support services. They often didn't know where their case was up to or even if it was still open. As one participant stated:

'...you have to go chasing them for everything. They're not getting back to, like the other service providers, you know, kids need to know what's going on in this timeframe that they've seen nothing happening, okay, so what are some of the things that have been happening, you know, so it assists for them to know something's being done.'

Transcript 32

Participants had also observed the same lack of support for adults disclosing historical child sexual assault. They said that they were also unsure of the process or where they should go next and that the police were often not offering any referral advice.

Investigating child sexual assault in Aboriginal communities

When police were investigating child sexual assault, communities observed inconsistencies in the amount of evidence that police required for a case to proceed to court. Some cases seemed to proceed more easily and with less evidence than others and communities could not see any reason why this would be so.

For example, one community member had had difficulty in getting police or JIRT to respond in the area she was living. Her child had disclosed child sexual assault and she was no longer living with the perpetrator. The family then moved to another town and reported

ACSAT recommendation 43

Reinforce the protocol that prevents the arrest of an Aboriginal person on an outstanding warrant if they have come to the police station to report child sexual assault or to support someone who is reporting child sexual assault. This is to be done through:

- i. Ensuring that training of the existing policy occurs
- ii. Developing a community education strategy to inform the community of the policy

ACSAT recommendation 44

Develop a protocol for taking reports of child sexual assault from Aboriginal people, which includes:

- i. A clear understanding of the risk factors of underreporting
- ii. Automatic referral to appropriate support services
- iii. Adults survivors reporting their child sexual assault experience

ACSAT recommendation 45

Make it mandatory for all evidence briefs involving child sexual assault in Aboriginal communities are to be forwarded to the Office of the Director of Public Prosecution in accordance with Prosecution Guideline 14. Police must follow any direction or advice set out by the ODPP in relation to charging, further investigation or not to proceed with legal actions

the assault, and the same disclosure, to the LAC in the new location. Police from this LAC responded immediately, ensuring that the child was safe, reporting to DoCS and proceeding through the court process.

Throughout consultations, agencies often criticised the police for not continuing with legal proceedings. Even DoCS and Health workers who had responded with the police (via JIRT), could not understand why on some occasions, when there was a clear disclosure and other supporting evidence, the police refused to proceed. They agreed with communities, noting the same inconsistencies in the levels of evidence required to proceed to court.

ACSAT acknowledges that the NSW Police have evidence sufficiency tests that help police to decide if there is enough evidence for a matter to proceed to court. However, these are still open to interpretation and police discretion and are no guarantee of consistency.

ACSAT recommends that all evidence briefs for child sexual assault matters are forwarded to the Office of the Director of Public Prosecution (ODPP) for formal advice as to whether to proceed to charge/court or whether further evidence is required. It also recommends that police be mandated to follow the advice of the ODPP to help remove discretionary decision making and promote consistency in evidence requirements across the state.

Skills of police officers and Aboriginal community liaison officers (ACLOs)

The community raised a number of issues regarding the skill levels of individual police, or in some instances whole commands, in responding to both child sexual assault and Aboriginal people. The following skills gaps were identified:

Aboriginal cultural awareness among police

Consultations with communities where the relationship with police was poor continually reported a perception that police didn't know anything about Aboriginal culture nor understood how the community functioned. They also felt that police didn't really care anyway.

The *Aboriginal Strategic Direction* states that NSW Police is committed to increasing Aboriginal cultural awareness among police. All police do participate in an Aboriginal cultural awareness program as part of their training at the Police College. However, this is minimal and needs to be supplemented at the local level by comprehensive introductions to the community and how the community works.

The *Aboriginal Strategic Direction* recommends that local area commands develop a locally based cultural awareness training program for police. According to the Ombudsman's audit, there are only a few commands in NSW that have done this at present but these are considered useful and are well received by police and communities.

In addition, the audit recommends local inductions for new police and that they should be mentored and assessed by experienced local police and ACLOs in relation to their dealings with the community.

Understanding of child sexual assault in Aboriginal communities among police

During consultations, communities often reported things that police had said or done that suggested a lack of awareness by police of the dynamics of child sexual assault occurring in Aboriginal communities. For example, communities spoke of instances where police told a person reporting child sexual assault to 'go home and keep an eye on the child overnight, until DoCS comes the next day'. Those who witnessed this example believed that this was irresponsible of the police, as it is sometimes very difficult for community members to secure the safety of the child without placing the child, or themselves, at further risk of harm.

ACSAT believes that police must understand child sexual assault if they are to be able to provide an effective response. They must be aware of the impact that child sexual assault has on the community, particularly as it effects the whole community and not just one family. It is particularly important that Domestic Violence Liaison Officers and Youth Liaison Officers have this understanding as they often have a more proactive role with families and young people and it is likely that they will have contact with Aboriginal children, young people and families where child sexual assault is an issue.

Understanding of child sexual assault among ACLOs

As with police, it was often reported to ACSAT that some Aboriginal Community Liaison Officers (ACLOs) did not understand child sexual assault and as a result often responded inappropriately and in ways that were not supportive to victims and their families. Many communities rely heavily on ACLOs to help them talk with police and ACLOs can often be very influential, both with the police and the local community. It is vital that they understand the crime of child sexual assault so they are able to provide appropriate support to individuals and communities.

ACSAT acknowledge that ACLOs currently receive a three-hour training session on child protection. However, while this session covers child protection issues such as physical abuse and neglect,

ACSAT recommendations 46

In addition to the training received at the academy on entrance to NSW Police, provide annual cultural training for all officers as part of the local cultural awareness programs. This should include:

- i. Local Aboriginal communities and issues
- ii. Youth issues
- iii. Interviewing and working with Aboriginal people
- iv. Child protection issues including child sexual assault

ACSAT recommendation 47

Provide comprehensive training on child sexual assault in Aboriginal communities to all DVLOs, Youth Liaison Officers and general duties police

ACSAT recommendation 48

Provide specific and mandatory training to all ACLOs about child sexual assault

it does not have a specific focus on child sexual assault. Given the high level of incidence of child sexual assault and the impacts that it has on the community, it is felt that this is not enough or is not effective.

ACSAT recommendation 49

Review and further develop the *Aboriginal Employment Strategy* to recruit and retain more females in ACLO positions, including developing local employment strategies

Employing Aboriginal staff

In every consultation, and about every service, communities said they would like to see more Aboriginal people employed. In particular, in relation to NSW Police, people said they would like to see more female ACLOs.

Aboriginal police

In 2003-2004, NSW Police employed 144 Aboriginal officers and 46 civilian staff. This is below the target set by the NSW State Government whereby Aboriginal staff are to make up a minimum of 2% of all staff employed.

NSW Police is committed to increasing the number of Aboriginal people it employs and to this end, has developed the *NSW Police Aboriginal Employment Strategy 2002-2005*. However, it has also identified a number of barriers for Aboriginal people to working with NSW Police. According to the Ombudsman's audit, work is being done at the corporate level, and at the local level with a few commands, to develop recruitment strategies to overcome these barriers. ACSAT supports the work of NSW Police to promote recruitment of Aboriginal police and endorses the recommendations of the Ombudsman's audit.

Aboriginal Community Liaison Officers

NSW Police employ ACLOs, who are civilian personnel employed to act as a link between the command and the local Aboriginal community. According to the Ombudsman's audit, there are a total of 56 ACLOs employed in 27 out of the 80 commands across NSW. (Commands with large Aboriginal populations may have more than one ACLO.) Women occupy only seven of these positions.⁹⁵ NSW Police is currently seeking funding to employ an additional 12 female ACLOs.

ACSAT believes that employing more women ACLOs is a very important measure as the issues arising from child sexual assault are traditionally considered 'women's business' in Aboriginal communities and many Aboriginal women will not talk openly about them to Aboriginal men. It supports the current initiatives of NSW Police in this area and recommends a consistent focus on recruiting and retaining Aboriginal women ACLOs.

⁹⁵ NSW Ombudsman (2005), *Working with Local Aboriginal Communities Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)*, p. 13.

Planning

ACSAT recognises that NSW Police has developed, and is implementing, *Aboriginal Strategic Direction* and that this strategy, together with the Ombudsman's audit, is making differences to the relationship between Aboriginal communities and police in some commands across NSW. ACSAT supports the continued implementation of this plan and the process of having the implementation audited by the NSW Ombudsman.

ACSAT also notes that NSW Police, in its submission to ACSAT, has identified the development of an Aboriginal Child Sexual Assault strategic plan as a practical measure that would help it to address the issue in a uniform way across the state. It would also provide a framework for responding so that Aboriginal people who are involved in child sexual assault matters are kept fully informed and supported by the police throughout the process. ACSAT recommends NSW Police develop this plan.

Collecting data

NSW Police report that the data it collects reflects the number of reports of child sexual assault made to police rather than actual incidences of child sexual assault, which is likely to be much higher.

The NSW Police data collection system is designed to collect data about the Indigenous status of both offenders and victims. However, it appears this data is collected, or recorded, inconsistently. In 2004, the Aboriginal status of the victim of child sexual assault was recorded as unknown in 15% of all recorded incidents. Similarly, in 2004 the Aboriginal status of Persons of Interest in sexual assault matters was also recorded as unknown in 15% of cases.

This could be because questions about Aboriginality were not asked or they were asked but the responses were not recorded. Or it could be that people did not want to disclose their Aboriginality, perhaps for fear that they might be treated differently.

It is important that standard data questions are asked, and the answers recorded, consistently so that NSW Police and the NSW Government can get a more accurate picture of the incidence of child sexual assault in Aboriginal communities.

ACSAT recommendation 50

Develop a strategic plan to respond to and address issues of child sexual assault in Aboriginal communities

ACSAT recommendation 51

Ensure that standard data collection questions regarding the Indigenous status of both victims and offenders are asked as a part of the response procedures for child sexual assault

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to NSW Police work towards achieving the following outcomes:

- NSW Police achieves a positive and effective working relationship with Aboriginal people
- Police understand and effectively respond to child sexual assault in Aboriginal communities
- Police provide an efficient and appropriate response to reports of child sexual assault within Aboriginal communities

PART 3: NSW HEALTH

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Overview of findings

When examining NSW Health's response to evidence of child sexual assault in Aboriginal communities, ACSAT found that:

- Overall, Aboriginal communities were positive about the quality of health services provided
- Many Aboriginal workers who took part in consultations were aware that NSW Health provided training about child sexual assault via the Education Centre Against Violence (ECAV) and they were very positive about ECAV's work
- NSW Health is the ideal agency to host a network of advocacy and support workers for Aboriginal families who have experienced child sexual assault and want to access government services support

However, ACSAT also identified the following barriers to NSW Health providing an effective response:

- Communities were confused about the roles of all the different health workers and were often not aware of the services provided by sexual assault services
- There are not enough counsellors or support workers able to respond to child sexual assault in Aboriginal communities, particularly in rural and regional areas
- Telephone sexual assault counselling services are often not culturally appropriate
- Counselling is only available after a referral from DoCS or JIRT and this restricted some people's access to counselling
- There are not enough forensic services available, particularly in rural and regional areas
- There are not enough Aboriginal workers employed in mainstream sexual assault services or in NSW Health generally
- NSW Health needs to provide adequate support and supervision for Aboriginal staff and also, help them to gain professional qualifications, for example in counselling
- There is limited access to treatment programs for young people who display sexually offending behaviour
- There is no treatment for adults who sexually offend but are not implicated in the criminal justice system
- Drug and alcohol services are not adequately responding to the possibility that their clients may have experienced of child sexual assault
- Mental health services are not adequately responding to the possibility that their clients may have experienced of child sexual assault
- Some doctors and hospital staff are not reporting sexually transmitted infections (STIs) in children and young people to DoCS, despite being mandated to do so

This discussion of the response by NSW Health to Aboriginal child sexual assault draws on consultations with Aboriginal communities, a submission provided to ACSAT by NSW Health and various National and State Aboriginal health policies.

Overview of services provided by NSW Health

NSW Health is responsible for ensuring that the people of NSW are provided with the best possible health care. The Department monitors the performance of the NSW public health system.

The NSW health system is made up of:

- NSW Minister for Health
- Minister Assisting the NSW Minister for Health (Cancer)
- Minister Assisting the NSW Minister for Health (Mental Health)
- NSW Department of Health
- Public health organisations

Public health organisations include:

- Eight Area Health Services
- The Westmead Children's Hospital
- Justice Health
- Clinical Excellence Commission

These organisations plan, deliver and coordinate local health services. They are responsible for providing services such as public and community health, public hospitals, psychiatric hospitals, emergency transport, acute care, rehabilitation, counselling, and many community support programs.

Policy framework for providing services to Aboriginal communities

Policies that guide the delivery of health services to Aboriginal people

Within NSW Health, policy development and strategic planning for Aboriginal health and well being issues are carried out by the Centre for Aboriginal Health. The Centre also works through the NSW Aboriginal Health Partnership and with government and non-government agencies to coordinate approaches.

For developing policies on child sexual assault, the Centre collaborates with the Child Protection and Violence Prevention Unit in the Primary Health & Community Partnerships Branch within NSW Health, which are the specialists in this field and connected to service provision and training.

NSW Health has a number of policy frameworks to guide the way it provides services to Aboriginal communities. These are outlined below:

NSW Aboriginal Health Strategic Plan – 1999

The *NSW Aboriginal Health Strategic Plan (NAHSP)* was developed in 1999 to help NSW Health implement the objectives of the *1989 National Aboriginal Health Strategy*⁹⁶. It aims to improve health outcomes for Aboriginal people and includes strategies such as:

- Effective partnerships and cultural awareness
- Improved coordination between the state and commonwealth responses
- Support and development of the Aboriginal health workforce
- Effective monitoring of progress against agreed performance indicators
- Informed decision making supported by a needs based resource allocation model

⁹⁶ NSW Health Department, *NSW Aboriginal Health Strategic Plan 1999*

The key priorities identified in the plan are to:

- Improve access to health services
- Address identified health issues
- Improve social and emotional well-being
- Increasing the effectiveness of health promotion
- Creating an environment supportive of good health

As a result of the NAHSP, NSW Health has developed local Aboriginal health plans, area health service Aboriginal health plans and state health plans. These three levels of planning provide for a coordinated response to improving Aboriginal health in NSW.

Ensuring Progress in Aboriginal Health – A policy for the NSW Health System – 1999

This policy was developed to assist with the implementation of the NAHSP. The policy outlines NSW Health's position with respect to all aspects of improving the health and well being of Aboriginal people and communities in NSW. It establishes agreed principles and goals to guide decisions and actions by NSW Health and strengthen accountability for outcomes and management of resources.⁹⁷ It provides practical strategic directions and goals to improve health services for Aboriginal people in NSW.

NSW Health Aboriginal Health Impact Statement and Guidelines – Incorporating Aboriginal health needs and interests in health policies and programs

NSW Health Aboriginal Health Impact Statement and Guidelines 2003 aims to ensure that staff incorporate the health needs and interests of Aboriginal people in the development of policies and programs.⁹⁸

Policy promoting employment of Aboriginal staff

Aboriginal Workforce Development Strategic Plan 2003-2007

The *Aboriginal Workforce Development Strategic Plan 2003-2007* (AWDSP) was developed to improve recruitment; retention and training of Aboriginal staff as well as improve cultural awareness in non-Aboriginal staff.

NSW Health responses to evidence of child sexual assault in Aboriginal communities

Child protection – mandatory reporting of child sexual assault

All staff of NSW Health are mandatory reporters in accordance with the *Children and Young Persons (Care & Protection) Act 1998* and are required to report to DoCS if they suspect a child is experiencing child sexual assault or is at risk of experiencing sexual assault.

The NSW Health *Frontline Procedures for the Protection of Children and Young People* provides information to all NSW Health staff about recognising and responding to child abuse and neglect,

⁹⁷ NSW Health Department, *Ensuring Progress in Aboriginal Health, A policy for the NSW Health System 1999*

⁹⁸ NSW Health *Aboriginal Health Impact Statement and Guidelines, Incorporating Aboriginal health needs and interests in health policies and programs, 2003*

including child sexual assault. These procedures are consistent with the *NSW Interagency Guidelines for Child Protection Intervention 2000*.

Providing health and support services to Aboriginal victims of child sexual assault

Sexual assault services and child protection units

NSW Health reports that it mainly responds to child sexual assault in Aboriginal communities through its network of 50 mainstream sexual assault services (SASs), which are based in hospitals and community health centres across the state. These services provide adult and child victims of sexual assault with:

- Crisis counselling
- Medical care and
- Forensic assessment

SASs also provide ongoing counselling, group work programs, information, medical care, court reports, court preparation and support to adults and children as required.

NSW Health indicates that access to these services is usually through a referral by a health worker, including Aboriginal Family Health Workers or from JIRT. However, people may also refer themselves to these services. Counselling for sexual assault will usually only be offered to children under 14 years if they have been interviewed by the Joint Investigative Response Team. This is to ensure that counselling is only provided to children who are believed to have experienced sexual assault.

Some children who have been sexually assaulted may not disclose to DoCS or police during an investigation or they may refuse to be interviewed. However, if the child has disclosed to another person, and there are indicators that the child has been sexually assaulted, a case planning process between SAS and DoCS will review what services the child needs.⁹⁹

The NSW Health *Sexual Assault Policy and Procedures Manual* guides the operation of sexual assault services.

Of the 50 sexual assault services in NSW:

- 39 operate on a 24 hours basis to provide an immediate response to victims
- Three are child protection units (located in metropolitan areas) and respond only to children
- Four are adult only services (also located in metropolitan areas)
- 38 are based in rural centres across NSW

The child protection units are based at Sydney Children's Hospital – Randwick, Westmead Children's Hospital and the John Hunter Hospital in Newcastle. They provide forensic and medical care for sexual assault, severe physical abuse and severe neglect matters, including case management and support to children under 16 years.

Adults and children who have been recently assaulted are a priority for these services. Where resources permit, counselling is also provided to adults who have experienced child sexual assault.

⁹⁹ NSW Department of Community Services, NSW Police and NSW Health 2001, *Joint Investigative Response Teams policy and procedures manual*, NSW p. 21

NSW Health reports that these services see approximately 1400 adults and 1500 children annually and provide approximately 700 forensic medical examinations on adults and 600 on children. NSW Health data indicates that during the 2003-04 year, 1057 children attended a sexual assault service. Of those where the Indigenous status of the child is recorded, 12.7% were Aboriginal or Torres Strait Islander.¹⁰⁰ (The Aboriginality of the child is not recorded in 17.4% of cases.)

As a partner in Joint Investigative Response Teams

NSW Health forms an integral part of the JIRT interagency response by providing medical examinations, crisis and ongoing counselling, court preparation and support services to children or young people who have experienced abuse and their non-offending carers. These services are provided through NSW Health's sexual assault services and Physical Abuse and Neglect of Children (PANOC) service.

JIRT may refer a child to a sexual assault service for counselling in instances where:

- The outcome of the DoCS risk of harm assessment is that the child has been sexually assaulted
- The child discloses during the interview
- There is no disclosure but indicators suggest that sexual abuse has occurred

Programs to reduce family violence and sexual assault in Aboriginal communities

Aboriginal Family Health Strategy

In 1995, NSW Health, through the NSW Aboriginal Health Partnership¹⁰¹, developed the *Aboriginal Family Health Strategy* (AFHS) to focus on a number of priority areas outlined in the *Aboriginal Health Goals for NSW*, namely: injury and violence; mental health; and substance misuse¹⁰².

AFHS has the overall objective of reducing family violence and sexual assault in Aboriginal communities and it is supported by recurrent funding of \$1.5 million annually. All NSW Health's initiatives in this area are initiatives of AFHS. According to its policy document, the AFHS aims to help communities to:

- Break the patterns of denial within communities and acknowledge both the incidence and unacceptability of family violence and sexual assault and
- Provide protection and support to those seeking refuge and subsequent action from incidences of family violence and sexual assault

The major principles of the AFHS encompass a holistic approach to Aboriginal family violence including the principle of self-determination, partnerships, recognition of historical events, trauma, grief and loss. Programs funded through AFHS work with the whole family and the whole community to address these issues.

¹⁰⁰ Data sourced from NSW Health Submission to ACSAT

¹⁰¹ The Partnership is between NSW Health and the Aboriginal Health and Medical Research Council, the peak body for Aboriginal Community Controlled Health Services in NSW, also known as Aboriginal Medical Services.

¹⁰² NSW Health's *Aboriginal Health Goals for NSW* (November 1993) sets out the Aboriginal health outcome goals for the NSW health system. In addition, *A Healthy Future: A framework for Health in NSW* (June 1994) reinforces the strategic achievement of Aboriginal Health Goals and partnerships with Aboriginal people.

NSW Health's submission emphasises that the AFHS is committed to community solutions based on cultural health philosophies. It calls on Aboriginal men to be involved in working towards solutions to family violence. It also fosters capacity building through providing accredited specialist professional education to Aboriginal family health workers and supporting and funding network liaison.

The AFHS funds a number of Aboriginal non-government organizations (NGOs) across NSW to deliver family health programs that aim to reduce family violence and sexual assault in Aboriginal communities. Each of these NGOs employs at least one Aboriginal Family Health Worker and the submission from NSW Health reports that addressing child sexual assault may be a component of their work.

Each service has identified priorities that are specific to the area in which it is located. Some examples of the type of services being provided in different areas include:

- Family support and early intervention for families considered 'at risk'
- Support and advocacy for women and children experiencing family violence, including crisis support and an after hours support service
- Education for communities about family violence, sexual assault and child protection
- Improving access to services and advocacy

Providing training about responding to child sexual assault to relevant service providers and to Aboriginal communities

NSW Health, through its Education Centre Against Violence (ECAV), provides training about responding to child sexual assault to mainstream and Aboriginal staff of NSW Health (for example sexual assault workers, Aboriginal family health workers, mental health workers etc) and also to interagency professionals who work with people experiencing violence (for example police, DoCS, JIRT, non-government agencies, etc).

ECAV also develops educational resources such as training packages, community education pamphlets, videos and DVDs to support area-based facilitators with training, community information sessions and group work with clients. Two resources developed specifically to support Aboriginal workers addressing Aboriginal family violence and sexual assault are *Who's The Loser, a story about family violence* and *Big Shame, a story about child sexual assault*.

ECAV, in partnership with other agencies, has developed a course for Aboriginal communities entitled *Weaving the Net*. *Weaving the Net* promotes community and family-based solutions to child abuse and family violence. It is a series of consultative, educational and community development modules that aim to increase capacity in Aboriginal communities to respond to child abuse.

A list of courses and resources available from ECAV, as at February 2006, can be found in Appendix 5.

Treatment programs for offenders

NSW Health funds one treatment program for adult offenders of child sexual assault in NSW (Cedar Cottage) and one treatment program for adolescents who display sexually offending behaviour (New Street Adolescent Service).

Cedar Cottage for adult offenders

Cedar Cottage is a pre-trial assessment and alternate sentencing regime for adult offenders of child sexual assault who have sexually offended against their own child, stepchild or their de-facto partner's child. At present, the program is quite small and can treat a maximum of 18 offenders.

This program has been in operation since 1989 and is governed by the *Pre-Trial Diversion of Offenders Act 1985*. The diversion to treatment at Cedar Cottage is only available where the victim was under 18 years, the offence was not accompanied by violence and the offender has not previously been convicted of a sexual offence. Diversion occurs after charges have been filed but before the matter proceeds to conviction or entry of judgment. A conviction is recorded after the offender has been assessed 'suitable' and enters an undertaking at the District Court to participate.

Cedar Cottage is an intensive, therapeutic, non-residential program run from premises at Westmead in Sydney's west. It is auspiced by Sydney West Area Health Service on behalf of NSW Health. Although the program itself is non-residential, strict conditions govern where the participants can live and participants must sign a 'treatment agreement'.

Offenders are required to attend individual, small group or large group therapy at least once a week for the duration of the program. Therapy can last two years, however the court has the discretion to extend this period for 12 months if requested by the Director of the program. If the offender breaches the conditions of the treatment program at any time, they will be returned to the criminal justice system for sentencing. If the offender completes the program successfully, no further action against them is taken.¹⁰³

The Cedar Cottage program gives priority to addressing the harm caused by the abuser's actions to the victim(s), the family and other significant relationships. Accordingly, counselling and therapy services are provided to victims and family members. The Cedar Cottage program is influenced by the work of psychologist Alan Jenkins, who believes that abusive behaviour is most likely to stop if the perpetrator accepts full responsibility for his/her actions.

New Street Adolescent Service

Established in 1998, New Street Adolescent Service (New Street) provides treatment for young people aged 10-17 years who have sexually abused, with a priority given to 10-14 year olds. Access to the New Street program does not require a criminal charge. However, it must be a NSW Department of Community Services substantiated sexual assault matter and a decision made by the investigating authorities not to proceed in the juvenile criminal justice system.

The New Street program has recognised that between 80-90% of the young people referred have sexually abused a close family member, with approximately half having sexually abused a sibling. New Street aims to:

- Prevent child sexual abuse by providing a specialised, early intervention program to address sexually abusive behaviours of young people
- Assist young people change their sexually abusive behaviours before they become an entrenched, and possibly life-long, pattern¹⁰⁴

¹⁰³ Although all participants have been male, the program is open to women and men.

¹⁰⁴ One of the distinctions between New Street and other services is that intensive services are provided to families and carers.

NSW Health reports that referrals to the New Street program may come from a number of sources and that the young person and the circumstances are assessed before the person is accepted into the program. NSW Health estimates that New Street is only able to accept about 25% of referrals and, because of its location and the type of program, can only effectively provide services to clients within a radius of approximately two hours drive from Westmead, Sydney.

Health services for juvenile detainees and adult prisoners

NSW Health, via NSW Justice Health, provides medical services to people in correctional facilities. If someone in a correctional facility makes a report of sexual assault, it is referred to Justice Health who is then responsible for providing the person with access to continuous health care, including counselling, medical assessment and treatment.

Justice Health's policy for managing sexual assault suggests that this response is available to anyone who discloses sexual assault, regardless of whether the assault occurred within the correctional facility or whether it occurred prior and regardless of whether the detainee was an adult or a child at the time of the assault.

Barriers to NSW Health responding effectively to evidence of child sexual assault in Aboriginal communities

Overall, Aboriginal communities were positive about the quality of health services provided.

Many Aboriginal workers who took part in consultations were aware that NSW Health provided training about child sexual assault via ECAV and they were very positive about ECAV's work.

However, consultations also identified a number of barriers to NSW Health providing an effective response to Aboriginal experiences of child sexual assault.

Community understanding of different roles within NSW Health

A number of consultation participants said that they, and others in their community, were confused about the roles of all the different health services and health workers. In some instances, they weren't sure which service they should go to or what type of professional they should try and see. This was particularly relevant in areas where there were regional Aboriginal health staff as well as local Aboriginal health workers and Aboriginal Medical Services.

ACSAT recommendation 52

Develop an education/communication strategy on the different roles and responsibilities of health professionals in NSW

In addition, consultations revealed a lack of awareness among Aboriginal communities, and even among some Aboriginal workers, of the role of sexual assault services and the support they can provide. This suggests an urgent need for sexual assault workers, and other health workers, to raise their profile with both Aboriginal communities and Aboriginal workers.

ACSAT recommendation 53

Develop a case coordination model that provides advocacy and support for families and victims and guides them through the process from disclosure to recovery. A case manager will be located in every Health region and the model would be developed in line with the Aboriginal Family Health Strategy

On-going support and advocacy for victims and their families

During consultations, some participants talked about being overwhelmed by the process of reporting child sexual assault. They said they did not know what to do, who to report to or what to expect if they did report. In addition, they did not know who they could talk to about their concerns or who could support them through the process.

Others talked about incidents where someone had reported child sexual assault to DoCS or police and had felt that the case 'disappeared into the system'. Often, in these situations the person who had reported the assault was not informed on the status of the report, whether it was being investigated or what progress was being made. If they tried to contact DoCS or police to find out, they were often told 'it is a departmental matter now, so we can't give you any information'.

Participants also talked about instances where DoCS had decided there were no further care and protection issues and/or police had decided there was not enough evidence to proceed. In these instances, the matter is closed. As a result of government referral procedures, it can then be difficult to access counselling services and children and families are not provided any on-going support.

Communities consistently suggested that these types of experiences frustrated those who had reported child sexual assault and made them feel as though nothing was being done and that no-one cared about them or their families. They also said that it deterred others from even reporting it. A perception that nothing would happen, even if they reported the assault, or that the process was too overwhelming and confusing, led people to feel there was no point in taking action.

ACSAT believes there is a crucial need for someone to be given an overall child sexual assault support and advocacy role so that Aboriginal people going through the process of reporting child sexual assault can receive a coordinated and supportive response across all government services.

ACSAT envisages that people could self-refer to this support role. The worker would then be able to help them all the way through the continuum of care, from explaining the process of reporting

through to recovery. The support worker could go with them to make a report, advocate for the victim with police and DoCS, participate in case planning and ensure the person is referred to appropriate support services.

If DoCS or JIRT decide not to investigate the matter further, the support worker could make sure that the victim is still referred to appropriate supports and assisted in addressing their issues. The role would not provide child sexual assault counselling but would ensure that appropriate counselling referrals were actioned. These positions would work closely with local services, particularly sexual assault services, DoCS and JIRT, as well as provide critical advice to the NSW Government on gaps in service delivery and best practice models.

As consultations revealed that most communities had a good rapport with their local health services, ACSAT believes that these are the ideal place to locate a child sexual assault support and advocacy worker.

Employing Aboriginal staff

As with all services, across all government departments, communities said they would like to see more Aboriginal people working in NSW Health services. During consultations, ACSAT identified a number of issues concerning the employment of Aboriginal workers in NSW Health, including:

Employing more than one Aboriginal worker in a service

Communities believed that NSW Health needed to make sure that more than one Aboriginal worker was employed in key health services. They noted that the practice of employing only one Aboriginal worker and then expecting them to manage all Aboriginal cases creates impossible expectations and demands on that worker and leads to high turnover of Aboriginal staff. As one participant suggests:

'There should be an integrated recruitment, state-wide integrated recruitment strategy so that we will employ Aboriginal people...we are talking about a layer of Aboriginal workers across the whole service network because at the moment there is one black face here/there. There is not a layer. The other issue, and this is the issue that we confront, and that is that we might have one black worker. We think that then, and this group talks a lot about developing a critical mass so that there is depth within our ranks. We need a layer of workers from NGOs right through into government so that there is enough depth and if you have got one person off on sick leave it is not the end of our whole cultural perspective and input. So we think it has got to be integrated across the whole range of service provision.' *Transcript 10*

Providing adequate support to Aboriginal workers

Communities also stressed the importance of providing adequate support for Aboriginal workers. A number of participants who worked for NSW Health, or for a NSW Health funded NGO, said that sometimes the trauma experience of victims can be transferred onto workers if the worker is dealing with issues such as sexual assault on a daily basis. This is especially so if they are working within their own community. These participants said that they often got case management support but felt they did not receive proper debriefing or formal supervision to limit the onset of effects such as vicarious trauma¹⁰⁵. As one community member said:

'I mean, you can't sort of give two weeks training and expect people to go out and work with the community and cope, because it's a hugely emotional area and one of my biggest grievances with every government department I've worked for, you get really great Aboriginal workers and the government departments burn them out, because they have unrealistic expectations... Aboriginal staff need support, so they can do their jobs.' *Transcript 29*

¹⁰⁵ Vicarious trauma is when the trauma from a victim is transferred to those who are in contact with them.

ACSAT recommendation 54

Strengthen the *Aboriginal Workforce Development Strategic Plan* for Aboriginal staff and ensure that it contains strategies that:

- i. Mentoring/work placements
- ii. Trainee/cadetships for Aboriginal counsellors, health workers, education officers
- iii. Recruitment
- iv. Retention including improved clinical supervision and debriefing for sexual assault and Aboriginal health workers

Helping Aboriginal people to gain qualifications

Communities acknowledged that in some instances, the lack of Aboriginal staff is due to the shortage of Aboriginal people qualified in the particular role, for example counselling. Communities believed that government departments such as NSW Health needed to develop innovative strategies such as cadetships, traineeships, mentoring and work placements to attract people to the positions and help them to attain formal qualifications.

ACSAT believes that NSW Health needs to increase the number of Aboriginal staff employed by health services and, at the same time, provide these workers with the support and infrastructure necessary to enable them to do their job. In addition, ACSAT believes that NSW Health needs to be more innovative in developing ways to attract Aboriginal staff and help them to attain formal qualifications.

ACSAT acknowledges that NSW Health has developed the *Aboriginal Workforce Development Strategic Plan* to address some of these issues. ACSAT recommends that NSW Health strengthen its commitment to the plan and ensure that it contains elements to address the above issues.

Access to counselling for Aboriginal victims of child sexual assault

Many participants who had experienced child sexual assault spoke of the devastating life-long costs, both to themselves and to their communities. They talked of the damage it caused them as children at the time of the abuse and continues to cause them into their adult lives.

Most participants believed that some form of support or counselling is needed to help those who have experienced child sexual assault to cope with, and heal from, the abuse. They also believed that at present, these counselling services were not available or were not accessible to Aboriginal people. A number of issues were raised, including:

ACSAT recommendation 55

Sexual Assault Services are able to accept and action referrals from victims, families and non-government agencies

Referral mechanisms

At present, child sexual assault counselling is only provided if the sexual assault service receives a referral from DoCS or JIRT. Communities often reported this was a slow and unwieldy process¹⁰⁶ and also, that it meant that those who did not want to report to DoCS or police could not access free counselling.

¹⁰⁶ NSW Health reports that JIRT agencies are reviewing the referral procedures NSW Health services to facilitate more timely and pro-active referrals to sexual assault service counselling. NSW Health has developed a draft policy that stipulates referrals are to be made in all accepted child sexual assault matters. The policy is to be included in the JIRT Manual.

ACSAT acknowledges that NSW Health uses this referral mechanism as a way of protecting children from having to tell their stories multiple times and also, to ensure that evidence is not contaminated should the child/family wish to proceed with court action. However, ACSAT also believes that NSW Health needs to provide counselling to people who do not want to report the child sexual assault to DoCS or Police.

Making more counsellors available

One issue raised over and over was that there simply weren't enough counsellors who could respond to child sexual assault in Aboriginal communities. For example, one participant reports:

'...Waiting anything from 6 to 12 months to see a counsellor....'
Transcript 2

Communities talked particularly about the lack of Aboriginal counsellors available. ACSAT understands that at the time of this inquiry only one person who identifies as Aboriginal was employed in any of the sexual assault services across NSW.¹⁰⁷ Communities consistently said the small number of Aboriginal counsellors employed by mainstream sexual assault services was a significant barrier to Aboriginal people accessing these services. As one community member explained:

'It's (counselling) only made a big difference to me because I've searched and searched and searched until I've found the right one. I found a Koori counsellor, a beautiful gem of a lady. Had I not met her when I was what, 18, 19, yeah I wouldn't be in this chair able to talk about what I have been through...she said you know, "Your culture loves you, you know, your spirituality loves you, you know, your mob loves you. You know, even your mum and dad and even though all these terrible things have happened, they love you" and to be told by someone I hadn't really ever met, but it was another sister girl, it was good, you know and I've also you know - some of them counsellors, like they don't have any idea.' *Transcript 25*

Participants also believed that there were few non-Aboriginal counsellors who were able to respond to experiences of child sexual assault in Aboriginal communities. They acknowledged that some Aboriginal people might actually prefer to see a non-Aboriginal counsellor. However, they stressed that this counsellor would need to have an extensive understanding of Aboriginal culture and the impacts of child sexual assault on Aboriginal people and communities so they would be able to respond in a culturally appropriate way.

ACSAT believes that NSW Health needs to train and employ more Aboriginal counsellors who can respond to child sexual assault. As one participant states:

ACSAT recommendation 56

Employ, and retain, trained Aboriginal counsellors in each Health service area

ACSAT recommendation 57

Investigate the viability of accrediting counsellors to work with victims of Aboriginal child sexual assault and subsequently develop a register of those accredited counsellors

¹⁰⁷ ACSAT does not mean to suggest that this one worker was responsible for all Aboriginal cases across the state, rather just to indicate the lack of Aboriginal workers in sexual assault services.

'We need qualified Aboriginal people counselling. We tell each other but then your friends problems become your own and you are retraumatised' *Non-audio recorded consultation 16*

It also believes that NSW Health should ensure that counsellors who are already working in sexual assault services (or working privately counselling survivors of child sexual assault) have the necessary skills to respond appropriately to Aboriginal experiences of child sexual assault. One way of achieving this is to develop a system that can accredit counsellors as having the necessary counselling and cultural skills to be able to respond to Aboriginal victims of child sexual assault and then compiling a register of accredited counsellors.

ACSAT recommendation 58

Research the efficacy of counselling techniques to identify best practice models/principles for working with Aboriginal people, not limited to the individual but including extended family and community

Cultural appropriateness of counselling

Some participants believed that traditional models of delivering counselling, i.e. one counsellor working in a room with one client for a fixed period of time for each session, weren't appropriate for Aboriginal people seeking support for child sexual assault. For example, Aboriginal community members mentioned things such as:

- Working only with the victim may not be useful and that counsellors may often need to work with the family and even the community
- The 'traditional counselling environment' could be too overwhelming for most people, particularly children and young people, as they would be required to sit in an unfamiliar room with someone they don't know, often without support, and disclose information that was very sensitive to them

Many community members, particularly support workers, also suggested that question and answer approaches to counselling were not likely to be effective with Aboriginal people. Those that held this view believed that narrative therapy was often an effective counselling model when working with Aboriginal people as this model aligns more closely with traditional Aboriginal story telling¹⁰⁸. However, this view is anecdotal and little is formally known about the effectiveness of different counselling techniques for Aboriginal people. ACSAT believes that more research needs to be conducted to identify effective ways to provide counselling services to Aboriginal people.

Telephone counselling

Of those participants who had a direct or indirect experience with sexual assault telephone counselling and referral services, many felt

¹⁰⁸ The central idea of narrative therapy is: The person never *is* the problem. The person *has* a problem. This approach separates the problem from the way the person sees himself/herself. Once the problem is found and named, it can be fought. In the process, the person does not have to change. S/he discovers a past, an identity, that was always there, but hidden by the biases of the previous story. The new story liberates the person from the shackles of the problem.

that these services had not really understood Aboriginal culture and consequently had not responded to them in a way that was useful. They had not been able to speak to an Aboriginal person, because at the time, none were employed by the service.

ACSAT believes that access to a telephone advice, referral and counselling service that can provide a culturally appropriate response is a crucial component of an effective service response to Aboriginal child sexual assault. For those communities with phone access, it provides an opportunity to get information and support anonymously, which many communities say they want.

Responding to child sexual assault when a client presents with drug and alcohol abuse issues or mental health issues

It is widely recognised that experiences of child sexual assault can contribute to a range of mental health problems such as depression, anxiety etc. It is also recognised that experiences of child sexual assault may contribute to drug and alcohol misuse, as people use drugs and alcohol as a way of 'dealing with' or forgetting their experiences.

In some instances, people may present to counselling for mental health or drug and alcohol issues, when the underlying issue for them is child sexual assault. However, a number of participants who had experienced child sexual assault spoke about seeing a counsellor who did not recognise nor address this link. For example, one participant said that at the end of his first session of counselling for child sexual assault, the counsellor had said 'you are an alcoholic, you need to get help for your alcoholism' and sent him away. When counsellors respond in this way, an opportunity to respond to child sexual assault, and help the person to heal from it, is lost.

Participants also said they had difficulty accessing any service if they had more than one presenting issue, i.e. if they had drug and alcohol issues *and* mental health issues. In their experience, mental health services will not respond if there are drug and alcohol issues present and drug and alcohol counsellors will not work with someone who has mental health issues. Neither drug and alcohol or mental health counsellors specifically address child sexual assault issues.

ACSAT believes that it is crucial that all counsellors are aware of the possible links between child sexual assault and drug and alcohol abuse and mental health issues and that they have the ability to respond, either through therapy or referral, in circumstances where there is a dual diagnosis.

ACSAT recommendation 59

- a) Establish/fund an Aboriginal specific, child sexual assault telephone counselling, support and referral service staffed by trained counsellors
- b) Provide training to Rape Crisis Centre and Dymrna House about responding to Aboriginal people in a culturally sensitive manner

ACSAT recommendation 60

- a) Comprehensive training on child sexual assault as a causal factor for all drug and alcohol counsellors
- b) Development of service agreements between all sexual assault services and drug and alcohol services regarding common clients

ACSAT recommendation 61

- a) Comprehensive training on child sexual assault as a causal factor for all mental health counsellors
- b) Development of service agreements between all sexual assault services and mental health services regarding common clients

ACSAT recommendation 62

- a) Develop a recruitment and incentive program to encourage medical practitioners to train in forensics, particularly in regional, rural and remote areas
- b) Resource the training and accreditation of medical staff in forensic procedures to fast track the process

ACSAT recommendation 63

Engage Aboriginal support people who are on call to forensic health services and who are able to support families through the process

ACSAT recommendations 64

Lead the development of community-based treatment programs (in partnership with DoCS and DJJ) for Aboriginal children and young people an age 10-17yo who displays sexually abusive behaviours. It is to be accessible through self and agency referral and not dependant of the criminal justice system

Access to health professionals trained in forensics

ACSAT found that there were limited forensic services available, particularly in rural areas. People were often asked to wait for excessive periods of time or to go to another location to receive the service. This impacts on people deciding to have forensic examinations in the future. As one participant described:

'I met someone who...had gone to XXXX and they had been told to wait for an accredited doctor to come on board. So they actually waited in XXXX Hospital for 12 hours and then they were told, "No there was no accredited doctor, you will have to go to XXXX" so it was 14 hours...if that gets out to the community, that people might have to wait 14 hours and stuff, people might just say "oh, don't worry about it".' *Transcript 15*

In addition, there are few Aboriginal people who are trained in supporting the process of forensic examination. The forensic process is considered quite invasive and the involvement of Aboriginal support people would help both forensic staff and the families to manage it. Participants believe that support from an Aboriginal person who understood what was happening would be very helpful for children and young people and their families. This person could explain the process to them, answer their questions and help them to feel supported.

Treatment programs**For children and young people who display sexually offending behaviour**

During consultations, participants consistently said that there was a need to provide treatment to children and young people who displayed sexually abusive behaviour. They believed that with appropriate treatment, provided early enough, these children could realise the negative impact of their behaviour before it became entrenched.

Those who held this view also believed that any treatment of children displaying sexually abusive behaviours must involve the family or relevant community elders to emphasise that this behaviour is unacceptable.

However, ACSAT's research found very few treatment programs of this nature currently available. ACSAT found that there are some private practitioners who provide counselling and intervention for sex offenders, however this is expensive and is not subsidised in any way by the NSW Government. Therefore, it is not accessible to people with little or no income.

Children under ten years of age can access treatment services through NSW Health sexual assault services. The only publicly funded treatment program for children and young people between the ages of 10 and 17 years who display sexually offending

behaviour is the New Street Adolescent Service. (While referral to this program does not require a criminal charge, it does require a referral from DoCS or JIRT and for the matter to be substantiated by DoCS.)

Of the 433 young people who have been referred to New Street since it received its first referrals in June 1998, 22 have identified as Aboriginal (approximately 5% of all people referred). Some of these young people were referred twice, accounting for a total of 30 referrals. New Street recognises that Aboriginal young people were under-represented in the referrals they received but they were not sure why that is.

Of the 30 referrals they did receive, 20 did not progress past the referral stage¹⁰⁹, 6 were accepted but withdrew, 2 have completed the program and two are currently participating in the program. New Street has identified a number of possible barriers for Aboriginal young people completing the program, including:

- No Aboriginal workers are employed
- It may be difficult to involve family or community in treatment as they young person may fear reprisals
- The service is provided in Sydney metropolitan area and this is sometimes too far away from home for people to attend
- Literacy requirements
- Poverty and related issues can impact on a person's ability to attend
- Coexisting medical or other problems such as alcohol or other drug abuse
- Secure out-of-home placement for Aboriginal young people can be challenging and this can be compounded by their sexually abusive behaviour as they would not be able to be placed with other children

With only two Aboriginal people completing the program in its eight years of operation, it is evident that New Street is currently not effective for Aboriginal children and young people.

ACSAT believes it is essential that a community-based, culturally specific (or at least appropriate) treatment program for Aboriginal children and young people who display sexually offending behaviour is developed and made available. ACSAT also believes that NSW Health, with its existing experience of treatment programs, should lead this process and that it should draw on the experience and knowledge of the Departments of Community Services (who provide support to children and young people who are sexually abuse) and Juvenile Justice (who run treatment programs for young sex offenders).

For adults who sexually offend but are not implicated in the criminal justice system

As with children and young people, participants also believed that there should be community-based treatment programs for adult offenders who are not (yet) involved in the criminal justice system that they could access voluntarily via self or agency referral.

At present, no such treatment program exists. There are some private practitioners who provide counselling and intervention for offenders. However, as above, this is expensive, not subsidised and therefore not accessible to people with little or no income.

¹⁰⁹ In nine of these cases, New Street was at capacity at the time of referral. New Street states that it has an on-going experience of referrals exceeding capacity and of course, this impacts on all young people, not just Aboriginal young people.

ACSAT recommendation 65

Lead the development of community-based sex offender treatment programs (in partnership with DCS) for Aboriginal adults that are accessible through self and agency referral and not dependant of the criminal justice system

The only publicly funded treatment program operating outside the gaol system is Cedar Cottage. However, access to this service requires a criminal charge of, and a guilty plea from, the offender. As with New Street, numbers suggest that only two Aboriginal people have completed this program in its fifteen years of operation. It is evident that this program is currently not effective for Aboriginal offenders. As one community member explained:

'I've had a couple go through this programme run down near Westmead Hospital called Cedar Cottage. I've had three clients be accepted into that programme. Two of them didn't make it through because I think it's a very demanding and exacting programme and two of them didn't make it through so got sent back to court and got sentenced to gaol, because you either do that or you go to gaol. That's really what it is.' *Transcript 11*

Research suggests that when offender programs are completed, they are effective in reducing the likelihood of re-offending (see page 226 of this report for more information)

ACSAT believes that a community-based, culturally specific (or at least appropriate) treatment program for adult offenders that could be accessed by self or agency referral is an essential component of addressing child sexual assault in Aboriginal communities. ACSAT also believes that NSW Health, with its existing experience of treatment programs, should lead this process and that it should draw on the experience and knowledge of the Department of Corrective Services (who currently run treatment programs for convicted sex offenders).

ACSAT recommendation 38

Assist DoCS in the development of a strategy/ awareness campaign that encourages the reporting of Sexually Transmitted Infections (STIs) in children and young people under the age of 16

Reporting sexually transmitted infections (STIs) to DoCS

Under the *Children and Young Persons (Care and Protection) Act 1998*, medical practitioners and hospital staff are mandated to report sexually transmitted infections in any child or young person under the age of 16 years to the Department of Community Services. They are mandated to report even if the sexual act was consensual, as it is unlawful to have sex with someone under the age of 16 years.

In situations where the sexual act was consensual between two people of similar age, for example both people were 14 years old, medical staff must still report and should also refer the young people to sexual health counselling, to ensure that they understand how to practice safe sex and remain infection free.

ACSAT recommendation 66

Direct all frontline staff to:

- i. Report all Sexually Transmitted Infections in children and young people under 16 years
- ii. Refer/provide all children or young people who have been diagnosed with an STI as a result of "consensual" sex to sexual health counselling

ACSAT believes that NSW Health needs to work with DoCS to raise awareness among medical practitioners of their obligations to report STIs and direct all front line staff to report STIs in children and young people under 16 years and refer to sexual health counselling where appropriate.

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to NSW Health work towards achieving the following outcomes:

- Aboriginal communities understand the roles and responsibilities of NSW Health staff
- Aboriginal people have access to culturally effective counselling and support services, provided in a timely manner
- Aboriginal children and young people are provided with forensic services in an efficient and effective manner
- Aboriginal people have access to culturally effective sex offender treatment services (adult and juvenile)
- All NSW Health staff and service providers are able to understand and effectively respond to child sexual assault issues in Aboriginal communities

PART 4: JOINT INVESTIGATIVE RESPONSE TEAMS

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Overview of findings

When examining the Joint Investigative Response Teams response to child sexual assault in Aboriginal communities, ACSAT found that:

- Overall, when community members were involved in a joint response, they were satisfied with the coordination and management of cases
- Communities often did not understand the functions of JIRT and the roles and responsibilities of the various JIRT officers
- JIRT officers need to be more involved with Aboriginal communities and develop their understandings of Aboriginal culture and community
- Some JIRT staff did not understand the implications of child sexual assault occurring in an Aboriginal community context
- There are few Aboriginal people involved in JIRT service delivery, either as staff or community partners
- Aboriginal people have difficulty attending JIRT offices, particularly in rural and remote areas.
- If transport to a JIRT office is required, Aboriginal people do not feel comfortable being transported by Police and DOCS
- Co-location of JIRT services was found to be an effective way of providing services as it promotes a positive working relationship between agencies and provides a more effective and convenient response to Aboriginal children and their families
- There is a need for JIRT to develop more appropriate ways to interview and communicate with Aboriginal children and their families
- Families often feel unsupported when they are involved in a JIRT investigation. NSW Health needs to be more immediately involved in the JIRT response by providing counselling and support services as soon as possible
- JIRT needs to develop working relationships with the local and regional support services that may already provide support to families involved in a JIRT investigation. JIRT needs to let these agencies know how to provide support in ways that will not impact on the investigation
- Families often feel they are not informed about the process and what is going in with the investigation of their case. As a result, they feel that they are not getting a response from JIRT
- JIRT recording facilities are not up-to-date and are not compatible with the system used in courts
- JIRT has no information about going to court available that is appropriate for Aboriginal communities
- No one agency has overall responsibility for the coordination and leadership of JIRT

Policy framework for providing services to Aboriginal communities

The interagency component of joint investigation is guided by the *Joint Investigative Response Teams Policy and Procedure manual 2001*. There is no specific information in this manual about providing services to Aboriginal communities.

However, each agency involved in joint investigation has its own policy framework for providing services to Aboriginal communities and these policies should guide the way its staff work within JIRT.

Overview of Joint Investigative Response Teams

In NSW, all reports of child sexual assault and of serious physical abuse and neglect where the victim is under 18 years of age at the time of reporting are investigated jointly by NSW Police and Department of Community Services (DoCS), with support from NSW Health, as part of a Joint Investigative Response Team (JIRT).

JIRT is a collaborative arrangement where NSW Police and DoCS have an equal partnership and share responsibility for the operation of joint investigation. NSW Health forms an integral part of the joint investigation response by providing both the medical examinations and counselling components of the interagency response¹¹⁰.

Joint investigation aims to¹¹¹:

- Minimise delays and promote information exchange between agencies
- Conduct investigative interviews in a child focussed environment child and promote the participation of the child or young person
- Enhance the standard of briefs of evidence presented to Court jurisdictions and proceed with charging offenders where appropriate
- Ensure timely access to care and support services throughout the process
- Ensure immediate referral to crisis counselling
- Minimise the number of investigative interviews conducted
- Utilise protective intervention to ensure the safety of children and young people
- Assess the individual needs of children, young people and families
- Support the non-offending parent or carer
- Identify and prosecute offenders

JIRT locations

There are now 21 JIRTs operating across NSW, located in Wagga Wagga, Albury, Griffith, Queanbeyan, Broken Hill, Dubbo, Bathurst, Tamworth, Inverell, Ballina, Coffs Harbour, Port Macquarie, Newcastle, The Entrance, Wollongong, Penrith, Liverpool, Parramatta, Ashfield, Kogarah and Chatswood.

¹¹⁰ Joint investigations have been conducted in NSW since 1997, when NSW Police, DoCS and NSW Health signed a memorandum of understanding that recorded the responsibilities of each agency in the investigation and support process.

¹¹¹ Adapted from NSW Department of Community Services, NSW Police and NSW Health 2001, *Joint Investigative Response Teams policy and procedures manual*, NSW page 3.

In nine of these JIRT locations (Liverpool, Bankstown, Kogarah, Chatswood, Parramatta, Newcastle, The Entrance, Wollongong, and Penrith), DoCS and Police are co-located at the same premises to forge closer working relationships. At present, the only rural centre with a co-located JIRT is Tamworth. However, this is a pilot program that is not yet fully operational, i.e. they are not yet sharing a premise.

The JIRT office locations were initially based on the number and geographic distribution of DoCS notifications or reports and were located away from Police stations to encourage reporting, and ensure confidentiality for victims and their families.

NSW Health services are provided through its network of sexual assault services (SAS) and Physical Abuse and Neglect of Children (PANOC) services.

JIRT responses to evidence of child sexual assault in Aboriginal communities

Referrals to JIRT

All reports of child sexual assault are made to the DoCS Helpline. If an initial report or disclosure of child sexual assault is made to police, they refer it to the DoCS Helpline. DoCS Helpline make a decision based on initial assessment as to whether to make a referral to JIRT.

All reports, disclosures or evidence of child sexual assault where the alleged offender is over the age of criminal responsibility, i.e. 10 years, are referred to JIRT for assessment.

A report of sexualised behaviour in a child or a report involving allegations of child sexual assault where the offender is 10 years and under will be assessed by the Community Service Centre (CSC) to see if it meets JIRT criteria before any referral to JIRT is made.

JIRT will conduct an after hours' response when a report meets the JIRT referral criteria and requires an urgent response.

Taking on a case

Joint investigation occurs when a DoCS child protection caseworker (CPC) and a police officer investigate a report of child abuse that meets the JIRT criteria.

The process includes completing a risk assessment and determining the need for Children's Court action and/or criminal charges. Together, the police team leader and the DoCS manager casework make the final decision about whether a report is accepted or rejected as a JIRT case. If the matter falls within the JIRT criteria, it will be accepted.

NSW Police report that in the 12 months to April 2005, JIRT accepted 3 789 sexual abuse cases, 130 of which (3.4%) have involved a child victim identified as Aboriginal. In 1 344 cases (35%), a suspect has already been identified or arrested. For 97 (7%) of these cases, the suspect or person arrested was identified as Aboriginal.¹¹²

NSW Police also reports that more than half (52%) of sexual assault cases where the victim was Aboriginal were being investigated by a relatively small number (six) of JIRT offices¹¹³.

¹¹² NSW Police submission to ACSAT, p. 3.

¹¹³ The proportion of cases in each JIRT office, where the victim was Aboriginal was reported as: Inverell 22%; Tamworth 11%; Broken Hill 10%; Griffith 10%; Port Macquarie 8%; Dubbo 6%.

It is important to note that these six offices are all located in rural settings with high Aboriginal populations.

Case management

If there are issues relating to the care and protection of a child or young person, JIRT officers from both NSW Police and DoCS will jointly manage the case.

JIRT staff will develop case plans as part of briefings and debriefings. Case plans will have a goal and outline what needs to be done, by whom and the timeframe for each activity. These plans will address the assessment, investigation and forensic aspects of joint investigation. Police officers may use Telephone Interim Orders (TIOs), Apprehended Violence Orders (AVOs) and bail conditions as a means of protecting children.

If there are no care and protection concerns, for example if a young person aged fourteen is reported as pregnant, however the sex was 'consensual' and her caregivers are protective, the matter will be managed by the police JIRT officers only. A case like this is still considered a JIRT matter as a child or young person has been involved in a sex-related crime.

Case transfer

JIRT are responsible for completing the investigation and finalising the risk assessment. If a care application is required, JIRT DoCS staff will lodge the application and file any supporting evidence.

JIRT are also responsible for ensuring that all referrals to sexual assault services are made before the case is transferred to the local CSC.¹¹⁴ The case can be transferred from the JIRT to the CSC for ongoing casework at the appropriate time.

If the case is investigated by the JIRT and there is no risk of harm to the child or young person, the case is closed after a formal consultation between NSW Police and DoCS JIRT staff. This consultation may result in recommendations for referral to support agencies.

The JIRT police officer will manage the criminal aspects of the case until criminal court proceedings are finalised. If the offender meets the criteria for the NSW Health's pre-trial diversion treatment program for sex offenders, police will provide information to the offender on the treatment program at, or around, the time of charge.

If a matter is investigated and the child or young person is in need of care and protection but there will be no criminal charges laid, the JIRT case manager will convene a case meeting with the CSC that covers the area in which the child or young person is currently residing.

Working with NSW Health services

Medical examinations

JIRT police and DoCS officers will liaise with an SAS to arrange medical and forensic examinations for victims of child sexual assault. If possible, police or DoCS should have the opportunity to speak with the child before any medical or forensic examination occurs.

¹¹⁴ The case is transferred to the CSC that covers the area in which the child or young person is currently residing.

If a child presents at a hospital emergency department and sexual abuse is suspected, the child protection unit or SAS will report to DoCS and medical examinations will be coordinated in consultation with JIRTs. A medical consultation is available from NSW Health to every child and young person who has experienced sexual assault.

Counselling

In addition to medical services, NSW Health provides crisis and ongoing counselling to victims and non-offending parents or carers. In cases where the child has disclosed sexual assault during the JIRT interview, the SAS will provide follow-up counselling to the child and non-offending family/carers to address the impact of disclosure as well as the short and long-term effects of the abuse. Where required, ongoing support, court preparation and court support will be provided.

In cases where the child does not disclose to DoCS or police during the interview or refuses to participate in the interview process but they have disclosed to another person and there are indicators that the child has been sexually abused, a case planning process between SAS and DoCS will review what needs to be addressed and whether counselling is appropriate.

In its submission to ACSAT, NSW Health states that this practice of referral ensures that only children who have been sexually assaulted receive counselling and it protects children from having to relate their stories multiple times. It also protects evidence from contamination should the child/family wish to proceed with court action.

Support for non-offending parent/carer and families

SAS will make telephone contact with the non-offending parent/carer of a child/young person being interviewed by JIRT within 24 hours of receiving their details. This is to engage families, provide crisis counselling and support.

Training provided to JIRT staff

Specialist training is conducted for NSW Police and DoCS staff responsible for investigating reports of child abuse. All staff that work as part of JIRT also receive specific training in interviewing children and recording evidence related to child sexual assault and serious physical abuse. This package is currently being reviewed and specific reference to working with Aboriginal children and young people within the JIRT context will be included.

Barriers to JIRT providing an effective response to child sexual assault in Aboriginal communities

The community generally accepted the coordinated JIRT response as effective. An evaluation of JIRT conducted in 2002 found that joint interviewing reduces the number of repetitive interviews for children, consequently reducing the stress on children and their families.¹¹⁵ However, communities and the evaluation also identified a number of barriers to JIRT providing an effective response to child sexual assault in Aboriginal communities.

¹¹⁵ Cashmore, J, Taplin, T & Green, V. (2002), *Evaluation of the Joint Investigation Team (JIT)/Joint Investigation Response (JIR) Strategy*

ACSAT recommendation 67

Develop and implement a comprehensive targeted community education strategy that explains the roles and responsibility of JIRT, Police, DoCS and Health

Access to JIRT services**Community understanding of JIRT**

During consultations, it became clear to ACSAT that many participants did not understand what JIRT did and didn't know how a JIRT response differed from a police response or a DoCS response. Participants continuously asked questions such as 'what does JIRT do', 'what's the difference anyhow?' 'why is it different from police and DoCS' and 'how does it help the kids anyway?'. In addition, no community member (who was not also a worker) knew that NSW Health was a part of JIRT.

ACSAT also found that participants were unsure why a case would be referred to JIRT and were confused by the delay in immediate response that this referral can cause. If a community member goes to the police station to report child sexual assault, in most instances, they expect the police in that station to handle it. If a DoCS CSC provides an initial response, community members expect that CSC to continue with the case and don't understand why it might then be referred to JIRT.

Participants said that when a case is referred to JIRT, it made it very difficult for them to know who to contact to find out where a case was up to and what was happening. For example, one community member said they had contacted the DoCS CSC that they thought was handling the case only to be told that it had been transferred to JIRT and they should now contact them.

These expectations and confusions, and the lack of a clear point of contact for community members, can contribute to a perception that they are not getting an efficient response or effective response from police, DoCS or JIRT.

ACSAT recommendation 68

Ensure that JIRT is involved in the delivery of community education of child sexual assault issues

JIRT involvement with Aboriginal communities

During consultations, participants identified a need for JIRT to take a proactive role with the community. JIRT partners (Police and DoCS in particular) are still viewed with mistrust by many communities and work needs to be done to overcome these perceptions and build trust.

ACSAT believes that one way for JIRT to become involved with the local community is by providing them with education about child sexual assault. Local JIRT staff could share their expert knowledge and give communities a better understanding of when, why and how JIRT respond when an incident of child sexual assault is reported. They could also provide communities with contact details for JIRT staff and offices.

ACSAT also believes that JIRT needs to spend a set amount of time on a regular basis getting to know the community and organising (or

attending as relevant or invited) community events or activities. As one community member suggests:

'They need to be involved in the community, whether it is part of the knock-out¹¹⁶ program, they need to get involved, they need to set something up, they need to get involved to let the community know what JIRT does, what the police do in that role and what DOCS does in that role and the only way they are going to do that is to get out there...we are doing two things, we are training I guess or teaching the non-Aboriginal people to understand what the community is about and we are also training our own people to understand what JIRT is about. So I think its really – its an important role. If you don't get in the community and get that trust, then you are not going to get anywhere.'
Transcript 10

DoCS have indicated that it had previously found it useful to allocate key staff ten hours per month to spend involved in community activities. ACSAT recommends that JIRT staff implement a similar practice.

JIRT understandings of Aboriginal communities

ACSAT acknowledges that the operational staff of NSW Police, DoCS and NSW Health undertake training in Aboriginal cultural awareness. However, ACSAT believes that this training is not sufficient and needs to be increased. This is particularly important for JIRT officers.

It is widely accepted by both the community and the agencies themselves that Police and DoCS have poor historical relationships with the Aboriginal community. As one community member suggests, the two agencies responding together leaves the community with little faith that they will be able to provide an appropriate response:

'You've got DoCS with its history and then you have got the police and you are combining them in one, but you haven't got any black faces whatsoever or any training for that matter for them to have any understanding at all.'
Transcript 39

JIRT officers need to be able to provide for the safety of the child, collect evidence and support the child and their non-offending family to get to court. ACSAT believes that to be able to do this effectively, JIRT officers must understand Aboriginal culture and communities and factors such as the importance of family and kinship, how the community works together, how decisions are made and how problems are solved. JIRT officers need to understand the dynamics of child sexual assault occurring within this cultural and community context and the impact the assault has on the child, the family and the community.

They also need to understand the impact a JIRT intervention can have on the community. For example, when the offender of child

ACSAT recommendation 69

Encourage and support all JIRT officers to engage with the local Aboriginal communities for at least ten hours per month and provide proactive support to communities, explaining about child sexual assault and its indicators, dynamics and impacts

ACSAT recommendation 70

Provide local cultural awareness training for all JIRT officers every two years

¹¹⁶ The 'Knockout' is an annual state-wide rugby league carnival, which attracts a large proportion of the Aboriginal population in NSW.

sexual assault is a member of the child's family and close-knit community, an intervention by JIRT may place the child and/or their family at risk of retribution from the offender or the offender's family or some other community member.

The 2002 JIRT evaluation¹¹⁷ found that the things that had the most impact on children were the interpersonal aspects of the investigation such as who they talked to, how comfortable they were with them, the timing and pace of the interview, and how well informed the child was about the interview. ACSAT believes that having an understanding of the child's culture and community will help JIRT officers to facilitate these interpersonal relationships more effectively.

ACSAT believes that training in cultural understanding should be maintained through regular refresher sessions. Community dynamics can change quickly and it is important that all JIRT officers have an on-going understanding of the Aboriginal communities they are working with.

ACSAT recommendation 71

Develop an Aboriginal recruitment and retention strategy in all three agencies that aims to match the ratio of Aboriginal JIRT staff employed with the ratio of Aboriginal clients accessing JIRT services

Staffing issues – employing and supporting Aboriginal staff

As with all agencies, participants stressed the importance of employing Aboriginal staff in JIRT offices. As one community member said:

'There needs to be a black face in there in the interview. There needs to be within the family as well to have an understanding of how that is going to affect Mum, how that is going to affect the kid.'

Transcript 8

ACSAT was unable to ascertain exactly how many Aboriginal people worked in JIRT offices. However, both NSW Police and DoCS acknowledge that there is not enough, especially considering the over-representation of Aboriginal children in the child protection system.

Support and training for Aboriginal staff was also identified as a crucial issue. Communities anticipated that Aboriginal people working in JIRT offices would have a challenging job that, at this stage, was unlikely to be supported by many in the community, particularly if a child is removed from their family or an offender is arrested.

ACSAT recommends that all partner agencies of JIRT develop a recruitment and retention strategy to employ more Aboriginal staff in JIRT offices. ACSAT believes that the retention strategy must include provisions to provide appropriate support and supervision for the workers as well as measures to ensure their safety.

¹¹⁷ Cashmore, J, Taplin, T & Green, V. (2002), *Evaluation of the Joint Investigation Team (JIT)/Joint Investigation Response (JIR) Strategy*

Physical access to JIRT offices

Many of the regional, rural and remote communities consulted by ACSAT said that it was often difficult for them to get to a JIRT office. Some community members also said that even if they could get to a JIRT office, they would not feel comfortable going to an office that housed both Police and DoCS. They believed that children often sensed their parent's/support person's unease and were therefore less likely to talk during the interview anyway.

Communities consistently suggested that it would be more appropriate to conduct interviews at local centres, where the children and families felt safe. For example suggested locations included an Aboriginal Medical Service, the local hospital, school or community centre. Communities believed that interviews conducted in locations such as these would be more likely to elicit the information that is needed.

However, communities also acknowledged there might be some instances where it was essential that a child and their family/support person go to a JIRT office. If, in these instances, transport was required, participants stated that it should not be provided by police or DoCS as this can be quite traumatising for some people. Unless the family or child explicitly states they are comfortable travelling with police or DoCS, ACSAT recommends that NSW Health arrange, or provide, the transport to the JIRT office.

Co-location of JIRT services

Consultation participants who had accessed a JIRT service where Police and DoCS were working out of the same premises (co-located) felt that this was an effective way of responding to and coordinating sexual assault matters. The most common reason given for this feeling was that people only had to contact one office to find out what was happening with their case.

The positives of co-location were also identified in the 2002 JIRT evaluation. The evaluation found that co-location had a positive effect on joint working relationships between agencies. Co-located staff viewed the investigation and child protection roles of JIRT as being more compatible, and were more interested in receiving further training about working in an interdisciplinary team. Conversely, the evaluation found that staff not co-located 'felt disadvantaged by a lack of resources' such as video and audio recording equipment.¹¹⁸

Communities also stressed the importance of JIRT offices providing counselling and support to children and families experiencing child

ACSAT recommendation 72

JIRT travels to communities rather than requesting Aboriginal people to attend an office

ACSAT recommendation 73

Health provides transport (or brokers transport) to help with forensics and interviews. Families are not to be transported by police or DoCS unless they have explicitly expressed a preference for this to happen

ACSAT recommendation 74

- a) Ensure that there is a collocated JIRT in each region
- b) Position health workers in all collocated JIRT offices

¹¹⁸ Cashmore, J, Taplin, T & Green, V. (2002), *Evaluation of the Joint Investigation Team (JIT)/Joint Investigation Response (JIR) Strategy*

sexual assault. As a partner in JIRT, this is NSW Health's role. Communities believe that it is crucial for NSW Health to work closely with JIRT offices to ensure this support is provided effectively.

ACSAT believes all JIRT offices should be co-located as this would facilitate a better working relationship between agencies and a more effective, responsive and convenient service for victims and their families. It would also provide access to more advanced technologies. ACSAT acknowledges that JIRT are trialling a regional co-located centre in Tamworth, which, if successful, could be rolled out across the state.

ACSAT also believe that a NSW Health support/counselling role should be co-located in JIRT offices to ensure effective support for communities. ACSAT acknowledges that this is currently being trialled in The Entrance JIRT Office.

Responses to Aboriginal victims of child sexual assault

Interviewing Aboriginal children and young people

Throughout consultations, Aboriginal people consistently said there was a need for more appropriate ways to interview and communicate with Aboriginal children and their families.

Aboriginal children may use terms or language that JIRT officers don't understand

One issue of concern raised in the consultations was that Aboriginal people often used language and terms that are not understood or recognised by JIRT or the judicial system. As one community member describes, this lack of understanding and/or recognition can mean that a report of child sexual assault is not responded to:

'When referrals are made to JIRT one of their criteria is that it requires a clear disclosure, and if the disclosure is given, in words that white workers don't understand, they don't define it as clear disclosure and JIRT rejects it.' *Transcript 34*

Each Aboriginal community is different and most communities spoke different languages prior to colonisation. Each community has incorporated English into their own language in different ways and the ways the languages blend also varies. Many Aboriginal communities still use words from their traditional language group and when a parent or family member teaches a child about their body, they will often use the traditional names for body parts as their parents and family members did before them.

For example, if a child has made what appears to be a clear disclosure to an Aboriginal person, such as "he touched me on the moot (vagina)", JIRT may not accept this as a clear disclosure as the officers are unlikely to know what a "moot" is.

JIRT officers may interview Aboriginal children in an inappropriate way

ACSAT found that a difference in communication styles can compound the difficulties of interviewing and gathering evidence from Aboriginal children. In general, Aboriginal children will not respond well to:

- Direct questions and eye contact
- The gender of the interviewer being different to their own
- Speaking about personal and sensitive issue with strangers

ACSAT acknowledges that the current techniques used in JIRT interviewing are considered 'best practice' for gathering evidence and subsequent use in criminal proceedings. However ACSAT believes that these techniques may need to be modified to work effectively with Aboriginal children and to take account of traditional or contemporary Aboriginal language and communication styles.

ACSAT also notes that the 2002 JIRT evaluation found that 52% of the DoCS and Police JIRT staff who were surveyed indicated that they would like to receive more training in culturally sensitive interviewing. This suggests to ACSAT that JIRT officers also feel they require more training to be able to interview Aboriginal children and young people effectively.

When developing an interviewing model, ACSAT recommends that JIRT also consider the appropriateness of the techniques for Aboriginal staff employed by JIRT.

Support for victims of child sexual assault and their families

JIRT is committed to providing effective support to victims of child sexual assault and their families, through JIRT offices, DoCS CSC's and sexual assault services. The Joint Investigative Response Teams' Policy and Procedure manual 2001 states:

'The role of the CSC is crucial when children or young people are involved in criminal proceedings. Ongoing care and support is essential so the child or young person is less likely to retract the disclosure. An intense level of investigation and assessment needs to be complemented by a high level of ongoing care and support.'¹¹⁹

Further, the manual highlights the importance of an immediate crisis response to disclosures of child sexual assault. It states:

'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.

The offer of follow-up after the crisis needs to be proactive in order to counter the denial which often accompanies disclosure. At this time, families are especially vulnerable to the influence of offenders who can minimise the seriousness of abuse.'¹²⁰

However, communities report that, in practice, this support is not always provided. Many participants said that they, or someone they knew in their community, had waited up to six months for counselling or support services. The main explanation they were given for this long wait was that counselling cannot be provided

ACSAT recommendation 75

- a) Develop a culturally appropriate interviewing model for working with Aboriginal children and young people
- b) JIRT Officers undertake refresher training in interviewing techniques and cultural competencies every two years

ACSAT recommendation 76

Make a referral to NSW Health automatically at the time of once DOCS and Police Officers receive the initial report from the Helpline

¹¹⁹ NSW Department of Community Services, NSW Police and NSW Health 2001, *Joint Investigative Response Teams policy and procedures manual*, NSW p. 15

¹²⁰ *Ibid* at p. 19

until after the investigative interview has taken place in case it contaminates the evidence.

Most participants felt that while the criminal justice process was important, the priority was for the abuse to stop and for the child to get the treatment they needed. However, most people felt the JIRT response was more focused on gathering evidence rather than providing support to the child.

The 2002 JIRT evaluation also found that a significant number of JIRT cases were not even referred to NSW Health for counselling and support. In some of these cases, the families had not wanted counsellors. In others however, the referral was not made because there was no counsellor available or there were long waiting lists. Health workers surveyed during the evaluation confirmed there was a need for earlier and better contact between JIRT officers and health services to ensure that children and families were getting the support they need.

NSW Police, DoCS and NSW Health acknowledge that this has been a long-standing issue. NSW Police are currently seeking legal advice from the Crown Solicitor about the possibility of 'contamination of evidence' if counselling occurs before an investigative interview.

According to the NSW Health submission, JIRT is also reviewing its referral procedures to facilitate more timely and pro-active referrals to sexual assault counselling. NSW Health has developed a draft policy that stipulates referrals are to be made in all accepted child sexual assault matters and this is to be included in the JIRT Manual.

ACSAT recommendation 77

JIRT to develop a formal relationship with relevant peak bodies and local support services to provide culturally adequate support for families and children going through the JIRT process

Supportive working relationships with local service providers

Aboriginal support workers highlighted a need for JIRT offices to form relationships with other service providers. Many support workers, who may have been working with clients for considerable lengths of time, reported that they found it difficult to continue to provide services while the JIRT investigation was underway.

The workers felt that if they continued to provide services, they may contaminate evidence. However, they were extremely reluctant to withdraw services, as often they were the only support a family had.

It is important that JIRT builds relationships with local, regional and state support agencies (including, but not restricted to, Aboriginal support services) to ensure these agencies understand how to provide support to children and their families while an investigation is underway without impacting on the evidence of the case.

Keeping families informed about the process

There was a common perception among a number of participants that, once a report was made, it seemed to take a long, long time for anything to happen. This was often interpreted as police or DoCS inaction and as though no-one was bothering to investigate the complaint. For example, one participant reported:

'It's very hard for children to build up to give a direct disclosure, only to see nothing happen for such a long period of time, because that inaction, it's not so much what people are saying to them, it's their actions that mean more to them, so there's nothing happening. They feel nothing's happening, nothing's happening, nothing's changing.'
Transcript 32

This view that nothing was happening was compounded by a lack of feedback from JIRT. Participants reported that JIRT were not getting back to the child or young person or their family, or letting them know what the process would be, what they could expect and where the police were up to. As one participant stated:

'They're not getting back to, like the other service providers, you know, kids need to know what's going on in this timeframe that they've seen nothing happening, okay, so what are some of the things that have been happening, you know, so it assists for them to know something's being done.'
Transcript 1

ACSAT believes it is crucial that JIRT improve its communication with Aboriginal communities. JIRT needs to provide a formal response to reporters and families on all matters accepted by JIRT. JIRT also needs to keep children and families whose cases are being investigated informed about the process and where it is up to, why it takes the time it takes and what is happening in their case. Communities reported that if they were better informed about the JIRT process, they would be more likely to follow through with the process instead of dropping out with frustration.

Ensuring facilities used are up-to-date

JIRT are still using an analogue system to record interviews. The courts have updated to a digitalised system. While the courts still have the capacity to play analogue material, the use of this superseded technology is causing a number of problems, including:

- Delays in court as people try and access relevant information from the tape
- Poor quality playback, with some tapes being of such poor quality they are almost inaudible
- When a copy of an analogue tape is made, for example to be used as the prosecutions evidence in chief, the quality of the copy is less than the original and the copying process actually damages the original
- Difficulties editing as analogue tapes are more complex to edit

ACSAT recommendation 78

- a) Provide a formal response to reporters and families for all accepted JIRT matters
- b) Develop a communication protocol to keep families informed of progress in each matter

ACSAT recommendation 79

JIRT recording systems are digitalised

A digitalised system for JIRT would address these problems. The NSW Attorney General's Department, NSW Police, DoCS and NSW Health have all recognised this issue. It was also identified in the 2005 *Evaluation of the Child Sexual Assault Specialist Jurisdiction Pilot* and was found to cause significant delays in court trials.¹²¹ ACSAT acknowledges that the NSW Government is working to address this issue and that, at present, the only barrier to implementation is funding.

ACSAT recommendation 80

JIRT to work in partnership with Victim Services and ODPP to develop culturally appropriate court preparation materials and information packages

Information about preparing for court

Currently, there is a lack of culturally appropriate information and court preparation materials available to Aboriginal people. Given that JIRT plays a key role in preparing children, young people and families for court, it is important that they are involved in the development of such materials. See page 218 of this report for further information.

ACSAT recommendation 81

One agency CEO is delegated the responsibility for JIRT's overall strategic leadership and accountability

Organisational issues

Leadership and accountability of JIRT

The JIRT strategy is an interagency partnership where NSW Police investigate the crime, DoCS ensure the children are protected and NSW Health provide forensic medical, counselling and support services. However ACSAT found, that when trying to extract information or gain an understanding of overall strategies of JIRT, no one agency would take responsibility.

ACSAT also found there was no central point where information was collated, including data.¹²² Nor did it appear that there was anyone taking responsibility for the overall coordination of the service. The CEOs of the partner agencies meet regularly to discuss JIRT strategy directions. However, when ACSAT asked DoCS, NSW Police or NSW Health questions about JIRT, there was rarely a uniform answer.

While ACSAT acknowledge the different roles and responsibilities of JIRT partners, it suggests that one of the three agencies needs to take the lead and be made responsible for JIRT's strategic development and implementation. The lead agency would continue to work in close partnership with the other agencies, however it would ensure that all agencies are accountable and JIRT can continue to improve and develop in a coordinated way.

¹²¹ Cashmore, J. and Trimbolei, L. (2005), *An Evaluation of the NSW Child Sexual Assault Jurisdiction Pilot*, NSW Bureau of Crime Statistics

¹²² Each agency uses its own data collection methods and these are often incompatible

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to JIRT work towards achieving the following outcomes:

- JIRT achieves a positive and effective working relationship with Aboriginal people
- JIRT staff are able to understand and effectively respond to child sexual assault in Aboriginal communities
- JIRT provide an efficient response to child sexual assault in Aboriginal communities
- JIRT services are effectively coordinated

PART 5: OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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Overview of findings

When examining the Office of the Director of Public Prosecution (ODPP) response to child sexual assault in Aboriginal communities, ACSAT found:

- Witness Assistance Support (WAS) officers and prosecutors need a greater understanding of Aboriginal culture and Aboriginal experiences of child sexual assault in order to provide effective support to Aboriginal victims of crime and their families and successfully prosecute offenders in child sexual assault matters where the victim is Aboriginal
- Where Aboriginal people have received support through the court process from a WAS officer, they report having felt very supported. Most Aboriginal people would prefer to receive this support from an Aboriginal person. However, the small number of Aboriginal WAS officers employed means that access to this support is limited
- There is a lack of culturally appropriate court preparation materials available

The discussion of the response by ODPP to addressing Aboriginal child sexual assault draws on consultations with Aboriginal communities and a submission provided to ACSAT by the ODPP.

Overview of services provided by ODPP

ODPP 'prosecutes on behalf of the Crown (that is, the community) under the *Director of Public Prosecutions Act 1986*. He or she is responsible to the Attorney General for the due exercise of the functions of the office, but acts independently of the government and of political influence. The Director also acts independently of inappropriate individual or sectional interests in the community and of inappropriate influence by the media'.¹²³

ODPP provides pre-charge advice to police in, and prosecutes at all stages of, all child sexual assault offences before the Children's, Local, District and Supreme Courts of NSW and handles related applications and appeals up to the High Court of Australia.

ODPP has a Witness Assistance Service (WAS) with 32 WAS officers across NSW. The WAS provides victims and witnesses with:

- Information about: their rights and entitlements as a victim of crime; the legal process; the role of the ODPP; and services available
- Responses to their enquiries about the progress of the case
- Assessment and referral to various organizations and professionals that help victims of crime, for example counselling, financial assistance, support groups
- Information about the court to prepare and familiarise them with the process of giving their evidence in court
- Information about Victims Impact Statements and help with preparing one and reading it in court
- Crisis counselling and debriefing in relation to the legal process and court outcomes
- Post-court follow-up and referral as necessary

In addition, WAS officers:

- Liaise with solicitors and Crown prosecutors about the particular needs of the victim
- Coordinate court support to ensure victims are supported whilst giving evidence

¹²³ ODPP *Prosecution Guidelines*

ODPP response to evidence of child sexual assault in Aboriginal communities

The ODPP prosecutes alleged offenders charged with child sexual offences as defined and prescribed in the *NSW Crimes Act 1900*. The ODPP also prosecutes matters where the child victim of sexual assault is an adult at the time of the complaint and giving evidence. The ODPP accepts briefs of evidence from NSW Police that contain charges relating to child sexual assault.

Three WAS officer positions are identified Aboriginal positions. ODPP report that where a matter involves an Aboriginal victim of violence, it is referred to an Aboriginal WAS officer who provides advice and ensures that Aboriginal witnesses receive a culturally effective service. If possible, an Aboriginal WAS Officer will also case manage the matter.

Barriers to ODPP effectively responding to Aboriginal experiences of child sexual assault

Skills of prosecutors and WAS officers

Cultural awareness among prosecutors and WAS officers

ODPP reports that cultural awareness training has been provided to staff of the Dubbo ODPP office, Crown Prosecutors and the Witness Assistance Service. However, cultural awareness training is not provided to all staff as a matter of course.

The Education Centre Against Violence has conducted training for the ODPP solicitors titled 'Cultural understanding and sexual assault'. However, ODPP reports this does not specifically address Aboriginal experiences unless issues are raised for discussion during the course.

ACSAT believes that all prosecutors and WAS officers should receive cultural awareness training. This training would provide them with a better understanding of their Aboriginal clients and why they may respond to certain things in particular ways. For example, it is common for Aboriginal people to feel uncomfortable around non-Aboriginal authority figures and in formal settings such as courts. This can make interviewing in these situations difficult.

Understandings of Aboriginal experiences of child sexual assault

ODPP provides training to staff about child sexual assault. However, this does not specifically address child sexual assault in Aboriginal communities.

ACSAT believe that it is essential for WAS officers who support, and prosecutors who represent, Aboriginal child witnesses to receive training about the dynamics and impacts of Aboriginal experiences of child sexual assault. A prosecutor needs to understand the experiences of Aboriginal children so they can ask the 'right' questions to get the answers the court needs. This includes an understanding of the fears a child might have of disclosing, such as retribution from the offender and/or of disrupting the family or community and of the language a child might use to describe an assault. As one community member said:

'...when that child speaks and they speak a language that someone doesn't understand it is not used, it is not recognised in any criminal system whatsoever at this stage and I mean that's the second part of an interview of abuse. It is the criminal justice system they need to value it and recognise it so they can use it.' *Transcript 10*

ACSAT believes that improved cultural awareness, and an understanding of child sexual assault in Aboriginal communities, will help WAS officers and prosecutors to communicate more effectively with their Aboriginal clients, particularly when conducting interviews. It will also help them to provide appropriate support to Aboriginal families and improve the likelihood of conviction.

Specialist training of prosecutors

In South Africa, specialist courts have been established to prosecute sexual offences (see page 277 for more detail of these courts). One of the features of these courts is that prosecutors must have experience prosecuting sexual offences before they are able work at the courts and they must also complete additional training as required. These prosecutors effectively become specialists at prosecuting sexual offenders and this specialisation has been found to be one of the reasons these courts are more successful at achieving convictions.

In NSW, the Child Sexual Assault Specialist Jurisdiction Pilot has also tried to raise the awareness of prosecutors about child sexual assault and about the procedures available in law to help a child go through the court process. The evaluation of the pilot found that the knowledge, understanding and sensitivity of those involved with child witnesses mattered because:

'they affect the way children are treated during the court process. This may be instrumental in enhancing children's capacity to provide reliable evidence.'

ACSAT recommends that at least some prosecutors are trained in responding to Aboriginal experiences of child sexual assault and that these prosecutors become specialists in prosecuting cases of child sexual assault in Aboriginal communities.

Until specialist prosecutors can be trained or appointed, ACSAT recommends that only prosecutors with experience of child sexual assault matters involving Aboriginal children are able to prosecute these cases.

Support through the court process

Witness Assistance Service

During consultations, 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'.

ACSAT recommendation 82

Develop a competency based training package for prosecutors and WAS officers which includes:

- i. Aboriginal child sexual assault indicators, dynamics and impacts
- ii. Cultural issues
- iii. How to interview Aboriginal children in line with traditional culture

ACSAT recommendation 83

- a) Consider the appointment of specialist child sexual assault prosecutors
- b) All Aboriginal child sexual assault matters are to be conducted by an experienced prosecutor

ACSAT recommendation 84

- a) All Aboriginal child sexual assault matters prosecuted by the DPP must be referred to an Aboriginal Witness Assistance Officer for support and assistance throughout the court process.
- b) Employ more Aboriginal WAS Officers across NSW (to a total of 12), including:
- i. 2 Senior Aboriginal WAS Officers to supervise and assist all Aboriginal WAS officers
 - ii. 1 Aboriginal WAS Officer placed in each DPP Office, including:
 - Campbelltown
 - Parramatta
 - Penrith
 - Wollongong
 - Newcastle
 - Gosford
 - Bathurst
 - Dubbo
 - Wagga Wagga
 - Lismore

Most community members stated they would prefer the support of another Aboriginal person, as they would feel more comfortable about asking them for information and support.

ODPP reports that where a matter involves an Aboriginal victim of violence, it is referred to an Aboriginal WAS officer for assessment. However, ODPP also reports that to make this referral, it relies on NSW Police to identify Aboriginal victims in the police brief. According to ODPP, police do not always do this and this impacts on case planning, management and referral to appropriate services. ODPP reports that although this issue has been raised and discussed a number of times at the Sexual Assault Review Committee meetings and external forums such as the JIRT Forum, it has not yet been resolved.

ACSAT acknowledges that WAS officers have a substantial workload and often cannot provide support to all witnesses at court. ACSAT also notes that there are currently only three Aboriginal WAS officers, so access to Aboriginal support is even more limited. However, ACSAT believes that it is essential that an Aboriginal WAS officer support Aboriginal victims of child sexual assault and their families throughout the court process and therefore recommends that an Aboriginal WAS officer be employed in every ODPP office.

ACSAT also believes it is crucial that Aboriginal WAS officers are provided with appropriate mentoring and training. To facilitate this support and provide supervision and debriefing for Aboriginal WAS officers, ACSAT recommends that two Senior Aboriginal WAS officers are also employed.

ACSAT recommendation 80

ODPP to participate in the development of culturally appropriate court preparation materials and information packages in partnership with JIRT and Victim Services

Culturally appropriate information about going to court

As mentioned in the Victims Services section on page 218 of this report, there is very little information about going to court that is relevant and appropriate for Aboriginal people.

ACSAT acknowledges that Victims Services, in partnership with the ODPP and other agencies, is in the process of developing court preparation materials and stresses the importance of making sure these materials are relevant to Aboriginal people.

ODPP's role in the development of these materials is crucial as it provides essential support and advice to children and families facing the court process.

Evidentiary requirements for prosecution to proceed

A number of communities commented on inconsistencies in the amount of evidence that police required for a case to proceed to court. Some cases seemed to proceed more easily, and with less evidence, than others and communities could not see any reason why this would be so.

Prosecution Guideline 14 states that the police can forward a brief to the ODPP for advice. The ODPP will examine the brief and provide advice on whether there is enough evidence to go to court. The police must take this advice and investigate further if necessary.

Given that this mechanism is already in place, ACSAT recommends that all briefs involving Aboriginal child victims of sexual assault be forwarded to the ODPP who will then make the decision about proceeding to court.

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to ODPP work towards achieving the following outcomes:

- Aboriginal witnesses are supported through the court process
- Prosecutors are able to understand and effectively respond to Aboriginal children who have experienced child sexual assault

ACSAT recommendation 45

Make it mandatory for all evidence briefs involving Aboriginal experiences of child sexual assault to be forwarded to the Office of the Director of Public Prosecution in accordance with Prosecution Guideline 14. Police must follow any direction or advice set out by the ODPP in relation to charging, further investigation or not to proceed with legal actions

PART 6: THE JUDICIARY

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Overview of findings

When examining the judiciary's responses to child sexual assault in Aboriginal communities, ACSAT found that:

- Some judicial staff have a limited understanding of Aboriginal culture
- Some judicial staff have little understanding of child sexual assault, especially as it occurs within an Aboriginal context

Overview of services provided by the judiciary

The judiciary consists of Justices (High Court), Judges (Supreme and District Courts) and Magistrates (Local Courts). In Australia these positions are appointed by federal and state governments, usually in consultation with existing judges and elected representatives of the legal profession. The judicial officer's role is as arbitrator of the court process.

The NSW Judicial Commission

The NSW Judicial Commission, an independent statutory corporation, is part of the judicial arm of government. It was established by the *NSW Judicial Officers Act 1986*. The Commission's principal functions are to:

- Assist the courts to achieve consistency in sentencing
- Organise and supervise an appropriate scheme of continuing education and training of judicial officers
- Examine complaints against judicial officers

The Commission may also:

- Give advice to the Attorney General on such matters as the Commission thinks appropriate
- Liaise with persons and organisations in connection with the performance of any of its functions

Education for the judiciary

All judicial education in Australia is voluntary. While judges and magistrates may choose to complete continuing education and professional development, they are not required to.

In NSW, the Judicial Commission is the body responsible for making an appropriate scheme of continuing education and training available for judicial officers. Its education programs provide judicial officers with information on law, justice and related areas; and assist in developing appropriate judicial skills and values.

The Judicial Commission conducts regular educational sessions and publishes articles/monographs for judicial officers on sexual assault and child sexual assault. It also runs an Aboriginal cultural awareness program for members of the judiciary.

Child sexual assault education

A representative from the Judicial Commission chaired the Education Working Group sub-committee of the Child Sexual Assault Jurisdiction Pilot Team and guided the development of an extensive reference manual on child sexual assault. This manual was then produced and distributed by the Judicial Commission to all District Court judges and magistrates in 2003.

As an adjunct to distributing this manual, the Commission organized a series of twilight seminars for judges from various courts. The first of the series was given by the Hon Justice Wood AO on the *Admissibility of Evidence in Sexual Assault Cases* and the second was given by Dr Jean Edwards on *The Role of Medical Evidence in Child Sexual Assault Cases*. Recordings of these two sessions were made available to those judicial officers who were unable to attend the seminars (32 judicial officers obtained copies of one or more of these tapes).

In addition, an educational session on *Treatment for Sex Offenders* was given by Mr. Dale Tolliday, Director of the Cedar Cottage and New Street pre-trial diversion programs for sex offenders. This session was repeated at the Local Courts Annual Conference in September 2005.

In September 2004, the Commission produced a research monograph entitled *Sentencing Offenders Convicted of Child Sexual Assault*.

Cultural awareness program for judicial officers

The Judicial Commission conducts, in partnership with the Australian Institute of Judicial Administration, an ongoing program of seminars and visits to Aboriginal communities, to raise the awareness of judicial officers about issues of current concern and to develop an understanding of contemporary Aboriginal society, customs and traditions.

Barriers to members of the judiciary providing an effective response to child sexual assault matters involving an Aboriginal victim or offender

Understanding of child sexual assault in an Aboriginal context

A number of consultation participants said that the Judge (or Magistrate) that had presided over the child sexual assault case they were involved with, or had observed, didn't seem to understand the dynamics of child sexual assault, let alone when it occurred in an Aboriginal context. In their view, the Judge didn't seem to do much to make the process easier for the child.

ACSAT notes that when the Child Sexual Assault Specialist Jurisdiction Pilot was set up, one of its aims was to improve the skills and knowledge of judicial officers presiding over child sexual assault matters. To this end, an education manual about child sexual assault was produced as part of the Pilot and distributed to all District Court judges and magistrates. This was accompanied by a number of workshops (listed above) organised by the NSW Judicial Commission.

However, ACSAT also notes that the Pilot evaluation suggests it is unclear what effect, if any, the judicial education package had on the handling of child sexual assault cases by the judiciary. The evaluation found that children are still being subjected to overly long, complex questioning and judicial intervention to clarify questions or control unduly aggressive questioning was variable and appeared unrelated to either the age or linguistic competence of child complainants.

ACSAT acknowledges that judicial staff need to remain impartial. However, it also believes that in order to respond in an impartial way judicial officers must have a thorough understanding of the dynamics of child sexual assault and the Aboriginal cultural context in which it is occurring.¹²⁴ In addition, it is essential that the judiciary are aware of all recent legislative amendments that have been enacted to improve proceedings in child sexual assault matters, and know when and how to use them.

ACSAT recommends that all judicial staff are provided with training on the dynamics of child sexual assault as it occurs in an Aboriginal context. ACSAT believes that this training is so crucial that it should be mandatory and regular.

Cultural advice available for judicial staff

In its submission to ACSAT, the Judicial Commission reported that it runs an Aboriginal cultural awareness program for judicial officers. ACSAT supports this program and recommends that the Judicial Commission employ an Aboriginal officer to oversee the program and promote its availability to members of the judiciary.

In addition, ACSAT recommends that a protocol is developed to enable the judiciary to seek cultural advice and input as required from Aboriginal Community Justice Groups.¹²⁵

Outcomes of ACSAT recommendations

The recommendations by ACSAT in relation to the judiciary were formulated to meet the following objectives:

- Judicial staff are able to provide fair arbitration with an understanding of child sexual assault in Aboriginal communities.
- Judicial staff can access Aboriginal cultural advice to assist them in their arbitration

ACSAT recommendation 85

Mandate judicial staff to undertake bi-annual training on child sexual assault in an Aboriginal context

ACSAT recommendation 86

- a) Aboriginal Community Justice Groups to make cultural advice available to judicial officers
- b) Employ a cultural officer within judicial commission to oversee its Aboriginal cultural awareness program and provide cultural advice to judicial officers as needed

¹²⁴ In the South African Sexual Assault Courts, judicial staff must undergo specialist training in order to reside over sexual assault matters. This has helped contribute to a more efficient and effective court process, with fewer delays. Specialist training has not been found to compromise the impartiality of the judicial officer.

¹²⁵ Aboriginal Community Justice Groups are local groups of Aboriginal people who come together to develop ways to address local law and justice issues. Groups are able to work with juvenile and adult offenders as well as victims of crime. Groups operate in rural, remote and metropolitan NSW. Groups can also provide advice to police and courts as appropriate.

PART 7: ATTORNEY GENERAL'S DEPARTMENT

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Overview of findings

When examining the Attorney General's Department (AGD) responses to Aboriginal child sexual assault, ACSAT found that initiatives such as the Child Sexual Assault Specialist Jurisdiction Pilot have begun to improve the experiences of children, young people and their families going through the court process.

However there are still a number of barriers to Aboriginal people accessing AGD services, including:

- Court processes are long and traumatic for Aboriginal children and their families
- Sentencing of offenders is inconsistent and perceived by some as too lenient
- Communities believe that Aboriginal input into sentencing of Aboriginal offenders of child sexual assault would make the sentence more appropriate and relevant to the offender and the community
- Many Aboriginal victims of crime are not aware of Victims Services and the counselling and compensation they can access from this service
- There is limited access to Aboriginal counsellors or counsellors experienced in counselling Aboriginal people
- It can be difficult for some Aboriginal people to physically get to counselling sessions as they may have to travel long distances and may not be able to access, or afford, transport
- The cap on counselling provided under Victims Services Approved Counselling Scheme (22 hours) is too low for some Aboriginal victims of crime
- The Victims Services Remote/Regional Coordinator positions are vacant and have been for some time
- There is little material about preparing for court and the court process that is relevant and accessible for Aboriginal people

Overview of Attorney General's Department

AGD assists the State's courts, tribunals and laws and assists the NSW Government, Judiciary, Parliament and the community to promote social harmony through programs that protect human rights and community standards, and reduce crime.

In relation to child sexual assault, AGD oversees the following areas:

Legislation and legal policy relevant to child sexual assault

The Legislation and Policy Division of AGD provides advice to the Attorney General, the Department, the courts, and other government agencies on legislative reform and on legal policy. The Division also reviews and revises legislation within the Attorney General's portfolio.

The Legislation and Policy Division works with other agencies to develop legislative proposals that improve the response of the criminal justice system to child sexual assault, particularly in relation to the process of gathering evidence from children. (See Child Sexual Assault Specialist Jurisdiction below.) It also participates in interdepartmental committees, for example, the *Two Ways Together* Families and Young Persons Cluster (chaired by DoCS).

The Criminal Law Review Division (CLRD) also provides advice to the Attorney General on the reform of the criminal law generally, to monitor its effectiveness and to research policy issues relating to the law.

While these Divisions may develop policies or legislative proposals that relate to child sexual assault, they do not have any direct involvement in delivering child sexual assault services or programs.

A number of pieces of legislation that relate to child sexual assault fall within the Attorney's portfolio, including:

NSW Evidence (Children) Act 1997

This Act was proclaimed on 1 August 1999 to provide a new legislative regime for the investigation, recording and admission of statements made by child complainants in sexual assault matters. The purpose of the Act is to afford greater protection to children and improve the quality of their evidence, while not intruding on the fundamental rights of the accused person.

The *NSW Evidence (Children) Act 1997* reformed the law relating to children's evidence in criminal proceedings. It introduced provisions that allow audio or video recordings or videotaped interviews with children and young people to be admitted into evidence as a child's evidence-in-chief in sexual offence proceedings (ss.9 and 11).

The Act also allows a child to give evidence via closed-circuit television facilities (CCTV) in certain proceedings. Also the Act states that a child must not be present or be visible or audible by CCTV while the recording is being played in court.

NSW Pre-Trial Diversion of Offenders Act 1985

The *NSW Pre-Trial Diversion of Offenders Act 1985* provides a legislative framework for diverting child sex offenders, who have pleaded guilty to a sexual offence with respect to their own child, step-child or their defacto partner's child, away from the criminal justice system and into a treatment program. (See page 166 for more information about this program.)

The Child Sexual Assault Specialist Jurisdiction Pilot

In response to an inquiry by the NSW Legislative Council Standing Committee on Law and Justice, the NSW Government set up the Specialist Child Sexual Assault Jurisdiction Pilot.¹²⁶ The aim of the pilot is to improve the way that the justice system deals with child sexual assault cases and to encourage more victims to come forward. One key element of the pilot is to encourage greater use of evidence gathering techniques enabled by the *Evidence (Children) Act 1997*.

The features of the pilot include:

- Upgraded state-of-the-art technology within existing courtrooms and in dedicated child-friendly remote witness suites
- Ongoing staff training and technical support in new technology
- Dedicated child-friendly waiting areas for witnesses and carers
- Improved case management of child sexual assault matters
- Specialist training resources for judicial officers and prosecutors

The pilot is currently operating in Western Sydney (Parramatta, Penrith and Campbelltown) and Dubbo and is scheduled to finish in June 2006.

¹²⁶ The pilot is being managed by the Legislation and Policy Division.

Legislative amendments arising from the Pilot

As a result of the pilot, there have been a number of legislative amendments that accommodate children and take into account their vulnerability by providing special measures for giving evidence. These include the amendments that mean:

- Children can no longer be called at committal: Following the passage of the *Crimes Legislation Amendment Act 2003*, child sexual assault complainants under the age of 16 at the time of the alleged offence and under the age of 18 at committal, can no longer be called at committal (s.91(8))
- An accused person cannot personally cross-examine a complainant in a sexual assault case: As a result of the *Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003*, (inserted into s.294A into the *Criminal Procedure Act 1986*) the accused cannot personally cross-examine child complainants in sexual offence cases. Where an accused person is unrepresented, an intermediary will be appointed by the court to ask questions on behalf of the accused
- A record of the complainant's evidence may be used in sexual assault proceedings if a retrial is ordered following an appeal: s.306A-E of the *Criminal Procedure Act 2005* permits a record of evidence given by a complainant in sexual assault proceedings to be admitted in any retrial that is ordered following an appeal. This includes the evidence given by the complainant in examination and cross-examination. The amendment provides that if the evidence is admitted in the new proceeding, the complainant cannot be forced to give further evidence, however, he or she may choose to do so. The record will only be admissible if the prosecutor gives notice of an intention to tender the record
- Witnesses will no longer have to answer improper questions: under s.275A of the *Criminal Procedure Act 2005* the court will be required to disallow a question put to a witness in cross-examination, or to inform the witness that it need not be answered, if the question: (a) is misleading or confusing; or (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or (c) is put to the witness in a *manner or tone that is belittling, insulting or otherwise inappropriate*; or (d) has no basis other than sexist, racial, cultural or ethnic stereotype. The court must take account of the age and level of maturity and understanding of the witness, the ethnic and cultural background of the witness, and the language background and skills of the witness
- Children can have a support person with them when they give evidence: Under, s.295C of the *Criminal Procedure Act 2005*, a complainant in a child sexual offence matter is entitled to have a support person of their choice when they are giving evidence in court

Findings of the pilot evaluation

In 2005, the pilot was evaluated and the following issues were identified.¹²⁷

In interviews, children, their parents and the professionals involved in the case made positive comments about the remote witness suite, and their responses indicated that this suite is perceived as a child-friendly and more appropriate environment than some of the other less specialised CCTV and waiting areas.

The use of the pre-recorded investigative interview as the child's evidence-in-chief and the use of CCTV also had positive benefits for children but technical problems associated with the JIRT tapes limited the efficiency and effectiveness of these measures. These included delays caused

¹²⁷ From Cashmore, J. and Trimboli. L. (2005) *An Evaluation of the NSW Child Sexual Assault Specialist Jurisdiction Pilot* NSW Bureau of Crime Statistics and Research

by the late editing of the tapes (which often occurred after legal argument), a lack of familiarity with the legislative provisions by some judicial officers and crown prosecutors, technical problems and difficulties with the equipment, and some court staff who were unable to operate the equipment.

It is unclear what effect, if any, the judicial education package had on the handling of child sexual assault cases by the judiciary. Court observation and the interviews with children, parents and professionals indicate that children are still being subjected to overly long, complex questioning which is unlikely to produce reliable evidence. Judicial intervention to clarify questions or control unduly aggressive questioning was variable and appeared to be unrelated to either the age or linguistic competence of child complainants.

While one of the courts in the specialist jurisdiction introduced some case management procedures and pre-trial mentions, these measures were limited by the failure to develop practice directions, the late appointment of crown prosecutors to specific cases, problems with the technology and an insistence on the part of some judicial officers and/or lawyers that child complainants/witnesses be at court long before they were required to give evidence.

Criminal Justice Sexual Offences Taskforce (CJSOT)

In December 2004, the Attorney General established CJSOT¹²⁸ to:

- Evaluate models for prosecuting sexual assault offences
- Evaluate proposals for legislative and procedural change in the area of sexual assault prosecutions in NSW
- Identify areas for possible reform in the provision of services for sexual assault victims¹²⁹

Court processes

Child sexual assault matters in NSW are heard in local, district and supreme courts.

When a sexual assault is alleged to have been committed against a child or young person, society regards the offence as a crime against the community. For this reason, the state government represents the community by prosecuting and punishing offenders, and the child or young person is a witness of the Crown.

In NSW, sexual assault of a child (under age 16) is an aggravated offence under s.61J of the *NSW Crimes Act 1900*.

After a report of child sexual assault has been investigated by JIRT, the file is handed across to ODP where a public prosecutor is appointed as the legal representative of the child.

¹²⁸ This taskforce is being managed by the Criminal Law Review Division.

¹²⁹ CJSOT has examined sexual assault proceedings in NSW. Its focus has been on adults, however a number of recommendations will impact on children's proceedings. CJSOT presented its findings to the Attorney General for consideration in December 2005. An example of the issues that have been examined include: the law relating to consent; the test for admissibility of evidence of sexual history and reputation; committal proceedings involving adult sexual assault complainants; pre-trial disclosure and case management; non-publication orders in sexual assault trials; directions to juries in sexual assault trials; the test for admissibility of tendency and coincidence of evidence; whether there should be a presumption that multiple complainants should be dealt with together in the same trial against the accused.

The first stage of the court process is for the matter to be mentioned by the prosecutor in the local court, where a magistrate decides whether the matter will proceed to trial in the district court before a jury based on whether there is sufficient evidence.

At the trial, both the defence and the prosecution can make oral and written arguments. Both sides can also call evidence. Witnesses can be called and cross-examined. The prosecution can submit documents such as psychiatric reports and pre-sentence reports to the judicial officer.

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 and improve the experiences of children and young people when they are giving evidence and involved in the court process for child sexual assault matters. These include: the proclamation of the *NSW Evidence (Children) Act 1997*; the Child Sexual Assault Specialist Jurisdiction Pilot; and the various legislative amendments that have been enacted both to enable the pilot and as a result of the pilot.

Barriers to the court processes providing an effective response to Aboriginal victims of child sexual assault

The experience of going to court

In every consultation, participants felt that the court process for child sexual assault matters was traumatic for children and their families. Community members consistently said things such as: 'its too long' and 'the kids keep having to repeat their stories'. In talking about her own experience of going to court, one community member recalled that she had to sit outside the court, not knowing what was going on, seeing her step-father, who was also the offender, in the court and being devastated by the whole experience. In her words she said:

'And then we came to court here in X. That was hard too because I had to sit by myself for, you know, about three, four hours just waiting for them to call me into the room to tell the judge about what happened... My mum was there but, you know, she was pretty distressed at the time too with what she was going through ... I felt a bit brain washed, I guess, I can say that, you know, because she was telling me that perhaps it was wrong, "Are you sure this is right?" and things like that, "Are you sure he really did it?" You know, "Your dad kind of can't do that type of stuff, are you really really sure?" And then she was saying, "Oh, you know, but it wasn't his fault, because he was, you know, he's an alcoholic", you know, and all of that.' *Transcript 25*

Many participants indicated that they would choose not go through with court action rather than force their child to go through this process. Others said that they knew of people who had chosen to go to court but who dropped out of the process along the way because it was just too long and difficult. This can place the children and young people at particular risk as the offender, who usually lives in the same community, now knows that nothing will happen to them if they continue offending.

ACSAT acknowledges that the NSW Government has been making efforts to improve the court processes for children. It notes that the principles of the Child Sexual Assault Specialist Jurisdiction Pilot are sound and that some of the initiatives implemented, particularly the remote witness suite, the use of pre-recorded interviews as the child's evidence in chief and the use of CCTV links, have been successful and have improved the experience of going to court for children and young people.

ACSAT recommendation 87

- a) Closely monitor the state-wide roll-out of technologies used in the Child Sexual Assault Specialist Jurisdiction Pilot to ensure that the technologies are successfully installed in each court, all relevant court staff know *how* to use the technology and all relevant judicial officers know *when* to use the technology
- b) Continue to improve case management and pre-trial conferencing techniques developed as part of the Pilot and reduce the total length of the court process to less than one year

ACSAT also notes that the Attorney General's Department is rolling out these technologies to courts across the state over the next two years. It recommends that this roll-out is closely monitored to ensure that the technologies are successfully installed, all relevant court staff know how to use the technology and all relevant judicial officers know when to use the technology.

ACSAT also notes that one of the aims of the pilot was to reduce delays in proceedings by improved case management and the use of pre-trial conferences. However, the evaluation found that this did not occur, citing the median number of days from arrest to outcome as 400.¹³⁰ It believes that as well as rolling-out the technologies, the Attorney General's Department needs to continue to improve case management and pre-trial conferencing techniques and reduce the length of the court process to under one year.

Sentencing

A magistrate or a judge decides what sentence an offender will undertake. Sentencing usually takes place on a separate day to the trial or summary hearing. In most instances, a sentencing hearing is conducted before the judicial officer (the judge or magistrate). At the sentencing hearing, the defence has the opportunity to put forward evidence and arguments about what the sentence should be. The prosecution assists the court by providing information about applicable law and relevant sentencing statistics.

Legislation stipulates a maximum penalty for aggravated sexual assault. When maximum penalties are set by Parliament, it is intended that such penalties will be given only when the case falls within the 'worst' category of cases for which the penalty is prescribed.

When determining a sentence, the judicial officer is guided by case law as well as the relevant general pattern of sentencing by criminal courts for the offence in question. They must take into account relevant sentencing legislation.

Circle Sentencing

Circle Sentencing is an alternative sentencing court for adult Aboriginal offenders. The Circle has the full sentencing powers of the court¹³¹. Currently all sexual offences and offences against children are excluded from the Circle Sentencing program. While Circle

¹³⁰ The evaluation notes that all the cases finalised during the evaluation period had already been in the system 'for some time' before the start of the pilot and therefore prior to the commencement of the case management changes.

¹³¹ This information about Circle Sentencing is from Crime Prevention Division (2005), *Crime Prevention Circle Sentencing Factsheet*, NSW Attorney General's Department

Sentencing is not considered appropriate for child sexual assault matters, it is of interest to ACSAT because it directly involves local Aboriginal people in the process of sentencing offenders.

Circle Sentencing involves taking the sentencing process out of its traditional court setting and into the community. Here the community members and magistrate sit in a circle to discuss the offence and the offender. The circle will also talk about the background and effects of the offence and develop a sentence that is tailored for that offender.

Circle Sentencing involves victims of offences and respected community people as well as the offender's family. It complements existing diversionary schemes and provides a further sentencing format for NSW magistrates. Circle sentencing has proven to be a more meaningful experience for the offender and helps to improve the Aboriginal community's confidence in the criminal justice system.

Barriers to effective sentencing in matters of child sexual assault involving Aboriginal victims

Length of sentences

During consultations, participants made a number of comments about conviction and sentencing in child sexual assault matters. Overall, participants believed that convictions were rare and therefore, no sentence was even passed. As one community member said:

'The conviction rate is very low. I mean, I think in some ways the legal system doesn't really, still got a long way to go in terms of you know in terms of conviction rates.' *Transcript 24*

However, if a person was convicted, participants believed that often the sentence was too lenient. They said that, in their view, the length of the sentence was not substantial enough to compensate the devastation the crime causes the victim.

Sentencing in child sexual assault matters has been raised as an issue at the state level previously and the Attorney General has asked the Criminal Court of Appeal for a guideline judgement for child sexual assault matters. If the guideline judgement were granted, judges would have to deliver a sentence that is in line with set criteria contained within it. ACSAT recommends that the Attorney General considers re-applying for a guideline judgement for sexual assault offences.

ACSAT recommendations 88

- a) The Attorney General applies for a guideline judgment from the Criminal Court of Appeal which will set a sentencing range that the courts are expected to follow for child sexual assault matters, unless there are special circumstances
- b) Monitor the implementation of the Standard Minimum Non-Parole period (SMNPP) that applies to sexual offences committed after 1 July 2003 upon conviction following a trial

In July 2003, a Standard Minimum Non-Parole Period (SMNPP) was introduced for sexual offences. In theory, this means that if an offender is sentenced to a gaol term for a sexual offence, they must serve that part of the sentence outlined in the SMNPP in gaol before they can be eligible for parole. However, ACSAT notes that there are circumstances where the SMNPP does not apply, for example if an offender pleads guilty. It suggests that the SNMPP is closely monitored and evaluated to ensure it is being applied consistently and that it is effective in meeting its own objectives.

ACSAT recommendation 89

Establish a local Aboriginal advisory panel to be consulted on sentencing child sexual assault matters. Members may include a representative for the victim and the offender and could utilise existing Community Justice Groups

Community participation in sentencing

Aboriginal communities consulted by ACSAT consistently said they strongly believed that Aboriginal people should be involved in sentencing of Aboriginal offenders of child sexual assault. They believed that sentences that were decided with Aboriginal community involvement would be more effective in providing both appropriate sentences and in reducing re-offending. It would also provide a sense of justice for the Aboriginal community itself, knowing that they were able to advise the courts on sentencing in a process closer to traditional Aboriginal lore.

'You'd have to have your court system here to recognise it and it probably would be more valuable to the perpetrator to have it done tribal, if he's a cultural man. Whether he's an urban man or not. If he's a cultural man he's aware of his faults. When the elders decree what his punishment is, it brings him closer to his culture and his people.'

Transcript 1

Communities and ACSAT acknowledge that the existing Circle Sentencing model being used in NSW is not appropriate for child sexual assault matters as this model involves the offender sitting in a circle with the victim (among others) and this is considered damaging for the victim. However, they also acknowledge that the participatory model it uses, of having Aboriginal community members talk about appropriate sentencing with a magistrate, could be built on.

ACSAT notes that there are already a number of Aboriginal Community Justice Groups established across NSW. It believes that with the appropriate training and support these groups would be in a position to undertake the role of community involvement in sentencing of Aboriginal child sex offenders.

Victims Services

Overview of services provided by Victims Services

Victims Services is part of AGD and consists of the Victims Compensation Tribunal (VCT) and the Victims of Crime Bureau (VCB). These bodies work together with the Victims Advisory Board (VAB) to help victims of crime in NSW access services and

entitlements to assist in their recovery. An additional role of the Victims of Crime Bureau is to co-ordinate support to families and friends of missing people.¹³²

Victims Services provides a range of services and entitlements to people who have been victims of violent crime as prescribed in the *NSW Victims Support and Rehabilitation Act 1996* and the *NSW Victims Rights Act 1996*.

Under the *Victims Rights Act* victims of crime are eligible for services such as: help to make a victim impact statement; and assistance in accessing their rights under the *Charter of Victims Rights*. Victims of crime can also contact the 24 hour Victim Support Line (VSL).

To be eligible for compensation and counselling, an applicant must establish on the balance of probabilities that they have suffered injury or loss as a result of an act of violence occurring in the course of a crime, including sexual assault. The VCT determines applications on the basis of documentary evidence received.

Victims Services response to evidence of child sexual assault in Aboriginal communities

A review of service delivery to Aboriginal victims of crime

During 2001-2003, Victims Services reviewed its service delivery to Aboriginal clients and produced *A Review of Aboriginal and Torres Strait Islander Peoples' Compensation and Counselling Claims Lodged with the Victims Compensation Tribunal 2001 – 2003 (the Review)*.

Among other things, the *Review* found that although Aboriginal people are between 2-6 times more likely to become victims of crime, they are five times less likely than a non-Indigenous victim of crime to lodge a compensation claim.

The *Review* also found that of Aboriginal claimants, females under the age of 35 years were the group most likely to pursue victims' compensation and counselling¹³³. In addition, the claims lodged by Indigenous victims of crime appear to most often relate to situations involving family violence.

The *Review* noted a number of barriers to victims accessing Victims Services that include: possible fear of retribution by the community if compensation in particular is accessed¹³⁴; and lack of information regarding the entitlements that victims are able to claim for.

As a result of the *Review*, Victims Services has made the Aboriginal Justice Plan a priority, with a strategy outlined in the Victims Services Business Plan 2004/05 and 2005/06.

The Victims Support Line (VSL)

VSL provides 24 hour information, referral and support to victims of crime.

VSL staff can provide confidential emotional support, in addition to practical information on how to access the Approved Counselling Scheme (ACS), or how to access other groups and services

¹³² <http://www.lawlink/victimsservices>

¹³³ The *Review* reported that this was consistent with the age demographic of the NSW Indigenous population were 57% of all Indigenous people in NSW are aged 24 years or younger (compared to 33.7% of non-Indigenous people).

¹³⁴ If compensation is granted, the VCT then attempts to recover the funds paid out from the offender. This then places the victim at risk of violence and retribution from the offender.

that may assist the recovery for victims of crime. VSL staff will also provide information on a persons rights as a victim of crime.

Compensation

Victims of child sexual assault can apply to Victims Services for compensation. Under the legislation, non-offending parents may also apply as secondary victims. A victim may claim either the compensable injury of Sexual Assault or other compensable injuries listed in the Schedule of Injuries. If the victim of an act of violence is a child, a relative or other suitable person can make an application on the child's behalf.

There has been a steady increase in the number of Aboriginal people claiming compensation for child sexual assault matters. In 2000, 30 claims were lodged and in 2004, 59 claims were lodged. Victims Services attributes this increase to more awareness of the scheme and local legal services (particularly the Women's Legal Service) encouraging Aboriginal people to apply.

Counselling

Victims of violent crime, including sexual assault, can access counselling under the ACS. However, the submission from Victims Services to ACSAT states that it may be more appropriate, or be part of the DoCS case plan, for children who have experienced child sexual assault to access counselling from a specialist sexual assault service. This does not preclude the non-offending parent from accessing counselling under ACS and getting the two practitioners to work together. Victims Services report that victims of historic sexual assault can also access the ACS.

A culturally appropriate counselling model

Victims Services reports that it is currently developing a culturally appropriate counselling model for Aboriginal victims of crime. This includes recognising that not all Aboriginal victims may want to access counselling provided by an Indigenous counsellor but that any counselling provided must be culturally appropriate. Consultation with Indigenous groups about the model is planned prior to it being completed.

Access to rights under the Charter of Victims Rights

Victims of child sexual assault are also entitled to access their rights under the *Charter of Victims Rights*. Victims Services has developed a range of strategies to implement the Charter across various government departments. The Warringa Baya Aboriginal Legal Service is translating the Charter into an Indigenous version and a youth version of the Charter is also available to children and young people who are victims of crime.

Interagency cooperation

Victims Services works with Aboriginal legal services to promote the ACS and encourage eligible victims to access it where appropriate. Victims Services is also investigating ways of working with the AMS to promote entitlements and services.

Victims Services convened a Senior Officers Group of representatives from all major support agencies in July 2005. This group comprehensively reviewed all existing resources to assist in court preparation for child victims of sexual assault. It has subsequently prepared a funding proposal to:

- Develop an interactive website (scoping for the development of the website has begun)
- Develop a new video for children about giving evidence
- Enhance the manual and resource folder *Nothing but the Truth*
- Enhance the booklet *Caring For Yourself During Court*

Barriers to Victims Services effectively responding to evidence of child sexual assault in Aboriginal communities

Access to counsellors who are able to respond to Aboriginal experiences of child sexual assault

During consultations, participants who had accessed counselling from the Victims Services Approved Counselling Scheme (ACS) raised similar concerns to those who had accessed counselling via NSW Health's sexual assault services (see page 170).

Several participants said they had had to see a number of counsellors before they found one who could respond to their experience as an Aboriginal person. Participants suggest that counsellors who can respond effectively to Aboriginal experiences of child sexual assault are few and far between and when one is found, all Aboriginal people wanting counselling will try and see them. One legal service involved in the ACSAT consultations said that even though they knew of many accredited counsellors in their area, they always referred the Aboriginal clients they were helping to access the ACS to the same counsellor because they knew this counsellor could respond effectively to Aboriginal experiences of child sexual assault.

Other participants who had accessed the ACS said that they had asked to see an Aboriginal counsellor but were told there were none available through the Scheme.

ACSAT believes it is crucial that Aboriginal people have access to Aboriginal counsellors and/or counsellors who are able to respond to Aboriginal experiences of child sexual assault. ACSAT acknowledges that Victims Services is in the process of developing a strategy to improve its responses to Aboriginal victims of crime under the ACS. Victims Services reports that the strategy will include: the provision of culturally appropriate training to non-Indigenous counsellors who are approved counsellors under the Scheme; investigating methods of recruiting qualified Indigenous counsellors to the Scheme; and the development of alternative ways of providing counselling to Indigenous people such as outreach clinics. This strategy will be developed in the first half of 2006.

ACSAT recommendation 90

Develop and implement a strategy to increase the number of counsellors experienced in Aboriginal issues. This strategy will include:

- i. A register of counsellors experienced in counselling Indigenous clients
- ii. A register of Aboriginal counsellors
- iii. Provide mandatory competency-based training in Aboriginal child sexual assault. No counsellor is able to work with Aboriginal people if they have not successfully completed this training
- iv. A recruitment and retention strategy for Aboriginal counsellors

In addition to the measures outlined in the proposed Victims Services strategy to improve its response to Aboriginal victims of crime, ACSAT recommends that Victims Services develop a register of Aboriginal counsellors and a register of non-Aboriginal counsellors experienced in working with Aboriginal people. For a non-Aboriginal counsellor to be placed on the register, they would need to complete a competency-based accreditation process, which includes training in Aboriginal culture and extensive experience working with Aboriginal people.

ACSAT also recommends a recruitment and retention strategy is implemented as a matter of urgency to encourage qualified Aboriginal counsellors to participate in the Scheme.

ACSAT recommendations 91

- a) Establish partnerships with Aboriginal organisation to assist in transporting clients to counselling services
- b) Increase levels of outreach to Aboriginal clients
- c) Establish a fund/grant to assist in the transport of clients to counselling appointments, particularly in rural and remote areas.

Physical access to counselling sessions

Many community members said they sometimes found it difficult to get to counselling sessions. They said that it can be hard to make appointments, particularly in rural areas, and that counsellors were often located in a different town. This means that people often have to travel long distances. As one community member recalls 'I had to travel for two hours to see a counsellor'.

Participants understood that it was not always possible to have counsellors based in the town, as there may not be enough demand. However, they said it was difficult for some people to get, and/or pay for, transport.

During consultations, agencies such as Aboriginal Medical Services and other local support services suggested that they could assist with transport if the financial implications of this assistance (cost of petrol, staff time etc) could be addressed. ACSAT recommends that Victims Services build partnerships with the local Aboriginal organizations that may be able to provide transport services. This would include financial recompense to the services for transport provided.

Another solution to this issue is to increase outreach services. ACSAT acknowledges that Victims Services does support counsellors to provide outreach services and the community has indicated that where this has occurred, it has worked well. ACSAT also acknowledges that Victims Services is considering alternative methods of providing counselling to Aboriginal people as part of its strategy to improve its responses to Aboriginal victims of crime under the Approved Counselling Scheme.

Awareness of Victims Services

Throughout community consultations it was apparent that many communities were not aware that they could access Victims Services, nor that they could apply for compensation. At almost

every community information session, ACSAT was asked about resources for sexual assault victims and when Victims Services were mentioned, there were few people who knew exactly what they provided.

This is supported by the evaluation of Victims Services which found that whilst Aboriginal people are between 2 and 6 times more likely to be victims of crime, they are five times less likely to pursue a claim for victims compensation or counselling. There could be a number of reasons for this, such as fear of retribution, but ACSAT believe that it is also to do with the lack of awareness of services available.

Given that Victim Services provide one of the few avenues for free counselling and support, as well as compensation, it is important that the community is aware of the services and can access them.

Time cap on counselling services offered

The total length of counselling that is made available to victims of crime under the *Victims Support and Rehabilitation Act 1996* No 115 is 22 hours. For many Aboriginal people, this was not considered enough. As one community member said:

'...you've got to apply for 20 hours. What's that? You've got 20 hours to try and deal with a lifetime of guilt and issues?'
Transcript 26

Participants suggested that if an Aboriginal victim is being counselled by a non-Aboriginal person, it is likely that it will take the Aboriginal person longer to engage with the counsellor. They believed that the victim would only just be beginning to deal with the issues when the cap on counselling was reached. As another community members said:

'...and I'm at the end of my hours. Where do I go from here? I can't afford to pay \$120 a session. This person has been the one person in my life that finally I've allowed inside to start helping me pull the chains off and start unwinding.'
Transcript 27

ACSAT acknowledges that victims can apply for further hours of counselling, however those who have done this found it traumatic.

During consultations, a number of participants said there was a need to involve family members in counselling, particularly if a number of family members have been sexually assaulted by the same perpetrator. In one family group that spoke with ACSAT, children from three related families had been sexually assaulted by the same perpetrator. This group felt that they would benefit from a group session with each other. However, they have been advised by Victims Services that this was not possible and that each member of the group would have to apply for their own individual counselling.

ACSAT recommendation 92

Develop an awareness campaign to encourage Aboriginal people to access Victim Services

ACSAT recommendation 93

Consider amending **Victims Support and Rehabilitation Act 1996 No 115** to:

- i. Remove the 22 hour cap for Aboriginal people
- ii. Include greater capacity to provide counselling to extended family and community

ACSAT recommends that more than 22 hours of counselling is made available to Aboriginal victims of crime¹³⁵ and that Victims Services are more flexible in the way this counselling is delivered.

ACSAT recommendation 80

Victim Services to lead the development of culturally appropriate court preparation materials and information packages in partnership with JIRT and ODPP

Information about preparing for court

One of the roles of Victims Services is to provide information and support to victims of crime about issues such as going to court.

Communities and service providers noted that there were few Aboriginal specific court materials available. As discussed throughout this report, the court process is very difficult for Aboriginal children, young people and their families. Therefore, to support the families through the process and prevent them from dropping out, it is important that they have materials available to explain the process and what they can expect.

ACSAT acknowledges that Victims Services is currently developing court preparation materials and stressed the importance of ensuring these materials are relevant for Aboriginal people. ACSAT believes the Director of Public Prosecutions (ODPP) and Joint Investigative Response Teams (NSW Police, Department of Community Services and NSW Health) should also play a role in the development of these materials as they provide essential support and advice to children and families facing the court process.

ACSAT recommendation 94

Develop a recruitment and retention strategy to employ/retain staff in Remote and regional areas. This may include the implementation of incentives such as a rural financial loading

Regional staffing

At the time of this inquiry, ACSAT noted that there was only one Aboriginal identified position (the Greater West Rural Coordinator position¹³⁶) and that this had been vacant for some time. This was consistently raised during consultations in the Western region of NSW and in one consultation in particular, participants said they found it difficult to access Victims Services programs. They said that often counsellors and accredited report writers¹³⁷ moved, changed or were not available at all and without this coordinator position, people did not where to go to get help.

¹³⁵ The *Review of Aboriginal and Torres Strait Islander claims lodged with the Victims Compensation Tribunal 2001-2003* found that, at the time of the review, between 42 and 67% of Indigenous clients had either let their counselling hours lapse or still had some hours available. This compared with only 30% for all clients. While this could be because of a lack of awareness that counselling is available, it could also suggest that while some Aboriginal victims of crime want more hours of counselling, others do not want to access any hours counselling that are available to them.

¹³⁶ The role of this position is to link victims of crime with appropriate support and rehabilitation services as well as develop community education strategies for their region to promote Victim Services and rights.

¹³⁷ To make a compensation claim regarding injury, a writer accredited by the Victims Services Bureau must be used.

As a part of the Victims Services review of service delivery to Aboriginal clients conducted in 2001-2003, Victims Services employed an Aboriginal Projects Officer from April 2002 to January 2003. During this period, the (then) three rural coordinators were also actively working with Aboriginal communities to promote the services available to victims of crime. During this time, the *Review* noted a 'sharp rise in total Aboriginal claimants'.

Employing Victims Services staff in rural and remote areas is clearly an effective strategy for improving access to services for Aboriginal victims of crime. ACSAT recommends that Victims Services actively try and fill vacant positions.

Outcomes of ACSAT recommendations

The recommendations by ACSAT in relation to the NSW Attorney General's Department were formulated to meet the following objectives:

- Court matters are dealt with efficiently
- Sentencing is consistent and effective for Aboriginal sex offenders
- Victims Services provides culturally effective counselling services to Aboriginal people
- Victim Services programs are easily accessed by Aboriginal people
- Culturally effective court preparation materials are available to all Aboriginal child sexual assault victims and their families

PART 8: DEPARTMENT OF CORRECTIVE SERVICES

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Overview of findings

When examining the Department of Corrective Services (DCS) response to child sexual assault in Aboriginal communities, ACSAT found:

- DCS staff are not always responding appropriately to disclosures of child sexual assault by inmates
- There is little or no support available for Aboriginal survivors of child sexual assault who are incarcerated
- It is not known whether sex offender programs being run in DCS facilities are effective for Aboriginal people
- The transition of an offender back into the community is often conducted without community involvement and without adequate support from DCS. This is putting children and young people at risk
- Data about survivors of child sexual assault who are within the DCS system is not collected, however research such as *Speak Out, Speak Strong* suggests that up to 70% of women in custody were sexually assaulted as children
- DCS has a role to play in the development of prevention and treatment programs for adults who display sexually offending behaviour but are not yet involved in the criminal justice system

The discussion of the response by DCS to addressing Aboriginal child sexual assault draws on consultations with Aboriginal communities, submissions provided to ACSAT by DCS and visits to two correctional facilities.

Overview of services provided by DCS

DCS provides custodial and community-based correctional services as part of the NSW criminal justice system. DCS manages offenders under the jurisdiction of NSW courts and the Commonwealth and provides custodial services on behalf of the Australian Capital Territory. Offender management services include:

- Correctional centre custody of remand and sentenced inmates
- Community offender supervision including periodic detention, home detention, parole and community service orders
- Custodial escort and court security services in many areas of the state

In what is known as *Throughcare*, DCS aims to manage offenders from their first point of contact to the completion of their legal orders and their transition to community living. *Throughcare* achieves this by:

- a) Recording information about an offender's management throughout their contact with the DCS to enable a whole of sentence approach to the offender's case management
- b) Strategic relationships built across the community so that offenders can access health, employment and accommodation services whilst under DCS supervision and for those being released from both community-based and custodial supervision

DCS reports that it offers a range of programs and services designed to reduce recidivism and to improve offender motivation to participate in offence-related, transitional and resettlement programs. These interventions and programs are delivered in both the custodial and community environment and are complimented by services and programs delivered by external agencies.

Services available to offenders include educational and vocational programs, psychological, welfare and alcohol and drug support services. Primary health care services in gaols are provided by NSW Justice Health.

Custodial services

There are 29 public correctional facilities in NSW, one private centre, two transitional centres, 15 court complexes and 15 Periodic Detention Centres. New inmates go through a Reception, Screening and Induction Program to identify their immediate needs and issues such as risk of suicide, mental illness and drug and alcohol withdrawal. Then they may be placed in a maximum, medium or minimum security facility.

Community-based services

DCS community-based services aim to effectively supervise offenders in the community and promote successful re-settlement. These services provide:

- Court advice and pre-release reports
- Probation supervision
- Parole supervision
- Intensive supervision
- Community service orders
- Community funding programs
- Periodic detention
- Victim services

Policy framework for providing services to Aboriginal communities

Aboriginal people are over-represented within the DCS system, in both custodial and community settings. In 2003/4, 19% of the average number of men in custody on any given day, and 28% of the average number of women in custody, were Aboriginal people. (See table 1) In November 2005, 14.6% of the average number of men on community-based orders on any given day, and 23.2% of the average number of women on community-based orders, were Aboriginal people.¹³⁸ Yet Aboriginal people make up only 1.4% of the general population in NSW over the age of 15 years.¹³⁹

¹³⁸ Corporate Research, Evaluation and Statistics Unit, DCS statistical data provided to ACSAT 19 January 2006

¹³⁹ Australian Bureau of Statistics, (2001), *Indigenous profile* from <http://www.abs.gov.au>

Table 1: Indigenous status of offenders in custody¹⁴⁰

Custody				
Male	Jul-03	Jul-04	Nov-05	Jan-06
Aboriginal	1316	1489	1556	1632
Non-Aboriginal	6168	6536	6732	6701
Total	7484	8025	8288	8333
Percentage	18.4	18.5	18.8	19.5
Female	Jul-03	Jul-04	Nov-05	Jan-06
Aboriginal	147	162	177	167
Non-Aboriginal	365	407	445	450
Total	512	569	622	617
Percentage	28.7	28.5	28.5	27

In 1991, the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) highlighted the need for DCS to provide better services to Aboriginal people under their supervision. DCS reports that, since that time, it has implemented a number of policies and procedures to reduce the high incarceration rate, reduce the risk of deaths in custody and address the underlying disadvantages experienced by Aboriginal people.

DCS has established the Aboriginal Support and Planning Unit to provide strategic policy advice, planning and support on Aboriginal affairs across the agency. DCS also employs Aboriginal staff in a range positions including welfare officers, a psychologist, alcohol and other drug workers, Aboriginal client service officers, custodial officers, probation and parole officers and regional Aboriginal project officers in both correctional centres and probation and parole offices across NSW. This has enabled DCS to implement culturally appropriate programs and services that target Aboriginal offenders.

An *Action Plan for the Management of Indigenous Offenders 1996-1998* was implemented and subsequently superseded by the *Aboriginal Offenders Strategic Plan 2003-2005* (AOSP).

AOSP aimed to meet the needs of Aboriginal offenders by developing effective programs. It is based on research that suggests factors in an offender's lifestyle, personal history, attitudes and behaviours are likely to contribute to re-offending¹⁴¹. The plan identifies six focus areas for DCS. These are:

- Work with Aboriginal communities and agencies
- Divert Aboriginal offenders from custody
- Reduce Aboriginal offending by effective programming
- Meet the needs of female Aboriginal offenders
- Promote awareness and sensitivity to Aboriginal culture
- Employ Aboriginal people and ensure that all staff are able to work effectively with Aboriginal offenders

¹⁴⁰ Corporate Research, Evaluation and Statistics Unit, DCS statistical data provided to ACSAT 19 January 2006

¹⁴¹ NSW Department of Corrective Services, *Aboriginal Offenders Strategic Plan 2003-05*, p. 11

This strategic plan expired last year and DCS report they are currently in the process of evaluating it and developing a new three-year plan for 2006-2008.

DCS response to evidence of child sexual assault in Aboriginal communities

The main ways that DCS responds to evidence of Aboriginal experiences of child sexual assault are by:

- Child protection – mandatory reporting on child sexual assault
- Responding to adult survivors of child sexual assault who are incarcerated
- Providing treatment for convicted Aboriginal sex offenders while they are in custody and as they are reintegrated back into the community

Child protection – mandatory reporting of child sexual assault

DCS staff are mandated by the *Children and Young Persons (Care and Protection) Act 1998* to report any suspected child abuse, including child sexual assault, to DoCS.

DCS reports that it is committed to ensuring that the care and protection of children and young people legislation is effectively implemented across the Department. DCS has established a Child Protection Coordination Unit (CPCU) and developed the *Strategic Framework on Child Protection 2003-2005* to ensure that child protection is fully integrated into all relevant departmental policies and procedures, including the management of sexual offenders in custodial and community settings.¹⁴²

Responding to adult survivors of child sexual assault who are incarcerated

DCS reports that it does not run any specific programs for Aboriginal inmates that address child sexual assault victimisation issues. If child sexual assault issues emerge for Aboriginal offenders while they are in custody, DCS states that it manages the disclosure in the following ways:

- If a woman discloses a history of child sexual assault, then a referral is made to a relevant external agency, such as community health, for professional services and support to deal with the issues. DCS provides transport or support to facilitate professional service whilst the woman is incarcerated
- If a man discloses a history of child sexual assault, the offender would be encouraged to work on the issues at a deeper level once he is released

Providing treatment for convicted offenders of child sexual assault

DCS defines a sex offender as any convicted offender whose:

- Current offences include one of sexual violence
- History of offences includes a conviction for sexual violence
- Offences are determined to have a sexual motivation

¹⁴² Now that this Framework has expired, DCS plans to develop a Business Plan for the CPCU that will review the outcomes of the Framework and carry forward the guiding principles.

DCS has developed a range of treatment services for sex offenders that aim to reduce the likelihood of offenders continuing their sexually offending behaviour. These are outlined below.

Assessment of sex offenders

Psychologists within the Sex Offender Program (SOP) provide assessments of sexual offenders throughout their prison sentence, including pre-sentence assessments for the court, reception assessments, assessments of offenders who may be a risk to staff, assessments for pre-release programs and for parole consideration. SOP psychologists based in the community provide DCS community-based services with assessments about how best to manage the offender while he is on parole or probation.

Custody-based programs

DCS provides a number of structured custody-based programs and procedures for managing convicted sexual offenders, including¹⁴³:

- Understanding Sexual Offending (USO) is an eight-session program that aims to challenge denial and minimisation of sexual offending and to increase an offender's readiness to participate in treatment
- Custody Based Intensive Treatment (CUBIT) is a residential therapy program at Metropolitan Special Program Centre (MSPC) that accommodates 40 moderate and/or high risk sex offenders. Participants are required to: take responsibility for their offending behavior; identify their offending cycle; examine victim issues; and develop a relapse-prevention plan. There is:
 - > A high-intensity program that runs for approximately ten months
 - > A moderate-intensity program that runs for approximately eight months
 - > An adapted program for sexual offenders with literacy problems (reading and/or writing), communication problems, and borderline functioning or other special needs that runs for approximately twelve months
- CORE is a non-residential therapy program for lower risk sex offenders who continue their regular institutional activities (e.g. education, work release). It targets the core issues common to sex offenders and runs in a group format. It can be run two half-days per week (five months in length) or one half-day per week (ten months in length). CORE currently runs at Kirkconnell Correctional Centre
- Custodial Maintenance Program is a relapse prevention program for sex offenders who have graduated from the CUBIT or CORE programs and focuses on reinforcing the gains made in more intensive treatment programs. Custodial maintenance runs at MSPC and Kirkconnell Correctional Centre

In 2002, DCS recognised that the sex offender treatment programs needed to be made more culturally relevant for Aboriginal offenders and created an Aboriginal Special Project Officer position to make this happen.

The Aboriginal Special Project Officer has developed, and piloted, cultural assessments of Aboriginal offenders entering the CUBIT program. The Project Officer has also developed a 16-session group-based program for Aboriginal offenders that runs along side CUBIT and aims to increase the offender's engagement with the CUBIT program by addressing their cultural issues.

¹⁴³ Programs for Sex Offenders, Offenders Programs Unit DCS – November 2005, http://www.dcs.nsw.gov.au/offender_management

Community-based programs

The DCS's Community Offender Services (COS) division, operating largely through the Probation and Parole Service, works with convicted sexual offenders to help them successfully reintegrate back into the community. One way that this is achieved is through community-based programs for sexual offenders, including:

- Low-Risk Treatment Groups conducted over 12 months with low-risk sexual offenders who are on probation and parole
- Community Maintenance Programs that provide post-release programs for sexual offenders who have completed the CUBIT or CORE gaol programs. These programs usually run for one year, with one session a week and attendance is usually a condition of parole (though offenders are encouraged to continue group participation after the parole period has expired). It aims to maintain gains made during treatment and help offenders to use relapse prevention strategies in a community context and avoid recidivism. These groups are offered at the Forensic Psychology Services – City Branch, Wollongong Probation and Parole

In addition, DCS has created Regional Supervisor Sex Offender Programs positions to provide individual follow up for offenders on parole in the north and west of the state.

DCS is also involved in the Child Protection Watch Team trial being led by NSW Police. This team became operational in June 2005 and is being piloted in southwestern Sydney. It aims to:

- Identify high risk offenders who present a risk to children
- Coordinate interagency efforts to reduce recidivism

See page 148 of this report for further information on the trial.

Barriers to DCS effectively responding to child sexual assault in Aboriginal communities

Effectiveness of Aboriginal Offenders Strategic Plan 2003-2005

DCS is in the process of evaluating AOSP, therefore it is not yet known whether the strategy has improved outcomes for Aboriginal people. Figures provided by DCS suggest that the proportion of Aboriginal offenders in custody has not increased significantly since the introduction of the AOSP in 2003. In July 2003, Aboriginal people were 18.3% of total prison population and in January 2006, they made up 20%.

It is important to note that DCS data is based on self-identification, i.e. a person must identify him or herself as Aboriginal. In 2004, Indigenous status was recorded as unknown in 12.6% of all those in the DCS system. By 2005, this had decreased to 10%.

Effectiveness of treatment programs for Aboriginal sex offenders

In general, evidence suggests that sex offender treatment programs are successful for some participants. Findings from studies into similar programs in Canada¹⁴⁴ indicate that sex offender treatment reduced the sexual offending recidivism rate by over 50% and that those who were treated remained out of prison at twice the rate of untreated offenders. Current treatments were associated with a sexual recidivism rate of 10%.

¹⁴⁴ Looman et al (1998) and Nicholaichuk et al (1998)

Evaluations undertaken by CUBIT psychologists have indicated that, in general, the treatment is effective in changing the thinking, attitudes, behaviour and feelings that has led to, or supports, offending behaviour. This is achieved by targeting inadequate coping strategies and attitudes condoning sexual violence that can lead to recidivism.

In NSW, a formal study of sexual offender recidivism is planned. However the study requires a sample of graduates from institutional treatment programs who have been in the community for more than five years and the SOP has not yet been running for long enough for this to be completed.

None of these studies review the specific experience of Aboriginal offenders. Research suggests that using mainstream models in sex offender treatment with Aboriginal people is unlikely to be effective as it uses frameworks and experiences that are foreign to Aboriginal people.¹⁴⁵ As they are not able to identify with the material used, they are much less likely to engage with it.

ACSAT acknowledges DCS attempts to improve cultural relevance of its CUBIT treatment program via the 16-session program being run concurrently by the Aboriginal Special Project Officer. However, ACSAT also notes that the effectiveness of this program is uncertain, particularly since it deals only with issues of culture and not with sexually offending behaviour in the context of Aboriginal culture.

During consultations, participants consistently said that offenders needed to be dealt with more effectively. They wanted offending behaviour to stop and they stressed the importance of effective treatment for offenders while they were incarcerated. They believed that current programs were not designed for Aboriginal people and that Aboriginal people found them difficult to complete, so many Aboriginal people were not receiving any treatment. As one participant said:

‘And then you might see them years later when they’ve finally got out of gaol and you find out that they never got any proper treatment or counselling or anything and it’s a revolving door situation. You worry about re-offending.’ *Transcript 11*

Some communities were also concerned that sex offender programs were voluntary and offenders could choose not to participate. In their view, voluntary participation coupled with a culturally irrelevant program, meant that most Aboriginal people would choose not to take part. They believed that if programs were culturally relevant, then more offenders would take part. They also believed that treatment should be a compulsory component of sentencing. As one participant suggests:

‘No-one gets rehabilitated in gaol. If they’re really serious about addressing stopping re-offending, there should be something built into the sentence that when they’ve done their time in gaol, they’ve got to go to some residential program that simply addresses the child sexual abuse problem and that that should be a coercive thing, perhaps under their parole conditions for instance.’ *Transcript 13*

Aboriginal-specific sex offender programs in other Australian states

During its research, ACSAT identified an Aboriginal-specific sex offender program that has been developed and successfully implemented in Western Australia. The success of this program has led to it being adapted for use in Queensland and the Northern Territory.

These Aboriginal specific programs retain most elements of the cognitive-behavioural relapse prevention model as used in NSW. However the therapists have found that the process of delivery impacts on treatment success more than the content of the programs. The specific differences to mainstream programs include:

¹⁴⁵ Lievore D (2004), *Recidivism of sexual assault offenders: rates, risk factors and treatment efficacy* A report prepared for the Office of the Status of Women by the Australian Institute of Criminology Canberra.

ACSAT recommendation 95

Research and develop an Aboriginal specific sex offender treatment program:

- a) Drawing on models such as the Aboriginal specific programs used in WA, Qld and SA
- b) Involving Aboriginal community members in the delivery of programs providing both male and female specific programming

- Greater use of audiovisual materials for Indigenous people
- Greater emphasis on the interaction of alcohol, violence and inappropriate sexuality
- Acknowledgement of the role of shame in Indigenous culture
- Awareness of issues arising out of tribal law
- Awareness of cultural differences with respect to sexual propriety and impropriety

A recent study of the program being run in Western Australia found that of 121 Aboriginal prisoners who completed the program since 2001, no participant had re-committed a sex offence.¹⁴⁶

Responding to Aboriginal adult survivors of child sexual assault who are incarcerated

Responding to disclosures of child sexual assault

Aboriginal inmates spoken to by ACSAT suggested that even if a disclosure was made to DCS, staff were not clear about how to respond. While ACSAT acknowledges that the protocols are in place, it is apparent that staff are not implementing them nor providing a supportive response.

ACSAT believes that effective responses to disclosures are always crucial, no matter where the disclosure occurs. Communities suggest that all too often, the first disclosure won't happen until the person is already incarcerated. As one participant suggests:

‘Sadly, a lot of them don’t disclose until they become more involved with corrective services.’ *Transcript 31*

DCS staff must respond appropriately and supportively to any disclosure of child sexual assault.

Programs for adult survivors of child sexual assault who are incarcerated

In its submission to ACSAT, DCS states that the prison environment is not an appropriate setting for offenders to address their experience of child sexual assault. DCS believe that programs in a correctional environment are at risk of being ineffective and potentially damaging and that such programs may render victims/offenders very vulnerable, as they may be released, or moved between centres. Such movements could disrupt the intensive therapeutic relationship and may reduce the likelihood of programs being effective in the future.

ACSAT recommendation 96

Develop a protocol and programs for victims of child sexual who disclose whilst in the corrective system (including both community or custody orders)

¹⁴⁶ As reported in the national newspaper: *The Australian*, 9 January 2006.

Communities, however, believed the opposite. They believed that gaols could provide a safe environment for those offenders who are also victims of child sexual assault to begin dealing with those issues. Community members suggested that inmates would not have the external pressures of family and community to think about and the distance provided by incarceration may allow them to deal more effectively with their issues.

Women and men in correctional facilities also reported to ACSAT that they felt 'more safe to talk' in the prison environment. As one participant said:

'We need programs in gaols, it is safe to talk there, we need groups in gaols.' *Non-audio recorded consultation 16*

In addition, 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. As one participant states:

'I am also aware that when the guys go inside when they are locked up for their offending behaviour what they address is the offending behaviour. But the underlying issues, they don't get addressed.'
Transcript 32

ACSAT believes that programs (such as group work) and counselling could be maintained throughout a person's incarceration. If a person is moved to a different facility, a record of their history can also be transferred and appropriate referrals could be made by the new facility so they could continue to work on their issues. If an inmate is to be reintegrated into the community, transition planning and appropriate referrals to community services can ensure that they can continue to get access to the services they need.

ACSAT recommends that every female correctional facility provide targeted programming and counselling to help women to address child sexual assault and that the same programming and counselling support should also be provided to male inmates.

ACSAT recommends that these services are available to all detainees so as not to stigmatise Aboriginal people within the system. However, the services would need to be culturally relevant to Aboriginal people and targeted efforts made to engage them with the program.

ACSAT recommendation 97

Develop and fund a model to provide child sexual assault counsellors/program coordinators in correctional facilities. Ensuring that:

- i. There is a counsellor/program coordinator on site of every female correctional facility
- ii. Counsellors/program coordinators are available to all male correctional facilities

ACSAT recommendations 98

- a) Research and develop a model and protocol for involving communities in transition planning for offenders
- b) Develop a communication strategy to inform community members of DCS sex offender programs and transitioning processes

Transition processes

During consultations, communities often reported the transition process for Aboriginal sex offenders from incarceration back into the community was not conducted well. Participants said that they didn't really know what the process of transition involved. However, it seemed to them that in some instances, convicted sex offenders were being placed back into communities with little or no support and this was placing more children and young people at risk.

Communities said that sometimes, a convicted sex offender will be ostracised by his own community and won't receive any support. This can be damaging for the offender. It may also lead to the offender moving to another community where his offending history is not known and he has access to children and young people. If he is also without support from DCS, or other services, family members or community people, this may place these children and young people at greater risk.

They also said that sometimes a sex offender is accepted back into the community without understanding the risks or the support that may be required to prevent this person from re-offending. Again, if he is also without support from DCS, children and young people in the community may be placed at greater risk.

ACSAT believes it is crucial that communities understand the transition process when a sex offender is to be reintegrated into their community and that communities are involved in transition planning.

ACSAT acknowledges that this would need to be implemented carefully due to the issues of privacy and suggests the model is developed in partnership with NSW Aboriginal community representatives.

ACSAT recommendation 99

Develop and implement protocols to collect data of offenders on community and custodial orders to ensure that appropriate services are made available to the adult survivors of child sexual assault

Data collection

DCS does not collect data on child sexual assault experiences of criminal offenders who are placed under their supervision. Collecting this data would allow for more targeted and effective programming and also provide an indication of the incidence of child sexual assault in Aboriginal people who criminally offend.

There is also limited data collected in relation to sex offender treatment programs. Data collected on the uptake of programs by Aboriginal people, tracking of dropout points, completion of programs and re-offending would allow for more targeted and effective programming. It would also report on the efficacy of sex offender programming for Aboriginal people.

Programs for adults who sexually offend but are not yet implicated in the criminal justice system

DCS has extensive corporate knowledge on dealing with sex offenders, yet it currently has no role in developing treatment strategies that may help prevent these people from becoming a DCS client.

ACSAT believes it is important that DCS work with agencies such as NSW Health, to share its knowledge and develop strategies to treat offenders who are not charged or convicted for an offence, but have requested help in dealing with their offending behaviours. See page 175 for further information on these programs.

ACSAT recommendation 65

Participate in the development of community-based offender treatment programs for adults that are accessible through self and agency referral and not dependant of the criminal justice system. (The development of this program is to be led by NSW Health)

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to DCS work towards achieving the following outcomes:

- Aboriginal sex offenders are able to access culturally relevant treatment programs
- Aboriginal people incarcerated are able to access programs and counselling to address historical issues of child sexual assault
- The Aboriginal community is aware of, and involved in, transition planning for Aboriginal sex offenders
- Data is collated and analysed regarding historical child sexual assault

PART 9: DEPARTMENT OF JUVENILE JUSTICE

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Overview of findings

When examining the Department of Juvenile Justice (DJJ) response to child sexual assault in Aboriginal communities, ACSAT found that:

- The impact of experiences of child sexual assault on offending behaviour is not adequately dealt with in DJJ programming for young offenders
- DJJ screening processes of new detainees were unlikely to identify experiences of child sexual assault victimisation among young Aboriginal offenders
- Data collected about detainees is not being collated or analysed in any clear way
- Young Aboriginal offenders had limited access to child sexual assault victim services and child protection education
- DJJ staff had limited knowledge of the dynamics of child sexual assault in Aboriginal communities and how experiences of child sexual assault might impact on the behaviour of the victim
- It was not known whether the sex offender treatment programs for juvenile sex offenders were effective for young Aboriginal detainees, nor whether more culturally appropriate models were needed
- DJJ has a role to play in developing prevention and treatment programs for children and young people who display sexually abusive behaviour but are not yet involved in the criminal justice system

The discussion of the response by DJJ to child sexual assault in Aboriginal communities draws on consultations with Aboriginal communities, submissions provided to ACSAT by DJJ and a visit of one detention centre.

Overview of DJJ services

DJJ manages children and young people who have committed criminal offences. This includes children and young people who have been:

- Referred and accepted for youth justice conferencing
- Remanded in custody pending appearance at court and
- Sentenced by a court to community-based supervision or to custody in a juvenile justice centre¹⁴⁷

Juvenile custodial services

In 2003/2004, there were eight juvenile justice centres in NSW and one emergency short-term accommodation unit located at Broken Hill.¹⁴⁸

Each juvenile justice centre provides supervision for, counselling (including drug and alcohol where appropriate) and interventions with, young offenders¹⁴⁹. The Department of Education and Training (DET) operates education and training units in each of the juvenile justice centres so that children and young people can continue their studies while in custody. NSW Health, through Justice Health, provides primary health services to detainees whilst in custody.

¹⁴⁷ Department of Juvenile Justice *Annual Report (2003/2004)*

¹⁴⁸ Of these, three are located in the Sydney metropolitan area and two are on the Central Coast. Other centres are located at Unanderra near Wollongong, Wagga Wagga, Dubbo and Grafton.

¹⁴⁹ Psychologists and counsellors (including drug and alcohol counsellors) conduct assessments and provide counselling and group work. They also provide advice to Juvenile Justice Centre staff about case management and provide reports on detainees to the courts.

Juvenile community-based services

Young offenders may be required to serve their court order within their communities, supervised by DJJ. Supervision is organised through one of the 37 juvenile justice community offices located across NSW¹⁵⁰. (Two of these are Intensive Program Units.)

Community-based offices provide children and young people with offence-focused interventions that aim to reduce re-offending. Interventions use intensive case management strategies and are provided by juvenile justice staff in partnership with other agencies.

Intensive Program Units (IPUs)

Juvenile justice counsellors provide specialist services from two metropolitan based IPUs as well as a variety of regional juvenile justice community service's offices. At these locations, counselling and development programs are provided as an alternative to custody. Psychologists or social workers provide intensive counselling, group work and living skills development to address the needs of young offenders whilst allowing them to remain in the community.

Youth Justice Conferencing

Youth justice conferences, operating within the terms of the *Young Offenders Act 1997*, are available for offences allegedly committed by children and young people that are too serious to be dealt with by police warnings or formal cautions. DJJ is responsible for administering Part 5 and Schedule 1 of the Act. These parts set out the provisions governing the administration of youth justice conferences and the status and conditions of engagement of youth justice conference convenors.

Services for Aboriginal detainees

In its submission to ACSAT, DJJ acknowledges the paucity of programs for Aboriginal children and young people. DJJ states that it has received funding until June 2007 to employ staff to develop more programs for Aboriginal children and young people. However none of the programs proposed will address child sexual assault.

Policy framework for providing services to Aboriginal communities

Aboriginal children and young people are grossly over-represented in the juvenile justice system. In 2003/4, Aboriginal children and young people made up 43% of the average number of children and young people in custody on any given day¹⁵¹, yet they make up less than 2% of the general population aged 10 to 18 years¹⁵².

In 2001, DJJ developed the *NSW Department of Juvenile Justice Aboriginal Over-representation Strategic Plan* to address the over-representation of Aboriginal children and young people in the juvenile justice system. The plan aims to:

- Provide a more accessible, comprehensive, focussed and holistic service network for Aboriginal children and young people that recognises the links between the factors that contributes to over-representation

¹⁵⁰ Community based offices employ a range of staff, including Juvenile Justice Officers, generalist and specialist (including alcohol and other drug) counsellors, program support officers and administrative staff.

¹⁵¹ NSW Department of Juvenile Justice *Annual Report, 2003/2004*

¹⁵² NSW Parliamentary Standing Committee on Law and Justice, (2000).

- Increase communities understanding of the support needs of Aboriginal offenders and the ability to provide that support
- Identify 'hot spots' or geographical areas where significant numbers of children and young people are entering the juvenile justice system
- Reduce re-offending by Aboriginal children and young people in 'hot spots'
- Research findings that are evidence-based and can inform policy and program development
- Increase the level of police cautions given to Aboriginal children and young people who offend
- Increase the level of referrals of Aboriginal young offenders to conferencing
- Improve access to DJJ funded services
- Decrease re-offending by Aboriginal children and young people leaving custody
- Develop a fully functioning and supported Aboriginal Unit within DJJ
- Improve effectiveness of DJJ interventions with Aboriginal people through the development and recruitment of Aboriginal staff
- Improve the effectiveness of DJJ interventions with Aboriginal people through the provision of cultural awareness training for all staff

Juvenile Justice community services aim to:

- Increase diversionary options for Aboriginal children and young people subsequently increasing community-based orders and decreasing custodial orders
- Develop a mentoring program that is effective in contributing to a reduction in re-offending

Specialist Programs and IPUs aim to improve access to DJJ specialist services and provide more culturally effective specialist services. Juvenile justice centres aim to provide successful community reintegration through effective and culturally appropriate interventions.

DJJ responses to evidence of child sexual assault in Aboriginal communities

The main ways that DJJ responds to evidence of Aboriginal experiences of child sexual assault are by:

- Providing support to young Aboriginal offenders who are also victims of child sexual assault and
- Providing treatment programs for juvenile Aboriginal sex offenders

Support for young Aboriginal offenders who are also victims of child sexual assault

Responding to disclosures

If a child or young person discloses past or present child sexual assault while they are in a DJJ facility or on a supervised court order, DJJ are mandated through the *Children and Young Persons (Care and Protection) Act 1998* to report the abuse to DoCS.

DJJ reports that it also refers the disclosure to Justice Health, a statutory corporation under the *Health Services Act* that provides all medical services to children and young people in custody. Justice Health then makes the appropriate referrals to the nearest sexual assault services.

According to the DJJ submission, support is also available from DJJ psychologists and protective behaviour training is provided to children and young people when recommended by DJJ counsellors/psychologists.

The submission provided to ACSAT from NSW Justice Health reported that it is in the process of developing clinical services plans with DJJ to help improve the services provided to children and young people who have been sexually abused. This has come about because a 2003 survey into the health needs of children and young people in custody¹⁵³ found 10% of all respondents said they had been sexually assaulted at some time. These clinical services plans include:

- A service agreement between Justice Health and NSW Health Sexual Assault Services
- Mechanisms to ensure that data about reports of sexual assault is collected and reviewed and
- Provision for educating DJJ and Justice Health staff about the management of sexual assault

Screening to identify victims of child sexual assault

When a young person is admitted into DJJ's care on either detention or community orders, a complete screening process is undertaken. DJJ uses a screening questionnaire known as the MAYSI-2 instrument, which provides initial information in the areas of mental and behavioural issues. Justice Health also provides a comprehensive health assessment to all children and young people entering detention centres.

DJJ reports that the children and young people are either asked the screening questions of the MAYSI-2 instrument directly by DJJ staff or asked to complete the questionnaire themselves. The MAYSI-2 instrument covers sexual assault in question number 50, which asks 'have you been raped, or been in danger of getting raped?'

In both juvenile justice centres and juvenile justice community offices, information is also gathered from external agencies/individuals such as police, DoCS and other significant people in the young person's life.

DJJ reports that information gathered during this process is used to develop a case plan and to provide the appropriate support/intervention for the young person. If issues of child sexual assault are identified during this process, the necessary referrals and reports are made.

Providing treatment for Aboriginal sex offenders

DJJ delivers a treatment program for children and young people who have been convicted of sexual offences. This program provides a comprehensive, individualised assessment for adolescents convicted of offences of a sexual nature, as well as providing group and individual treatment for children and young people assessed as suitable for the program.¹⁵⁴

Specialist assessment occurs after the child or young person has been convicted of the offence, but before sentencing. Recommendations are then made in the pre-sentencing report provided to the court. Only those whose sentences specify the need for treatment are included in the program.

¹⁵³ The survey was conducted by DJJ and Justice Health. The findings indicated that 41% of all respondents identified as Aboriginal. However, the data was not cross-referenced to see how many respondents who reported sexual abuse also identified as Aboriginal.

¹⁵⁴ Sex Offenders Program, Psychological and Specialist Services Information, Series No. 1, NSW Department of Juvenile Justice (2005).

The treatment aims to give the offender insight into his or her behaviour, develop a sense of responsibility for their offending, learn coping skills and relapse prevention strategies to stop further offending. The treatment is undertaken through group therapy and individual education to the child or young person and their families.

A coordinator and ten full-time counsellors provide the program. It is supported by a research unit that generates information about best practice in management and treatment of juvenile sex offenders. It also reviews the program and its outcomes.

There is no Aboriginal specific component to the sex offender program. DJJ reports that the program is delivered in a way that is designed to meet the needs of the participant and the participant's needs are identified through an individual assessment process. The counsellor then designs the program to respond to those needs and the circumstances of the young person.

Indirect responses

DJJ has developed a number of specific programs to work more effectively with Aboriginal children and young people. DJJ suggests that some issues relating to child sexual assault may be indirectly addressed as part of these programs.

Our Journey to Respect

Our Journey To Respect is a program designed for young Aboriginal men to address intergenerational violence. The program provides young offenders with strategies such as how to establish and maintain non-violent relationships and understanding issues around power and control in relationships. The program is delivered through group work over twelve sessions.

No More – No More Hurt, No More Pain, No More Grog, No More Shame

The program is an alcohol and other drug program aimed specifically at Aboriginal young men to assist them in addressing the issues surrounding alcohol related violence. The program is delivered through group work.

Barriers to DJJ effectively responding to evidence of child sexual assault in Aboriginal communities

Effectiveness of DJJ Aboriginal Over-representation Strategic Plan

An evaluation of the *DJJ Aboriginal Over-representation Strategic Plan* has recently been completed by the Institute of Criminology, University of Sydney and DJJ reports that they are in the process of analysing that report and associated data. Therefore, the evaluation was not available to ACSAT.

Community responses to DJJ services and a failure to decrease the high numbers of Aboriginal children and young people coming into contact with the service would suggest that this plan has not been very effective. In 1999/2000, *DJJ Annual Report* states that on any given day Aboriginal people were 35% of the total number of people in juvenile detention. The Plan was developed in 2001 and in 2003/04, Aboriginal children and young people made up 44% of the total number of people in juvenile detention. This marks a 9% increase in Aboriginal representation over a four-year period. During consultations, communities consistently stated that 'more of our kids are getting locked up everyday'.

ASCAT acknowledges that changes in legislation such as bail laws and a general increase in sentence lengths may impact on the overall increase of Aboriginal offenders in custody, however overrepresentation remains an issue.

The relationship between experiences of child sexual assault and offending behaviour

During consultations, Aboriginal communities consistently said they saw a link between experiencing child sexual assault and criminally offending behaviour. They believed that, in many instances, the children and young people who ended up in the criminal justice system were acting out as a direct result of their abuse or to get alcohol and/or drugs to help them try and forget the abuse. As one community member states:

'I mean, you look at the gaols and you look at the juvenile centres and I am sure most of those kids that are in there, whether they be Koori or, you know, other ethnic groups, a lot of those are survivors (of child sexual assault).' *Transcript 9*

Research has supported this link. For example the Aboriginal Justice Advisory Council report, *Speak Out, Speak Strong* (2000) found that of the Aboriginal women in prison it spoke to, 70% said they had been sexually assaulted as a child. This report also found that women who had been sexually assaulted were more likely to use heroin and that heroin-related crimes were the main reason they were incarcerated.

Communities felt that DJJ did not effectively deal with child sexual assault as one of the underlying factors that might lead to the criminally offending behaviour of Aboriginal children and young people. As one community member observes:

"Now what is happening is that kids are going in there [detention] as a result of their criminal activities, nobody is trying to work with them to look at underlying and that sort of thing and the kids coming out and just continuing and they are becoming more and more angry." *Transcript 12*

In its submission to ACSAT, DJJ acknowledges that, based on its experience and on the results of the *Young People in Custody Health Survey*, many children and young people in custody could be regarded as having 'maltreatment' histories. DJJ stated that its offender-focussed programs recognise a 'maltreatment history' as one of the risk factors associated with re-offending. However, DJJ does not necessarily respond to these histories as 'causes' of offending behaviour.

Further, in its *Aboriginal Over-representation Plan*, DJJ recognise that a number of underlying factors can contribute to the overrepresentation of Aboriginal children and young people in its service, including issues such as family separation, socioeconomic disadvantage and marginalisation. However, it does not recognise experiences of child sexual assault or any form of child sexual abuse in this list. This is despite what DJJ knows, and reports in its 2000/01 Annual Report, about the profile of its clients. As reported:

'A large proportion has been affected by neglect, or physical, emotional or sexual abuse. This is particularly the case with young women who are departmental clients.'

In one sample of Reiby (a detention centre for 10-16 year old male detainees with behaviour difficulties) clients, it was found that 87% had been officially notified as victims of child abuse and 62% had been officially notified on three or more occasions.¹⁵⁵

ACSAT finds it extraordinary that DJJ admit that a 'maltreatment history' has an impact on offending behaviour, and the Justice Health Survey also suggests there is a likely link, however

¹⁵⁵ DJJ Annual Report 2000/02, p. 6

DJJ still fails to acknowledge that child sexual assault needs to be dealt with when addressing offending behaviours.

Similar issues exist in the adult correctional system. There is a lack of clarity about whether child sexual assault is directly related to criminally offending behaviour and whether there is a need to address this link within the current correctional systems. Therefore, it is evident to ACSAT that further research is required to explore the nature of the link and the impacts that child sexual assault victimisation has on criminally offending behaviour.

The efficacy of the screening process in identifying victims of child sexual assault

In its submission, DJJ reports that it conducts a screening process as part of a person's admission into custody that would identify whether someone has experienced child sexual assault and enable DJJ to provide appropriate supports to this person.

However, ACSAT identified a number of issues with the screening process that is likely to impact on its effectiveness, including:

- The question asks people only about their experience of rape. Rape is only one form of sexual assault. The question does not consider other forms of sexual assault or the complex nature of child sexual assault. Therefore a 'yes' answer to rape does not give a reliable indication of victimisation of child sexual assault. Similarly, a 'no' answer to rape does not necessarily mean the person was not sexually assaulted as a child as they may not recognise this assault as a 'rape'
- The question is number 50 of a questionnaire. This means that young people have been answering questions for a while before they get to this one and may be less engaged with the process
- DJJ staff generally asks the questions. To an Aboriginal young person being admitted into custody, this person is likely to be viewed as a prison official and a stranger. It is unlikely that a direct question about sexual assault asked by such a person is going to be answered reliably

Given what is known about government officials asking Aboriginal people questions, coupled with the dynamics of child sexual assault, ACSAT believes that this process is unlikely to be effective in identifying Aboriginal victims of child sexual assault. As DJJ programming for young offenders is based on the outcome of this process, it would appear that opportunities to identify and address child sexual assault victimisation are being lost.

ACSAT recommendation 100

Research is undertaken to investigate the relationship between child sexual assault victimisation and criminally offending behaviour in Aboriginal detainees (both adults and children and young people). This will provide an evidence base for future programming to address offending behaviour. It is to be undertaken by the Centre for Health in Criminal Justice

ACSAT recommendation 101

Review current screening processes to ensure that appropriate child sexual assault victimisation questions are asked

ACSAT recommendation 102

Standard data about victimisation of child sexual assault is collated, analysed and included in annual reporting processes so that any trends and needs can be identified

Use of data

On review of the information provided by DJJ in its submission, and of various annual reports, it appears that information collected as part of the screening process is not collated or analysed. ACSAT could not find any reliable information about how many detainees identified themselves as victims of child sexual assault, or how many were identified as possible or actual victims from information provided by other service providers as part of the screening process.

DJJ reported that they had not collated the data from the MAYSI –2 screening tools. In addition, the data collection process could be considered subjective and inconsistent as the questions on the MAYSI –2 screening tool can be completed in a variety of ways. For example the young person can fill in the answers themselves or DJJ staff can complete the questionnaire based on responses from detainees.

ACSAT recommendation 103

Develop a service delivery model which employs child sexual assault counsellors/sexual health workers in every detention centre to provide:

- i. Child sexual assault counselling
- ii. Protective behaviours programming
- iii. Sexual health counselling

Programming for Aboriginal offenders who are also victims of child sexual assault

In 2003/04, 44% of all detainees in the juvenile justice system were Aboriginal. Aboriginal communities, and research, suggest a strong correlation between child sexual assault victimisation and criminal offending behaviours in Aboriginal children and young people. And yet, no programs to address child sexual assault were available to Aboriginal children and young people in the juvenile justice system.

In its submission to ACSAT, DJJ acknowledges that there is a paucity of programs for Aboriginal children and young people and as previously discussed, has sought and has received funding for the next four years to employ staff to develop further programs. However, none of these programs address child sexual assault issues.

DJJ argue that 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.

ACSAT acknowledges that these are issues that need to be considered. However, many consultation participants saw this absence of program support as a missed opportunity. Participants that held this view 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.

ACSAT believes that DJJ could have a greater role in providing services to Aboriginal offenders who have experienced child sexual assault and suggests that every detention centre should be providing specific programs to help children and young people to address it.

ACSAT recommends that these programs are available to all detainees, so as not to stigmatise Aboriginal people within the system. However, the programs would need to be culturally relevant to Aboriginal children and young people and targeted efforts made to engage them with the program.

Staff skills

Evidence has proven that the experience of child sexual assault has a profound effect on a young person and reduces their likelihood of developing positive behaviours.

Given that: 44% of the DJJ client base is Aboriginal; there appears to be a link between criminal offending and child sexual assault victimisation; and ACSAT's findings suggest the incidence of child sexual assault is much higher than current data suggests, it is likely that a large number of Aboriginal children and young people in the system have experienced child sexual assault.

At present, DJJ frontline staff receives training in child protection issues and how to respond. However, ACSAT believes more skills development is required. ACSAT believes that it is essential for all DJJ staff, particularly frontline staff and those working with the children and young people on an intensive level such as counsellors, to have an in-depth understanding of the impacts, indicators and dynamics of child sexual assault specific to Aboriginal communities so they can respond effectively to any disclosure or indicative behaviour that the young person may be displaying.

Any training would need to be undertaken on a regular basis to ensure that the DJJ staff maintained their understanding of the issues and their skills in managing children and young people who may have been impacted by child sexual assault.

Teaching protective behaviours

It is possible that DJJ clients are experiencing current child sexual assault from someone in their family or community that has only been 'interrupted' by the young person's detention. In these instances, the abuse could resume when the young person is released from custody.

ACSAT recommendation 104

- a) Review current child sexual assault training to include Aboriginal specific issues
- b) Provide comprehensive training for counselling staff on indicators, impacts, dynamics and responses to child sexual assault in Aboriginal communities
- c) Provide extensive training on Aboriginal experiences of child sexual assault to all staff annually

ACSAT recommendation 105

Include consistent and mandatory protective behaviours/personal safety in all detention centres programming and deliver this information in partnership with Aboriginal communities

Similarly, it has been suggested by communities that many people who experience child sexual assault often end up in abusive relationships as adolescents and adults. This link has been confirmed by research.

The break in the 'cycle of abuse' that detention sometimes provides could be used as an opportunity to teach the young person about how to develop safety strategies that may help them to prevent further abuse in the future.

When ACSAT asked about how protective behaviours were taught, DJJ indicated that this was the responsibility of the Department of Education and Training (DET), who provide educational programming within centres. In its submission to ACSAT, DJJ did state that protective behaviours were taught to children and young people if recommended by DJJ counsellors. However, this still relies on the screening process identifying that the young person is in need of support from the counsellors.

DET advised ACSAT that all centres provide child protection education, but the extent and nature of the programs was diverse and used a range of approaches. At the time of this inquiry, it was not known to what extent these programs were run in each centre. It was also unknown if any Aboriginal people were involved in the development and delivery of these services.

Given the vulnerability of young Aboriginal offenders and the increasingly risky situations that they put themselves into through their criminal behaviour, ACSAT believes it is essential that personal safety and protective behaviours programs are delivered in DJJ centres. ACSAT believes that DJJ, DET, Justice Health and the Aboriginal community need to work in partnership to develop programs that will be effective and applicable to Aboriginal children and young people.

Treatment for juvenile sex offenders

Treatment programs for juvenile sex offenders were not discussed in any detail during consultations. Most people weren't aware that such programs for juveniles existed and there was a perception that little was being done to assist sex offenders.

Some participants expressed concern that juvenile sex offenders were in fact victims themselves and were simply perpetuating the abuse. While everyone who held this view still believed the abuse was wrong and that being a victim of child sexual assault was no excuse for becoming a perpetrator, they did feel it needed to be taken into consideration as part of treating the offender. They felt that if experiences of child sexual assault were a conscious or unconscious factor in an offender's decision to become a

perpetrator, then healing from this experience would be essential to reduce the likelihood of re-offending.

Those participants who did comment on treatment for juvenile sex offenders felt that alternative treatment options for Aboriginal juvenile offenders needed to be explored or existing ones needed to be made more effective. Meeting the needs of Aboriginal sex offenders is complex as one participant suggests:

'I think community based residential treatment for sex offenders is what we need, it needs to be local and it needs to be near the community, but not within the community and it needs to be run by the Juvenile Justice system and it is about treatment and it's about residential, because residence in housing sex offenders is really difficult and we can't do it and we don't do it well and families feel like they have got no choice, but that can then add to the fact that we then take the victim child who is easier to place to some extent, but exacerbates everybody's pain and suffering.' *Transcript 10*

Research suggests that treating sex offenders as soon as possible is crucial to addressing the behaviour and reducing recidivism. As outlined by Robyn Layton QC of the Child Protection Review in South Australia:

'Sexually abusive behaviour often starts in early adolescence and is likely to become entrenched if intervention does not occur. As adolescence is a period of developmental change, there is often greater potential to intervene, change behaviour and create positive sexual identity.'¹⁵⁶

Aboriginal involvement in sex offender programs

Aboriginal children and young people make up a significant proportion of sex offender program participants in juvenile justice settings. In 2002/03, 35% of children or young people undertaking the DJJ sex offender program were Aboriginal and 61% of these completed the program. In 2003/04, 26% were Aboriginal and 50% of these completed the program.¹⁵⁷

However, DJJ reports that there is no Aboriginal specific component to the sex offender program. DJJ acknowledges that many Aboriginal detainees have specific needs and they suggest that this is addressed through the assessment process. Counsellors would consider Aboriginal cultural issues and develop a specific approach for working with Indigenous clients. None of these counsellors are Aboriginal.

Again, ACSAT believes this is a missed opportunity. Given the high proportion of Aboriginal detainees in juvenile justice settings, the high incidence of sexual assault in Aboriginal communities, the importance of providing treatment to sex offenders at the earliest possible age and DJJs commitments in its *Aboriginal Over-*

ACSAT recommendation 106

- a) Examine the effectiveness of current sex offender programs for Aboriginal children and young people
- b) Research and develop specific sex offender treatment models to engage young Aboriginal sex offenders more effectively

¹⁵⁶ Layton, R. QC, (2004), *Protecting Children Through Sex Offender Treatment*, Child Protection Review 16.7, South Australian Government.

¹⁵⁷ Note: It is not known whether these programs are effective in reducing re-offending. Also, the actual numbers of participants is quite low, n=13 in both periods. Care must be used in interpreting data.

representation Strategic Plan, it makes sense that DJJ should try and make its treatment programs as effective as it possibly can for Aboriginal children and young people. To be effective, treatment programs need to be delivered in ways that Aboriginal children and young people can identify with and relate to.

ACSAT recommends that DJJ review its treatment programs to see if they are effective for Aboriginal children and young people and develop appropriate models accordingly.

ACSAT recommendation 64

DJJ to actively work with NSW Health and DoCS to develop programs for Aboriginal offenders who have not yet come into contact with the criminal justice system in a crime prevention/early intervention capacity

Working with children and young people ‘at risk’ of sexually offending

During consultations, Aboriginal communities consistently said that there were no services available for children and young people who were at risk of sexually offending unless they were charged and dealt with by the justice system.

DJJ has extensive corporate knowledge on dealing with children and young people who display sexually abusive behaviours, yet it currently has no direct role in strategies to prevent these children and young people from actually offending.

ACSAT believes it is important that DJJ work with agencies such as DoCS and NSW Health to share its knowledge and develop strategies to address sexually abusive behaviours in children and young people *before* they are charged or convicted with an offence. This would also be compatible with the aims of the *DJJ Aboriginal Over-representation Strategic Plan*, which is to reduce the number of Aboriginal children and young people in the criminal justice system.

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to DJJ work towards achieving the following outcomes:

- DJJ clients receive appropriate counselling and support to address their issues of child sexual assault victimisation
- Sex offender programs are accessible and effective for Aboriginal children and young people
- DJJ staff are able to understand and respond effectively to child sexual assault issues for Aboriginal clients
- Data relating to child sexual assault victimisation is effectively collected and analysed

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Overview of findings

When examining the Department of Education and Training (DET) response to child sexual assault in Aboriginal communities, ACSAT found:

- Overall, communities were positive about their local schools and educational facilities
- While some communities said that their local schools were performing their child protection responsibilities adequately, others believed that some teachers in their local schools were not reporting child sexual assault to DoCS even though they knew it was happening and they were mandated to do so
- Aboriginal staff working within schools are relied on heavily by the community to provide support to children and their families and it is possible, even likely, that disclosures of child sexual assault will be made to them. It is crucial that they understand the indicators and dynamics of child sexual assault and the impact it has on communities so they can provide appropriate support to students, their families and the school
- Participants believed that teaching protective behaviours to Aboriginal children and young people was a vital component to addressing child sexual assault in Aboriginal communities and that schools were the ideal place for this learning to occur
- Protective behaviours should also be taught in a community setting so that high-risk children and young people who were not attending school regularly could access it
- Teaching and learning about child protection and protective behaviours to Aboriginal children and young people must be culturally appropriate and ideally involve the local community in its development and delivery
- The *Negotiating Consent* package developed by the NSW Violence Against Women Unit should be run in all secondary schools
- More Aboriginal staff are needed in student support roles, particularly counsellors and welfare positions
- Little is known about the specific support needs of Aboriginal children and the best ways to provide this support
- Human services courses, welfare courses and counselling courses being offered through TAFE currently do not teach about child sexual assault in Aboriginal communities

This discussion of the response by DET to Aboriginal child sexual assault draws on consultations with Aboriginal communities, a submission provided to ACSAT by DET and the Review of Aboriginal Education, *Yanigurra Muya: Ganggurrinyma Yaari Guurulaw Yirringin.gurray*, Freeing the Spirit: Dreaming an Equal Future.

Overview of services provided by DET

The NSW Department of Education and Training provided education and training services through an extensive network of Government schools, TAFE NSW Institutes, Adult and Community Education (ACE) colleges, the National Art School (NAS) and the Adult Migrant English Service (AMES).

The NSW Department of Education and Training provides:

- Preschool education
- Primary school education
- Secondary school education

- Vocational education and training (VET) programs and services
- TAFE NSW industry-recognised VET courses
- Apprenticeships and traineeships
- Adult and community education courses
- Adult migrant English programs

Policy framework for providing services to Aboriginal communities

Policies guiding the delivery of Aboriginal education in NSW

In 1990, the *National Aboriginal and Torres Strait Islander Education Policy* (NATSIEP) committed all Australian governments to work towards educational equity for Aboriginal Australians. The NATSIEP was reviewed in 1995 and this led to the development of the *National Strategy for the Education of Aboriginal and Torres Strait Islander Peoples 1996–2002*.

NSW worked from the national policy to develop the *NSW Aboriginal Education Policy 1996–2002*. This policy framework set the following goals for NSW schools:

- Curriculum, teaching and assessment programs will be challenging and culturally appropriate
- Schools will have a supportive learning environment
- Aboriginal communities and DET will become partners in the educational process
- All Department of School Education staff will have a knowledge and understanding of, and respect for, Aboriginal Australia

Review of Aboriginal education

In 2003/04, a review of the way education and training for Aboriginal students was provided in NSW was undertaken. The review, *The Report of the Review of Aboriginal Education, Yanigurra Muya: Ganggurrinyima Yaarli Guurulaw Yirringin.gurray Freeing the Spirit: Dreaming an Equal Future*, mapped current activity and then worked in partnership with Aboriginal communities to develop a comprehensive state-wide approach to improving Aboriginal education.

Aboriginal Education and Training Draft Strategic Plan

Many of the outcomes of the review have been incorporated into the *Aboriginal Education and Training Draft Strategic Plan* currently being developed to guide the delivery of education to Aboriginal communities in NSW.

The *Aboriginal Education and Training Draft Strategic Plan* provides a framework for DET, in collaboration with the NSW Aboriginal Education Consultative Group Inc (AECG) and other government agencies, to overcome barriers to Aboriginal people accessing DET services. Strategies include:

- Ensuring all DET staff complete the Aboriginal Cultural Education program
- Providing Aboriginal community capacity building programs through TAFE
- Establishing Elders Groups in each region to provide advice
- Strengthening the partnership agreement between DET and AECG to include state, regional and local agreements

Working with Aboriginal communities

DET delivers Aboriginal education in NSW in partnership with AECG. DET and AECG have a partnership agreement and work collaboratively at all levels of the education and training system. AECG is represented on the Director General's Aboriginal Education and Training Advisory Group, all major Aboriginal education and training committees and working parties and merit selection panels for identified positions and positions in schools with significant Aboriginal student population. AECG provides community advice to education providers at local, regional and state level.

This partnership develops the agenda and materials for Aboriginal learning, and ensures Aboriginal input into decision-making. It also ensures that mainstream teaching and learning includes lessons about Aboriginal Australia. DET consults AECG on the targeting of resources to ensure equitable outcomes for Aboriginal students.

Overseeing Aboriginal education

The Aboriginal Education and Training Directorate (AETD) is responsible for improving the education and training outcomes of Aboriginal students. It provides a framework for the development of policies and guidelines and provides leadership and advice in the development of specific courses for Aboriginal people.¹⁵⁸ The AETD also promotes services and programs, supports the professional development of staff and allocates funds for the provision of education and training programs for Aboriginal and Torres Strait Islander students.

DET responses to evidence of child sexual assault in Aboriginal communities

While responding to evidence of child sexual assault in Aboriginal communities is not the DET's primary role, it does provide some direct and indirect responses, as outlined below.

Direct responses

Child protection – mandatory reporting of child sexual assault

All DET staff are required to report to DoCS if they suspect a child is being harmed or is at risk of being harmed, including experiencing child sexual assault. DET are currently one of the highest child protection reporters. In 2002-03, 14.3% of all reports to DoCS came from school staff.

Protecting children and young people from risk of harm while they are in the DET's care

DET staff also have a responsibility, as outlined in the *Interagency Guidelines for Child Protection Intervention 2000*, to promote the safety, welfare and well-being of children and young people. They provide general support to children and young people considered at risk in collaboration with other agencies such as DoCS and NSW Health.

¹⁵⁸ <http://www.aboriginaleducation.nsw.edu.au>

Indirect responses

Developing early intervention models that help to identify children at risk

Schools play a key role in the early identification of children and young people who may be at risk of harm. DET states that when problems are identified, collaborative early intervention is a priority.

Research has shown that the early years of a child's life (i.e. between 0-5 years) are the most formative. To assist in the development of Aboriginal children during these years, and to help with the early identification and intervention of possible learning difficulties, DET has established eleven pre-schools in Aboriginal communities in NSW.

These pre-schools aim to provide formal early education experiences for Aboriginal children and to promote a smooth transition from home to school. The pre-schools:

- Provide culturally appropriate programs developed in consultation with local Aboriginal communities
- Develop skills and understanding in literacy and numeracy through a structured play environment, which values home experiences and incorporates Aboriginal English
- Help to identify children who are at risk at an early stage and provide support to these children and their families

Providing information about child protection to the broader school community

DET, in consultation with AECG, has developed a *Child Protection: the Community Perspective* package to provide information about child abuse and neglect to the school community (including students and their families and communities) and to help communities to understand and support child protection initiatives. The package includes a video, posters and a session to raise awareness with communities.

Teaching and learning for students about child protection

All students, from kindergarten to year 10, are taught *Child Protection Education* materials as part of the Personal Development, Health and Physical Education (PDHPE) curriculum. Students are taught about their right to live free from abuse, how to recognise and respond to unsafe situations and how to get help. There are specific lessons addressing child sexual assault.

From kindergarten on, the DET child protection teaching and learning materials address concepts of gender, masculinity and femininity, appropriate sexual behaviour, relationships, and skills in communication and conflict resolution. Older students are taught how to recognise risky situations and some ways they might protect themselves.

DET reports that the school's student welfare, gender equity and discipline policies, and anti-bullying codes, reinforces that violence and abuse of any kinds is not acceptable and encourages students to seek support if they have concerns about their safety.

In addition, DET allows schools to run additional programs that may have been developed outside of the DET curriculum development system. These materials must complement the DET curriculum and schools may choose to run them if they consider they are relevant to the their students. One example of such materials is the *Negotiating Consent* package developed by the NSW Violence Against Women Unit to teach young people about date rape and negotiating consent to sex.

Teaching and learning for students about healthy relationships

The PDHPE curriculum also teaches students about sexuality and types of relationships, gender equity, skills in developing and maintaining positive, non-coercive relationships and rights and responsibilities in relationships.

DET is currently running a pilot, called *Machismo*, in 27 government schools across the NSW. *Machismo* targets male students and aims to help them develop an understanding of, and skills in, respectful relationships. It explores factors that can have a destructive impact on relationships and includes activities which challenge the use of violence against women.

Employing school counsellors and welfare officers

DET employs a number of counsellors and welfare officers¹⁵⁹ across NSW. Their role is to strengthen student welfare provisions and provide counselling and psychological assessment for students with specific needs. This includes helping teaching staff to engage children and to provide support to students who have experienced abuse.

School counsellors are experienced teachers with post-graduate training in counselling, who collaborate with teachers to improve learning outcomes for students. School counsellors also provide general support to students who have experienced abuse. However, they do not provide specialist sexual assault counselling. If a student has experienced sexual assault, counsellors will refer them and their families to services such as DoCS and local support services and liaise with these agencies as appropriate.

Other staff who may provide support to students include student welfare co-ordinators, head teachers (student welfare) and year advisors.

Employing Aboriginal staff

DET employs Aboriginal staff in a range of positions across NSW. These positions are crucial for providing effective education to Aboriginal children and young people. In addition, they provide links between Aboriginal communities and schools and help to create a supportive environment where complex issues such as child sexual assault could be raised. The current Aboriginal field staff positions which may impact on incidence or reporting of child sexual assault include¹⁶⁰:

- Aboriginal Education Assistants (AEAs) – DET reports that it employs 320 AEAs to help classroom teachers improve educational outcomes for Aboriginal students. AEAs are appointed to high, primary and central schools, designated Departmental preschools in Aboriginal communities and schools for specific purposes. They work closely with Aboriginal students and develop partnerships with parents, community and the local AECG. They have a key role in referring students to school support services where there are concerns about their welfare or well-being
- Aboriginal Community Liaison Officers (ACLOs) – DET reports that it employs 33 ACLOs to promote community knowledge of, and access to, school and regional student welfare staff resources. ACLOs also inform school staff about local issues and protocols in Aboriginal communities and they help to build links between the school and the community, including the local AECG

¹⁵⁹ The DET submission (2005) stated that DET employs 10 Student Support Coordinators (Student Counselling and Welfare), 33 Student Support Officers and 43 Student Welfare Consultants.

¹⁶⁰ Review of Aboriginal Education, (2004) *Yanigurra Muya: Ganggurrinyrna Yaarri Guurulaw Yirringin.gurray*, Freeing the Spirit: Dreaming an Equal Future.

- Aboriginal Student Liaison Officers (ASLOs) – DET reports that it employs 10 ASLOs to help improve Aboriginal children’s attendance at school. They work with schools, students, their families and communities and may provide support to families by visiting them at home and liaising with principals in following up non-attendance issues
- Consultant, Aboriginal Education – these consultants work across a school region providing advice and support to schools on the implementation of education, equity and anti-racism policies and programs and specialist support to schools with Aboriginal students. They assist in providing professional support for Aboriginal educators such as Aboriginal teachers and Aboriginal Student Liaison Officers

Staff training in child protection

All staff employed by DET must attend an initial child protection briefing and DET keeps a register of this participation. Every year, all staff also complete a professional development and training workshop on protecting and supporting children and young people. Information and support for training is provided on the Department’s internal Child Protection Website.

The Aboriginal Education and Training, and Student Welfare, Directorates have developed a professional development plan for Aboriginal staff that targets child protection issues for Aboriginal students and families. The professional development plan builds on the Department’s core child protection training and includes facilitator training, mentoring and support for AEAs and ACLOs working with teachers and regional student services personnel.

Staff training in family violence

Information about family violence, and providing support to children and young people who experience it, has been provided in training packages for school staff and in on-line information on the Department’s child protection website. Staff development resources, entitled *Teaching Against Violence*, have been distributed to every school to help teachers to integrate teaching and learning about anti-violence and skills for conflict resolution across the curriculum. These resources address family violence, harassment and bullying.

Interagency cooperation

DET is involved in a number of key government strategies that link schools and families with health, welfare and family support programs. For example, DET participate in the NSW Government *Families First* and the DoCS *Aboriginal Child, Youth and Family Strategy* at the state, regional and local level.

Barriers to DET effectively responding to evidence of child sexual assault in Aboriginal communities

Throughout the ACSAT consultation process, Aboriginal communities consistently reported a positive relationship with local schools and educational facilities. Communities could see that DET had been proactive in improving educational outcomes and providing support mechanisms for Aboriginal children, young people and adults.

However, ACSAT also identified a number of factors that were barriers to DET providing an effective response to evidence of child sexual assault in Aboriginal communities. These are outlined below.

Staff skills

All staff

All DET staff receive an initial child protection briefing and every year, all staff complete a professional development and training workshop on protecting and supporting children and young people. However, ACSAT is concerned that this training may not be sufficient. While many communities reported that the schools in their area performed their child protection responsibilities adequately, others reported that teachers and schools in their area did not.

A number of participants said that teachers were sometimes not reporting child sexual assault, even when they were aware it was happening. They concluded that this was because the teacher, or the school, didn't want to get involved in the situation by making a report. Communities stressed how important it was for schools to take action, as sometimes the family could not¹⁶¹. As one community member stated:

'The teachers are the main priorities at school, you know. They see the problem; they know there's a problem...they're supposed to be mandatory reporters but they don't do it...A lot of them are pushing it beneath the carpet. They can see it happen, but they want the parents to identify it themselves. But how can they when they're not educated enough to identify it?' *Transcript 15*

Failure to report a child at risk of harm because of child sexual assault could arise because a staff member does not fully understand either their obligations as a mandatory reporter or the consequences for the child if no-one intervenes. It could also arise because they are not able to recognise the indicators of child sexual assault in an Aboriginal context. Either way, it suggests further skills development is required for DET staff that work in direct contact with Aboriginal children and young people.

ACSAT recommendation 107

Develop and implement a targeted training strategy to educate staff in the dynamics, indicators and impacts of child sexual assault in Aboriginal communities. This strategy is to include:

- i. Annual staff training on Aboriginal specific child protection issues
- ii. Extensive child sexual assault education for Aboriginal staff to build their understanding and awareness

Aboriginal staff

Aboriginal staff working within schools are relied on heavily by the community and the education system to provide support to children and their families. Often, because the children and the families trust them, Aboriginal staff become a mechanism for disclosure. They play a central role in supporting the children and their families through these difficult circumstances. It is crucial that they are able to understand the impacts, indicators and dynamics of child sexual assault, so that they are able to provide effective support to the community as well as DET.

ACSAT acknowledges that DET has a professional development plan for Aboriginal staff to target child protection issues for

¹⁶¹ There are many reasons why a family may not be able to take action. These include factors such as fear of reprisal, shame, lack of awareness that the assault is occurring etc. These reasons are discussed in more detail in chapter 2, part 1 of this report. (page 48)

Aboriginal students and families. ACSAT recommends that Aboriginal staff also receive extensive and specific education about child sexual assault to raise their awareness and improve their understanding of the issue.

Aboriginal involvement in teaching protective behaviours

Communities consistently stressed the importance of their children learning ways to protect themselves from sexual assault from as early age as possible. This included teaching the children general safety strategies as well as some specific things they might do if they were being sexually assaulted or at risk of being sexually assaulted. This was seen as a vital component of addressing child sexual assault in their communities. As participants said:

‘Education, prevention is better than a cure.’ *Transcript 27*

‘If we educate these kids from the word go and keep educating them all the way through, hopefully we might save a child...’

And

‘We need to start on these little young, from pre-school age up, from babies, you know, we need to be out there talking to them. I mean we may not be able to educate their predators but perhaps we can educate our kids how to protect them still.’ *Transcript 10*

Communities believed that schools were the best place for this learning to occur. They felt that whilst their children were attending school, DET had the ideal opportunity to provide information about child sexual assault to both the children in their care and their families. Participants made comments such as:

‘Teaching kids how to keep themselves safe. From the moment they go to school they need protective behaviour, culturally appropriate protective behaviours training to help keep themselves safe and I just can’t emphasise that enough. They need to know, learn how to put strategies in place to keep themselves safe, how to identify people in the community or the family who they can go to. They need to have a plan if anything goes wrong and that’s, you know, where protective behaviours is really important in school, learning it in school, because they can get an idea from their friends in class about how to keep themselves safe. Because often kids who are abused don’t know how to stay safe. They don’t know how to plan to keep safe if anything goes wrong and sometimes when they’re having this educational stuff at school, something will come up that they think “Oh, I can do that” you know the next time it looks like it’s going to happen, yeah.’ *Transcript 24*

And

‘We need it taught in schools because parents could be the perpetrators.’ *Information Session 4*

And

‘You’ve got to start in school. I mean, I don’t know if it’s being done at school at the moment or what’s being done, but that’s certainly the first place you’ve got to look to for generational change.’ *Transcript 11*

Participants also stressed the importance of teaching protective behaviours to Aboriginal children and young people in a culturally appropriate way that acknowledged community and family links and was delivered in a way Aboriginal children and young people could relate to. Participants made comments such as:

‘Education is another good one through the schools, but in a language that our kids understand.’ *Transcript 35*

ACSAT recommendation 108

- a) Involve the local Aboriginal community in development and planning of locally relevant strategies and resources for the delivery of child protection education
- b) Involve Aboriginal people in the delivery of the child protection education curriculum

And

'We need more Aboriginal protective behaviours type programmes being done in the school system because I don't know that the programme that the school's currently run that has - you know, about keeping kids safe, looks at Aboriginal culture and the value of family and how broad family is in Aboriginal communities.' *Transcript 10*

Those participants that spoke of the importance of teaching culturally appropriate protective behaviours believed that children should be taught how to protect themselves within their local community. They suggested that to do this, local Aboriginal people would need to be involved in the development and delivery of protective behaviour programs. Such community involvement would have the added benefit of allowing participants to continue to support the education outside of the school as well as helping to educate the wider community.

Complimentary child protection education that can be taught in a community setting is also a vital part of educating Aboriginal young people about child sexual assault as some high risk young people were not attending school.

ACSAT recommendation 109

Encourage/support schools to implement the *Negotiating Consent* Program in secondary schools

Teaching the Negotiating Consent package

In consultations where the *Negotiating Consent* teaching and learning package had been run in the local schools, it was highly regarded. Participants said that their young people were coming home very clear about their rights in relationships and that it had helped them to develop a greater sense of safety.

ACSAT understands that because this is not a DET produced package, running the *Negotiating Consent* package is not compulsory but a decision for individual schools. ACSAT recommends that DET encourage secondary schools, particularly those in areas with large Aboriginal populations, to run the program. (The cultural appropriateness of the *Negotiating Consent* package is discussed on page 111 of this report.)

ACSAT recommendation 110

Develop strategies, short and long term, to increase the number of Aboriginal staff in student support roles.

Aboriginal staff in support roles

Aboriginal communities commended DET's achievements in supporting Aboriginal children, young people and their families through the education process. However, communities taking part in consultations still felt there were not enough Aboriginal people working within the DET system, particularly in school counsellor and welfare positions.

The participants that expressed this view indicated that Aboriginal families often had complex needs, particularly in relation to child protection (including child sexual assault), poverty and substance abuse. They believed that these issues impacted on a family's

ability to keep their children at school and the burden of supporting these Aboriginal families often fell to only one or two Aboriginal staff working within a school. ACSAT believes that DET needs to increase the number of Aboriginal staff in support roles.

ACSAT also believes that DET needs to examine the support needs Aboriginal students and the effectiveness of current support mechanisms. ACSAT's recommendations are supported by the *Review of Aboriginal Education's* recommendation 25, which suggests the value and continued need for key Aboriginal personnel in schools and TAFE be affirmed by revising roles and providing additional training. It is also supported by recommendation 37, which states 'regions and schools review the effectiveness of their attendance and welfare programs.'¹⁶²

Teaching and learning about child sexual assault in relevant TAFE courses

Throughout this report, and across all agencies, participants consistently noted that many people working with Aboriginal children and young people and their families did not have adequate skills to recognise nor respond to Aboriginal experiences of child sexual assault. This included many counsellors. In addition, it was noted that there weren't enough Aboriginal counsellors.

ACSAT believes that this could be at least partially rectified by including teaching and learning about child sexual assault in Aboriginal communities in relevant TAFE courses and encouraging Aboriginal students to complete the counselling course. Relevant courses include:

Human services and welfare courses

The human services and welfare courses currently offered by NSW TAFE do teach a child protection component, however this does not specifically cover child sexual assault in Aboriginal communities.

ACSAT recommends that a component addressing Aboriginal experiences of child sexual assault is developed and included in all child protection modules. DET have advised ACSAT that this would need to be undertaken by the Commonwealth, Department of Education Science and Training, Community Services and Health Skills Council, as the component would need to be accredited.

ACSAT recommendation 111

Research Aboriginal student support/ counselling needs, the efficacy and outcomes of current Aboriginal student support/ counselling provisions, and determine and undertake the best means for providing such support /counselling

ACSAT recommendation 112

Department of Education Science and Training and Community Services and Health Skills Council to develop a TAFE subject/component to be included in all Health and Welfare courses on child sexual assault in Aboriginal communities

¹⁶² Review of Aboriginal Education, (2004) *Yanigurra Muya: Ganggurrinyrna Yaarri Guurulaw Yirringin.gurray*, Freeing the Spirit: Dreaming an Equal Future

ACSAT recommendation 113

NSW TAFE to customise the child sexual assault counselling course to include:

- i. Child sexual assault counselling in an Aboriginal context
- ii. Delivery of the course to Aboriginal people

Counselling courses

Given the high incidence of child sexual assault in Aboriginal communities and the devastating impact it is having on individuals and communities, current TAFE courses teaching child sexual assault counselling should consider including a component on counselling Aboriginal people who have experienced it. This would ensure that all graduating counsellors have the necessary skills to respond when required.

TAFE reports that it currently offers a Child Sexual Assault Counselling course, however very few, if any, Aboriginal people have completed it. ACSAT recommends that TAFE build on the existing child sexual assault counselling course so that it is appropriate and relevant for Aboriginal people and then encourage Aboriginal people to complete the course. This would increase the numbers of Aboriginal people with child sexual assault counselling qualifications and subsequently the number of Aboriginal counsellors available.

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to DET work towards achieving the following outcomes:

- DET staff are able to understand and respond to child sexual assault issues in Aboriginal communities
- Aboriginal children and young people have an understanding of child sexual assault through the development and delivery of a culturally effective Child Protection Education curriculum
- Aboriginal students are able to access support from Aboriginal staff within DET
- Aboriginal people access NSW TAFE courses on child sexual assault counselling
- Students undertaking human services and welfare courses offered through TAFE have an understanding of the dynamics, indicators and impacts of child sexual assault in Aboriginal communities and the services available that can help
- There is an increase in the number of Aboriginal people with child sexual assault counselling qualifications

PART 11: DEPARTMENT OF HOUSING

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Overview of findings

When examining the Department of Housing (DoH) response to child sexual assault in Aboriginal communities, ACSAT found:

- Aboriginal communities were not aware that emergency accommodation is available for families in crisis as a result of child sexual assault
- Communities suggested that they often spoke with DoH staff about their housing concerns. ACSAT believes it is possible that people may build a rapport with DoH client services staff and may disclose child sexual assault to them. It is therefore crucial that all DoH client service staff, and staff attached to DoH community renewal projects, know how to respond to child sexual assault and provide appropriate support and referrals
- Many Aboriginal communities experienced chronic overcrowding in their houses and this increased the vulnerability of children

This discussion of the response by NSW DoH to Aboriginal child sexual assault draws on consultations with Aboriginal communities and a submission provided to ACSAT by DoH.

Overview of services provided by DoH

In partnership with the community, industry and individuals, DoH provides safe and affordable housing opportunities for people on low incomes.

DOH encompasses Public Housing Services, the Office of Community Housing, the Home Purchase Advisory Service and the Centre for Affordable Housing.¹⁶³

DOH is involved in a range of activities including:

- Public housing advice, referral and assessment
- Private rental help
- Home purchase assistance
- Aboriginal housing
- Community housing
- Community regeneration
- Urban renewal
- Asset management and commercial investment
- Policy development

As at 30 June 2005, DoH:

- Directly managed almost 130,000 properties
- Provided more than 13,000 properties through community housing providers
- Managed over 4,100 properties on behalf of the Aboriginal Housing Office

DoH works closely with the Aboriginal Housing Office to develop culturally appropriate housing infrastructures and policies.

¹⁶³ <http://www.housing.nsw.gov.au/>

Aboriginal Housing Office

The NSW Aboriginal Housing Office (AHO) is a statutory body that reports to the NSW Minister for Housing and is governed by the *Aboriginal Housing Act 1998*. An Aboriginal board oversees the AHO in relation to:

- Access to affordable and quality housing
- Appropriate housing
- Aboriginal peoples involvement in the decision making process
- Delivery of needs based assistance
- Increasing housing options for Aboriginal people
- Supporting and resourcing the Aboriginal housing sector
- Efficient administration of housing programs and services
- Encouraging sustainable employment of Aboriginal people

AHO works in partnership with the NSW and Commonwealth Governments and local communities to develop and deliver Aboriginal housing. The various forms of housing assistance provided by the AHO are collectively known as the Aboriginal Housing Program (AHP). This includes:

- The Housing Aboriginal Communities Program (HACP) which provides rental accommodation through Aboriginal housing organisations including Aboriginal Lands Councils
- Housing owned by the AHO being provided and managed through the DoH
- A Commonwealth State Working Group in Indigenous Housing who are working on Targeted Housing Management Grants (Management Models Program) to make Aboriginal housing organisations viable over the long term

Policy framework for providing services to Aboriginal communities

DoH is involved in a national plan to improve housing outcomes for Aboriginal people. This plan – *Building a Better Future: Indigenous Housing to 2010* – involves all state, territory, and commonwealth governments meeting agreed objectives to improve housing outcomes for Aboriginal people. DoH also has specific commitments relating to Aboriginal people and housing in the Commonwealth State Housing Agreement – Multilateral and NSW Bilateral.

One project that has come out of *Building a Better Future* is a review of all operational policies to ensure they are culturally appropriate for Aboriginal clients. DoH reports that it has completed this process and is now implementing the recommendations that arose from the review.

In addition, DoH is in the process of developing an overarching policy framework for access to mainstream housing for Aboriginal people. This framework will outline the Department's commitment to Aboriginal tenants and applicants in the areas of equitable access, quality service delivery, consultation and participation, and staffing issues.

The Department has also developed an *Aboriginal Employment Strategy and Framework 2006-2008* that incorporates the employment of Aboriginal staff, training, mentoring and support.

DoH responses to evidence of child sexual assault in Aboriginal communities

While responding to evidence of Aboriginal child sexual assault is not DoH's primary role, it does provide some direct and indirect responses, as outlined below.

Direct responses

Child protection – mandatory reporting of child sexual assault

DoH has a legal obligation to protect children and young people¹⁶⁴ and will notify the DoCS if a DoH staff member suspects a child is being harmed or is at risk of harm, including experiencing child sexual assault.

DoH reports that it has a policy outlining staff responsibilities in relation to child protection and that staff receive training on the child protection obligations imposed by the *Children and Young Persons (Care and Protection) Act 1998*. The Department's policy includes definitions of physical abuse, sexual abuse and neglect. It also contains a list of factors that may indicate a child is being abused.

Responding to child sexual assault and family violence

The DoH reports that it is committed to reducing the effects of domestic violence and child abuse by improving people's access to safe, affordable housing. The DoH policy that outlines its response to child abuse states that people affected by child abuse are considered 'at risk' and are therefore eligible for priority assistance or private rental assistance as long as general eligibility criteria are met.

In addition, existing clients can apply for a transfer to another public housing dwelling if their existing dwelling is no longer suitable, for example, because of domestic violence or child sexual assault. In some instances where there is child abuse, DoH may seek to transfer the perpetrator to another dwelling so the non-offending caregiver and the child/ren can remain in their home.

Indirect responses that may impact on reporting or incidence of child sexual assault

Providing emergency accommodation

DoH reports that it has a limited direct role in providing emergency accommodation. The DoH Office of Community Housing administers the Crisis Accommodation Program (CAP) which provides dwellings for people who are homeless, are at risk of homelessness or who are in crisis. These dwellings are managed by non-government organisations to provide transitional accommodation to assist clients move to independent living. The CAP program is closely linked to the Commonwealth Government's Supported Accommodation Assistance Program (SAAP), which is administered by the NSW Department of Community Services.

¹⁶⁴ Under the *Children and Young Persons (Care and Protection) Act 1998*

DoH also delivers the following two forms of emergency accommodation:

1. Emergency Temporary Accommodation, provided for up to 3 months to people who are ineligible for public housing but are:
 - In urgent need of short-term temporary accommodation and
 - Cannot resolve the need themselves and
 - Cannot be accommodated by family or friends and
 - Are not eligible for other forms of assistance from other agencies because of income or temporary residence status
2. Rentstart – Temporary Accommodation, provides short-term assistance (usually several nights up to a maximum period of 4-6 weeks) with accommodation costs and is available to people who are eligible for public housing, at risk of facing imminent homelessness and are not able to access private rental accommodation or a SAAP service.

DoH also has a *Priority Assistance Policy* that says that eligible clients (including children of eligible clients) who have urgent housing needs and meet the criteria for Priority Assistance are housed ahead of most other applicants on the waiting list for public housing. Victims of child sexual assault or those 'at risk' of assault would qualify under 'urgent need'. DoH would usually work with the DoCS to substantiate evidence of the assault/abuse.

Responding to disadvantage

Disadvantage is one factor identified as influencing the incidence of child sexual assault. Therefore, strategies that reduce disadvantage may have an impact on the incidence or reporting of child sexual assault.

DoH reports that it has an estates strategy to address concentrations of disadvantage on public housing and build community capacity. Some of the estates targeted by the strategy have large Aboriginal populations. Initiatives targeting Aboriginal people include:

- Providing culturally appropriate outreach services in urban and rural Aboriginal communities to increase access to DoH services by Aboriginal people. These outreach services provide information, assess eligibility and provide tenancy support
- Organising of NAIDOC Family Fun Days with Aboriginal tenants and community groups and other government agencies to reinforce positive behaviours and provide links to support services

Preventing homelessness

In some instances, people may become homeless because of past or present experiences of child sexual assault. DoH reports that it provides a number of services that help people who are homeless or at risk of homelessness. For example, its Temporary Accommodation Scheme and its Priority Assistance Policy.

DoH is the lead agency in the *Partnership Against Homelessness*, a network of NSW Government agencies that aims to improve services and outcomes for homeless people. Under the Partnership's *Inner City Homelessness Action Plan*, the Aboriginal Housing Office has conducted research that will help the government to better understand the distinct needs of Aboriginal homeless people and the cultural dimensions of Aboriginal homelessness.

In addition, the Homelessness and Ex-offenders Sub-group of the Partnership is currently investigating service delivery models and initiatives to support female Aboriginal criminal ex-offenders and their families to prevent homelessness.

Funding supported housing

A significant proportion of DoH housing is allocated to people with complex needs such as mental health disorders and alcohol and/or drug dependency. DoH initiatives to support these clients in partnership with other agencies include:

- Under the *Crisis Accommodation Program*, DoH fund non-government organisations to build, head lease, purchase, renovate or upgrade accommodation to assist people who are homeless or at risk of becoming homeless with short- and medium-term housing. Non-government organisations manage the housing and work in partnership with agencies providing support. Key target groups include women and children experiencing domestic violence and young people experiencing abuse or violence
- Under the *Community Housing Assistance Program*, DoH provides funding for capital expenditure for non-government organisations to deliver supported housing projects to assist people with medium to longer term support needs such as youth in crisis and people with a mental illness. These projects involve formal partnerships between housing and support providers
- The *Housing and Accommodation Support Initiative* is a partnership between DoH and NSW Health to provide accommodation linked to support for people with moderate to high level mental disorders. Under this program DoH funds accommodation, which is then managed by non-government organisations or DoH public housing client service teams

Aboriginal inquiry line

This is a free and direct phone line for Aboriginal applicants and tenants of DoH and the Aboriginal Housing Office. Callers can make complaints, suggestions and general inquiries about a range of housing issues.

Interagency cooperation

DoH reports that it works in partnership with a range of government and non-government agencies, including the AHO, to address disadvantage and homelessness. For example, DoH is a partner to the *NSW Community Solutions and Crime Prevention Strategy*, which targets disadvantaged communities, including Aboriginal communities. DoH has a significant role in development and implementation of the multi-agency Joint Guarantee of Service for people with mental illness (JGOS) and also participates in court support programs, *Families First* and the DoCS *Aboriginal Child, Youth and Family Strategy*.

DoH, when it is possible to do so, provides crisis, mid- and long-term accommodation to clients of these strategies through its priority housing and crisis accommodation structures.

The NSW Housing and Human Services Accord has been signed by a number of NSW Government agencies, including the AHO. The Accord aims to clearly define the different roles of human service agencies in providing supported social housing and assisting low income people with support needs to sustain their tenancies.

Strengthening organisational capacity – improving services and supporting staff

The DoH submission states that it is continuing to develop organisational capacity to better meet the housing needs of Aboriginal people and work effectively with communities. This contributes to a supportive environment that is better able to respond to issues such as child sexual assault should they arise. Measures undertaken include:

- Creating a Senior Aboriginal Policy Officer position within the Policy, Strategy and Finance Division of DoH to manage projects, assist in developing and implementing housing assistance policy, provide advice to senior management, and improve the outcomes of mainstream assistance for Aboriginal people
- Establishing the Aboriginal Service Improvement Team in the operational programs area of DoH to help develop best practice when providing services to Aboriginal people and when employing Aboriginal staff. This team will also help the DoH to talk, and work, with communities more effectively
- Getting DoH policies and practices reviewed by the Aboriginal Reference Group, made up of Aboriginal members of staff
- Holding an annual gathering for all Aboriginal staff employed by DoH, organised by the Aboriginal Reference Group
- Organising an Aboriginal mentoring program that promotes training and career development opportunities for Aboriginal staff

Barriers to DoH effectively responding to Aboriginal child sexual assault

ACSAT suggests that there are some barriers to DoH effectively delivering services to Aboriginal people. It suggests that DoH works closely with the AHO to address these issues and the subsequent recommendations.

Access to emergency housing assistance because of child sexual assault

DoH identified a number of reasons why Aboriginal families who are in crisis because of child sexual assault may not seek help to find new, safer housing. These include:

- Fear that if offending behaviour is notified to authorities, they may lose their tenancy if the principle tenant is also the offender
- A belief, or knowledge, that there is no alternative housing available in their area and a reluctance to leave their family and community for a new housing placement elsewhere.
- Complex application processes and/or being unable to provide supporting documents DoH requires

ACSAT recommendation 114

- a) Provide emergency accommodation assistance to families in crisis because of child sexual assault
- b) Raise awareness in the Aboriginal community that Priority Housing assistance and emergency temporary accommodation may be available if a family is in housing crisis because of child sexual assault

During consultations, ACSAT also found that communities were not aware of the DoH Priority Assistance program or the emergency temporary accommodation that may be available to families in housing crisis as a result of child sexual assault.

It is important that DOH continue to provide emergency accommodation to these families to assist in protecting children from abuse and raise awareness in the community and service sectors that this service is available.

ACSAT recommendation 115

- a) Develop and implement a policy to respond to Aboriginal families who experience child sexual assault
- b) All frontline DOH staff are provided training in the dynamics, indicators and responding to child sexual assault in Aboriginal communities

Client service and other staff responses to child sexual assault

DoH client service and other staff are mandatory reporters of child abuse, so if a staff member suspects, or knows, that child sexual assault has occurred, or is at risk of occurring, they must notify DoCS.

DoH's child protection policy defines child sexual assault and includes some detail of factors that may indicate that assault is occurring and client service staff have received some training on the obligations imposed on them by the *Children and Young Persons (Care and Protection Act) 1998*.

However, ACSAT is concerned that this may not be sufficient. During consultations Aboriginal community members reported problems with their housing and stated that they spoke regularly to DoH about their concerns. As a result of this, ACSAT believes that people may build a rapport with local DoH staff and therefore consider them a safe person to talk to. It is possible that, during their discussions with housing staff, they may disclose that child sexual assault was occurring in their homes.

Alternatively, the DOH staff member may detect, or suspect, that child sexual assault is occurring but may not know what to do next. They may not realise that reporting child sexual assault is included in their child protection obligations, so an opportunity to respond may be lost.

ACSAT recommendation 116

Aboriginal client service officers are employed in all DOH areas where there is a significant Aboriginal population

Someone participating in one of DoH's community renewal projects or in one of the partnership projects may also disclose child sexual assault. It is crucial that all staff involved in DoH projects and partnerships are aware of child sexual assault and have a protocol for providing a response. That response may vary from making a report to DoCS, continuing to support the family and/or providing effective referrals.

Communities consistently talked about wanting more Aboriginal people working in all NSW government services. DOH has employed a number of Aboriginal client service officers, however consultations reported that there are still areas with significant Aboriginal

populations that do not have access to Aboriginal staff. Most community members said they would be more comfortable talking to another Aboriginal person on personal issues such as housing and they believed they would get a better service outcome by having such staff available.

Overcrowding

Communities repeatedly talked about overcrowding in their houses as an issue of concern and one that they believed increased the vulnerability of children.

Overcrowding can arise from a lack of availability of housing. It can also arise from the transience of the Aboriginal population and regular movements from community to community and family to family. Many Aboriginal families will move to wherever their extended family may be. When they get there, they stay with these family members, often for extended periods of time. Communities frequently described situations where family members would move from one relative's home to another.

The Aboriginal community suggested that large numbers of people living in one house can increase the risk of child sexual assault. It increases the likelihood of a perpetrator living in the same house as children and also creates an environment of constant change. This can make it difficult for non-offending carers to monitor the activities of all residents and harder to keep track of all children in their care. If child sexual assault were to occur in such an environment, it is more likely to go undetected.

The issue of overcrowding has previously been raised as a national indicator of disadvantage.¹⁶⁵ DoH do not currently have a strategy to address it. However, they reported that they would be conducting research into the issue of Indigenous overcrowding within the next year, as a basis for developing a strategy to address.

ACSAT recommendation 117

Develop and implement a comprehensive strategy to address overcrowding in Indigenous homes

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to DoH work towards achieving the following outcomes:

- DOH provides accommodation to Aboriginal children and their families who are in crisis because of child sexual assault
- DOH staff are able to understand and effectively respond to child sexual assault in Aboriginal communities
- Aboriginal children and young people are not made vulnerable as a result of their accommodation circumstances

¹⁶⁵ Through the Australian Institute of Health and Welfare (2005): *Overcoming Indigenous Disadvantage, key indicators*, it is reported that overcrowding contributes to poor health, family violence and poor educational outcomes.

PART 12: NON-GOVERNMENT ORGANISATIONS

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Overview of findings

When examining the response of non-government organisations (NGOs) to child sexual assault in Aboriginal communities, ACSAT found that:

- Communities believed that most NGOs provided a flexible service that responded to their needs. For many Aboriginal people, NGOs are the only service they will use
- NGOs often feel unsupported by government agencies
- Many of the NGOs consulted feel that there is insufficient funding for them to provide a service that truly meets community need
- There is a prevalence of one-off, project funding available and this can lead to an ad hoc delivery of services
- As NGOs are often the first, and in some instances the only, point of contact for Aboriginal people who have experienced child sexual assault, it is crucial that they are able to provide an effective response. As such, NGOs need access to training on the dynamics of child sexual assault in Aboriginal communities
- While all NGOs involved in consultations were aware of their reporting obligations, some individual staff members indicated that they weren't sure what this meant. Community members also expressed concern that some NGOs weren't making a report even when one was clearly required
- Staff of NGOs wanted clearer guidelines for working with their own family and communities

Overview of non-government organisations

There are a range of NGOs in NSW that provide a variety of services, including family support, drug and alcohol support, child sexual assault counselling, Aboriginal medical, legal, supported housing and child abuse prevention.

A number of peak bodies have been established to represent, and provide support to, NGOs. These peak bodies act as a central point of information exchange between the organisations, the community and the government. They also provide a way for NGOs to communicate and work with each other and ensure consistency in the way they provide services.

Overall, the peak bodies represent the hundreds of NGOs that are functioning across NSW. Those that directly or indirectly address child sexual assault in Aboriginal communities include:

- Aboriginal Child, Family and Community Care State Secretariat (AbSec)
- Aboriginal Health and Medical Research Council (AHMRC)
- Aboriginal Medical Services (AMS)
- Association of Children's Welfare Agencies (ACWA)
- Child and Adolescent Counselling Services Inc.
- Coalition of Aboriginal Legal Services NSW (COALS)
- Combined Community Legal Centres Group (NSW) (CCLCG)
- The Council of Social Service of New South Wales (NCOSS)
- NSW Family Service Inc.
- NSW Women's Refuge Movement (WRM)

Detail of each peak body can be found in Appendix 7.

NGO's relationship with the NSW Government

The NSW Council of Social Services (NCOSS) and the NSW Government are in the process of developing an agreement outlining how government and NGOs will work together to effectively provide human services in NSW. The foreword of this agreement describes the relationship between government and NGOs as complex and interdependent and explains this in the following way:

'Non-government organisations deliver key human services. They also provide essential community infrastructure, which helps to deliver and support government funded programs and services.

Government funding and regulation, strong community support and more recently, contributions of expertise and funds from businesses have assisted the development of a large non-government human services sector in NSW.

Non-government organisations play a pivotal role in community development and capacity building, the identification of community need and the development of new ways of responding to need. Government, and its agencies, often seek the advice of non-government organisations in the development and implementation of new social policies and human services programs.'

Funding for NGOs

Non-government organisations receive funding from a range of sources including the state and commonwealth governments, charities, religious groups and business.

Many NGOs receive core funding from one group, for example government or a religious group, and then accesses program or project funding from other source/s to deliver additional services that are compatible with its core business. For example, a women's health centre in Sydney receives its core funding from NSW Health and also receives recurrent funding from the DoCS *Community Services Grants Program – Child Sexual Assault Program* to employ a counsellor for children who have been sexually abused. In another example, one Aboriginal community organisation receives funding from the DoCS *Community Services Grants Program* and from the DoCS *Aboriginal, Child, Youth and Family Strategy* and from the whole of NSW Government *Families First* strategy.

Funding for NGOs, whether it is for core services or to implement the services of a particular program or project, is linked to agreed objectives and specific outcomes. Facilitating community development may be an outcome for some sources of funding. NGOs apply for funding through grant or budget processes. This funding may be either recurrent or project based.

NGOs responses to evidence of child sexual assault in Aboriginal communities

Child protection – mandatory reporting of child sexual assault

All NGOs that work with children, young people, families and communities are required to report any child abuse concerns, including risk of, or incidents of, child sexual assault, to DoCS as per the *Children and Young Persons (Care and Protection) Act 1998*.

Support for children and young people and their families

In NSW, non-government agencies (NGOs) provide the majority of family support services and many of the child protection support services.

Some NGOs provide services that support children who have experienced child sexual assault, or some other form of child abuse or neglect. These services include crisis intervention, counselling and care, emergency housing, out-of-home care etc.

Others provide prevention and early intervention services that aim to reduce the risk of harm. These include community education, family support, supported childcare, therapy, residential care, accommodation and specialist support. Initiatives like *Families First* have put non-government agencies centre stage in delivering what are mainstream services.¹⁶⁶

Interagency cooperation – working with government and other non-government agencies

NGOs are a partner to the *NSW Interagency Guidelines for Child Protection 2000*. They work with government agencies and other NGOs within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people.

As many NGOs receive funding from government agencies to deliver what are effectively government services, they also work with the funding body to meet agreed outcomes.

DoCS can request a service from an NGO in relation to protecting children and NGOs are required to exchange relevant information to progress investigations, assessment and case management.¹⁶⁷

NSW Government funding streams available to address child sexual assault in Aboriginal communities

NGOs can access funds for services and projects that directly or indirectly respond to child sexual assault in Aboriginal communities via a number of funding streams. These include (but are not restricted to):

- NSW Health's *Aboriginal Family Health Strategy*, which funds initiatives to reduce family violence and sexual assault in Aboriginal communities
- DoCS's *Aboriginal Child, Youth and Family Strategy*, the *Community Services Grants Program* and its *Child Protection and Child Sexual Assault Program* and *Better Futures*
- NSW Government's *Families First* strategy and its *Community Solutions and Crime Prevention Strategy*

DoCS reports in its submission to ACSAT that it provides funding to 278 Aboriginal NGOs via its Aboriginal specific and general funding streams.

¹⁶⁶ http://www.community.nsw.gov.au/html/news_publications/insideout/insideout_2004/MarApril04/04MA_achievingmoretogether.htm

¹⁶⁷ NSW Government (2005) *NSW Interagency Guidelines for Child Protection 2000*, revised edition

Training provided to NGO staff

NGOs can access training about child sexual assault from ECAV. Most ECAV courses are free to NGO staff. (See page 112 for more information about ECAV.)

NGOs can also access training from the Centre for Community Welfare Training (CCWT), the training and development arm of ACWA. CCWT provides professional development opportunities for staff employed across the community services industry, particularly those that work with vulnerable children, young people and families.¹⁶⁸ NGOs may have to pay to attend a CCWT course.

Barriers to NGOs providing an effective response to Aboriginal child sexual assault

ACSAT received a number of submissions from NGOs and conducted a number of consultations with staff of NGOs. Most people consulted by ACSAT said that NGOs were able to provide a flexible service that was responsive to their needs. They believed that NGOs were not as restricted in what they could do as government agencies were and they saw this as important in providing a holistic and effective response to child sexual assault.

Organisational issues identified by NGOs

Support from government agencies

NGOs work closely with the community to provide localised and tailored services, often on behalf of the NSW Government. However, many of the NGOs that spoke with ACSAT said they were not always well-supported by government, particularly in areas such as funding, training, capacity building and work with the voluntary sector.

Consultations found that the work of NGOs can be challenging. There is nearly always more work to do than there is staff or resources to do it. Being closer to the community, NGO staff are usually very aware of the needs that are not being met and often feel responsible for this.

These challenges are compounded for Aboriginal NGOs or Aboriginal workers within a non-Aboriginal service. Often these services and/or workers are on call to the local Aboriginal community 24 hours a day, seven days a week. They may be required to work with members of their own community, or even their own family, particularly if they are working in rural and remote areas. There may be conflict of interest issues as well as threats to the worker's safety if they are, in any way, involved in a child being removed or an offender being arrested. Or they may be the only Aboriginal person working in the service and as such, are required to respond to all Aboriginal queries in the service area.

ACSAT observed that, in some instances, these factors led to a kind of 'service overwhelm'. During one consultation, a worker from an NGO was asked if the service they worked for was doing anything to address child sexual assault in the local community. The service provider responded by saying that the community had so many issues, they weren't sure where to start. They said that they knew child sexual assault was a serious issue in the community but they also knew they didn't have the resources that would be required to address it if it were to 'break open', so they tended to avoid it and focus on other, more achievable objectives.

¹⁶⁸ <http://www.acwa.asn.au/CCWT/AboutCCWT.html>

Many NGOs believed that they were often 'taken for granted' and were not acknowledged for the support that they provide families. They felt this was so even though it was widely recognised that NGOs are often the only service that an Aboriginal person feels comfortable in accessing.

Access to funding

NGOs consistently stated that there was not enough funding for them to provide an adequate service to meet the needs of the community. As one NGO worker said during a consultation:

'Funding's the drama because there is so much more you can do if you've got more funding.'
Transcript 2

One NGO submission believes that for NGOs to deliver services in a holistic way, that addresses the needs of community, funding arrangements would need to change:

'When allocating resources, government funding processes need to be responsive to the strengths of community based non-government agencies that enable them to resource the identified needs of the community in a timely way.'
Submission 8

ACSAT has recommended that additional funding streams, for services, program or projects that specifically address child sexual assault in Aboriginal communities, be established at the NSW and Commonwealth Government levels. (See page 112 for more details of funding recommendations.)

Ad hoc delivery of service

One criticism of the way the current funding streams are structured, that was reflected in consultations and in research, was that it led to an ad hoc response to issues such as child sexual assault. Much of the funding available is project-based, non-recurrent and locally distributed. While this may provide the means to respond to local need, it does so often on a one-off and short-term basis. Many innovative local strategies may be developed, but they do not necessarily become permanent services, may not be evaluated and unless there is someone who can keep preparing funding submissions, are likely to disappear when the project funding runs out. Funding that is only available in small, non-recurrent amounts cannot be said to be a coordinated, statewide response to child sexual assault in Aboriginal communities.

For example, in its submission to ACSAT, ECAV said that it had run training sessions about child sexual assault for government and non-government agencies across the state. ECAV said that based on what participants have said during these sessions, there appears to be an absence of a holistic approach to child sexual assault. ECAV writes:

'...there are many programs that seek to address child sexual assault, either directly or indirectly, but [it] observes no consistency across regions as to what these programs are, who manages them or what they seek to do. There is no apparent strategic plan guiding the provision of services or how they could be coordinated more effectively.'
Submission 19

ACSAT has recommended that a whole of NSW Government plan for addressing child sexual assault in Aboriginal communities be developed and implemented as a matter of urgency. This plan must include the resourcing and training of NGOs if it is to be successful. See page 112 for more details of this plan.

Access to training

Many NGOs said they had difficulty accessing training. They said that NGOs are strictly funded and have a limited budget for training. Any training that is available generally incurs a cost, if not for the course, then for travel, accommodation and loss of staff hours.

NGO staff are often the first people to receive information about the incidence of child sexual assault. As such they need the skills and understanding to be able to provide an immediate response. This sort of work involves a specialised skill set that workers need to be able to learn and develop.

One submission suggests that all Aboriginal workers who come into contact with individuals and communities who have experienced child sexual assault should have provisions built into their worker duty statements, and the organisation's policies and procedures, that ensure adequate training, support and supervision is provided to them.¹⁶⁹

ACSAT has recommended that the NSW Government develop a comprehensive education campaign about child sexual assault that will make training available for non-government agencies (among others). See page 112 for more information about this recommendation.

Issues with services provided by NGOs

Reporting child sexual assault to DoCS

A number of issues were raised about NGOs and reporting suspected harm and risk of harm to DoCS. Some Aboriginal community members expressed concern because they believed that some NGOs were not making a report to DoCS, even when one was clearly required.

In a few instances, NGO workers indicated that while they knew they had to report, they were not clear on what exactly that meant. This suggested to ACSAT that either the NGO had not developed a policy and protocol, or if they had one, then staff were not accessing it. ACSAT recommends that all NGOs develop a policy and protocol for making a report to DoCS and that all relevant NGO staff are provided with copies of the policy and training about when to make a report and how to do it.

Participants who also worked at an NGO talked about how important it was that Aboriginal clients of their service were aware that the NGO must report. Everyone agreed that it is better if all agencies are up-front about their reporting obligations from the start. As one community member explained:

'If I am notifying on someone and normally I have been working with a parent for a while, I am right in your face. I say so. You know "by law I have to report that I am really concerned about this and I am doing it". We sort of, in here and in a lot of Koori organisations, I guess the relationship is built on trust, so rather than go behind the back and all that sort of thing, I am notifying on someone I normally let the parent know that the notification is going in and what my concerns are.' *Transcript 1*

¹⁶⁹ Education Centre Against Violence submission to ACSAT

Support for staff providing services to their own families or communities

A number of NGO staff said that they were sometimes asked to provide a service to their own families or community. They stressed the importance of the NGO supporting them when this occurred to avoid any possible conflict of interest that might arise. They believed that, if possible, someone else should provide the support and if this was not possible, there should be strict guidelines for them to follow about how to provide support if the client is a family or community member.

Outcomes of ACSAT recommendations

The recommendations formulated by ACSAT in relation to NGOs work towards achieving the following outcome:

- NGOs are able to effectively respond to child sexual assault in Aboriginal communities

ACSAT recommendation 118

Every NGO working with Aboriginal children, young people, families and communities must develop and implement a reporting/response protocol to child sexual assault as part of any funding and performance agreement. It must include:

- i. Response and reporting processes
- ii. A conflict of interest strategy
- iii. Promotion of statements about reporting within the agency and to clients



CHAPTER 5

Different ways of working



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Overview

In its terms of reference, ACSAT was asked to identify and review any alternative models or processes for addressing child sexual assault in Aboriginal communities that were being implemented outside NSW. ACSAT has done this by looking in detail at the model currently being implemented in NSW and then searching for areas within Australia and around the world where a modified or different model is being used to effectively respond to child sexual assault in Indigenous communities.

When looking overseas for alternative models, ACSAT looked particularly to Canada and the United States as the experience of colonisation on Indigenous communities in these countries is considered to be similar to the experiences of Australian Aborigines.¹⁷²

In this context, ACSAT considered the differences in approach between adversarial, inquisitorial and restorative systems of dispensing justice, as well as different ways of working with existing services and new ways of responding.

ACSAT considers this chapter to be introductory rather than definitive. The theory and principles behind each approach is complex and the appropriateness of various responses to child sexual assault in Aboriginal communities requires careful consideration and thorough research.

The current model being used in NSW

At present, the NSW Government response to child sexual assault in Aboriginal communities aims to protect and support children and their families, prosecute offenders and reduce the incidence of child sexual assault.

The government's response is triggered by a disclosure to a service provider or a report of suspected harm or risk of harm. Few services are available to the victim of child sexual assault or their family until they have 'entered' the government system.

Protection and support

Once a child and their family have disclosed, they may be able to access immediate and on-going protection, emergency housing, health care, family support, counselling and victims' compensation.

The criminal justice response

A disclosure or report of child sexual assault will also result in some criminal investigation. If there is enough evidence, a case will proceed to court, an offender will be prosecuted and may or may not be convicted.

An adversarial system

The NSW criminal justice system is known as adversarial. This determines how a case is brought to trial, what evidence is required, how a trial proceeds and what is required for a conviction. In this system, guilt needs to be established beyond reasonable doubt.

In an adversarial system, adversarial lawyers each develop a self-interested view of events, in order to win the case, rather than find the truth. Evidence is admitted only if called for by these

¹⁷² Hill (2000); Lynch (2001)

adversaries, and attempts are made to shape, distort or suppress it according to the vested interests of those in opposition, and according to rules of law.

The adversarial system of law, generally adopted in common law countries, relies on the skill of the advocates who represent their party's positions and not on a neutral party such as a judicial officer who tries to ascertain the truth of the case.

Judicial officers in an adversarial system are interested in ensuring the fair play of due process. Such judicial officers decide, often when called upon by counsel rather than of their own motion, what evidence is to be admitted when there is a dispute; though in some common law jurisdictions judges play more of a role in deciding what evidence to admit into the record or reject.

The rules of evidence are also developed based upon the system of objections of adversaries and on what basis it may tend to prejudice the trier of fact which may be the judge or the jury. In a way, the rules of evidence can function to give a judge limited inquisitorial powers as the judge may exclude evidence he/she believes is not trustworthy or irrelevant to the legal issue at hand¹⁷³.

Alternative criminal justice responses

Over the last 20 years participants in the legal system, the judiciary, legal practitioners, consumers and their advocates, have sought alternative approaches to the dispensing of justice including variations to how the existing system is provided, inquisitorial models and restorative justice options.

This movement has arisen from a range of perceived shortcomings and limitations of judicial and legal practice and relies on an ever-expanding body of research into alternative methods of jurisprudence¹⁷⁴. Some of the shortcomings in the present system that relate to Aboriginal people include high rates of recidivism, lack of effectiveness of sex offender programs and the negative experience of the victims in the legal process.

ACSAT identified three main variations to the way the criminal justice system is implemented in NSW. These were:

- Specialist courts for prosecuting sexual assault matters
- Adopting an inquisitorial system of justice as opposed to the current adversarial model and
- Models of restorative justice rather than the current retributive models

ACSAT has included an overview of these alternatives and restates its position that more research is required.

Specialist courts for prosecuting sexual offences

In South Africa specialist courts have been created at the regional level and dedicated to sexual offence cases. The aims of the specialised sexual assault courts are to¹⁷⁵:

- Improve treatment of victims of sexual offences in the criminal justice system
- Create an integrated approach to the management of sexual offences by various agencies and
- Improve the reporting, investigation, prosecution and conviction rate in sexual offence cases

¹⁷³ http://en.wikipedia.org/wiki/Adversary_system

¹⁷⁴ Stewart, (2005)

¹⁷⁵ <http://www.polity.org.za/pdf/Report.pdf>

In 1993, the first sexual offences court was introduced in Wynberg, South Africa. The court tried sexual offences exclusively and was also equipped with appropriate facilities to address the needs of complainants in these cases.

The difference between a specialist sexual offence court and an ordinary regional court

The Wynberg sexual assault court differed from an ordinary regional court in that two prosecutors (with an interest in sexual offence cases) instead of one are assigned to the court. This enables the prosecutors to spend a sufficient amount of time preparing for cases, for example consulting with witnesses, guiding the investigation and conducting in loco inspections without wasting court hours. Prosecutors take turns in presenting their cases in court thus allowing each other sufficient preparation time.

Unlike in other courts where dockets change hands each time the perpetrator appears in court, sexual offences court prosecutors are allocated a docket from the time a decision to prosecute is made. Once allocated, the prosecutor handles a case to the end. In addition, the prosecutors are specialised. They are required to have five years experience before they can be appointed to the court and must exhibit a certain skill level in prosecuting sexual assault matters.

The specialist court has a waiting room where a victim waits in private, away from the accused, until he/she is called on to testify. A Victim Support Services Coordinator is also located at the court for the convenience of victims.

Evaluation, improvement and expansion

The original Wynberg Court was evaluated and improved in order to fully realise the court's objectives. Improvements included:

- Initiating an integrated and coordinated multi-agency project on sexual offences to secure the commitment of all role players to the specialist sexual offences courts
- Ongoing training for all criminal justice officials, including magistrates, to enhance their capacity to respond appropriately and sensitively in sexual offence cases
- Making district surgeons available 24 hours a day to ensure prompt execution of forensic examinations and
- Developing mechanisms to maximise victim's access to information on the criminal process, complaints mechanism and progress made in their cases

By May 2004, 50 specialist sexual offences courts had been established across South Africa and the South African government plans for a further 50 to be operational by 2009.¹⁷⁶

Special measures for child victims of sexual assault

In terms of special measures for children, *the South African Criminal Procedure Act* makes provision for accommodating special needs of a child witness that include:

- In-camera proceedings
- Prohibition against publication of a child's identity and
- The use of intermediaries

¹⁷⁶ <http://www.info.gov.za/aboutgovt/justice/npa.htm>

New child-witness rooms are furnished with one-way glass partitions adjacent to the courtrooms. Where it is impossible to provide such rooms in existing buildings, other rooms away from the courts are utilised by providing a closed-circuit television link.¹⁷⁷

Intermediaries act as buffers against hostile and potentially protracted cross-examinations of child witnesses in an open court, particularly necessary in cases of sexual victimisation. Most intermediaries are social workers by profession, and fulfil their intermediary functions on a part-time basis or as volunteers. Given the specialised nature of the work and the scarcity of the resource, about 30 full-time intermediaries are to be appointed. The *Draft Criminal Law (Sexual Offences) Amendment Bill, 2003* aims to provide intermediaries to all vulnerable witnesses in sexual-offence cases.¹⁷⁸

The performance of the specialist sexual offences courts improved during the first three quarters of 2003/04. The number of cases finalised rose from 1 814 to 2 998.¹⁷⁹ This corresponds with the roll-out of the specialist courts around the country.

The benefits of a specialist court

The specialist sexual offences courts are meant to provide a dignified and speedy court process for women and children victims of sexual assault. Through their separate witness rooms and other special facilities women and children are protected from the intimidation of an open courtroom.¹⁸⁰

The success of the specialist courts in South Africa has been largely dependent on the establishment of specialist prosecutors. Prior to specialisation, prosecutors were perceived as being de-sensitised and de-motivated. They had poor interviewing skills, and lacked specialised knowledge of sexual assault laws. There was a high turnover rate of staff, and a victim often saw a different prosecutor each time the matter went to court. There was only one prosecutor assigned to the court and there was no time to consult at all with the victim. One aspect of the specialist courts in South Africa is that prosecutors are required to have 5 years experience. There is an entrance requirement and an applicant must demonstrate a certain level of skill before being accepted.

Future directions for South Africa

The South African Government states that it is developing national benchmarks and guidelines for these specialist courts to facilitate a more uniform approach across the country.¹⁸¹ Research shows that a specialised response to the problem of rape and related forms of sexual violence directed at women and children leads to a higher rate of conviction.¹⁸²

An inquisitorial model of dispensing justice

An inquisitorial system is a legal system where the court or a part of the court is actively involved in determining the facts of the case, as opposed to an adversarial system where the role of the court is solely that of an impartial referee between parties. Arguments in support of the inquisitorial model perceive it as a system where the rights of the accused are preserved in the context of a child-appropriate enquiry process.

¹⁷⁷ <http://www.info.gov.za/aboutgovt/justice/npa.htm>

¹⁷⁸ <http://www.info.gov.za/aboutgovt/justice/npa.htm>

¹⁷⁹ <http://www.info.gov.za/aboutgovt/justice/npa.htm>

¹⁸⁰ http://www.doj.gov.za/2004dojsite/m_speeches/sp2004/2004%2005%2028_min_sxoc%20george.htm

¹⁸¹ <http://www.lawrights.asn.au/docs/kruger2005.pdf>

¹⁸² http://www.doj.gov.za/2004dojsite/m_speeches/sp2004/2004%2005%2028_min_sxoc

The inquisitorial system applies to questions of criminal procedure as opposed to questions of substantial law; that is, it determines how criminal enquiries and trials are conducted, not the kind of crimes for which one can be prosecuted, nor the sentences that they carry. It is most readily used in many, but not all, civil legal systems.

Under inquisitorial systems the judge's role is to find the truth and he or she takes a very active role in the court. During the trial the judge conducts an audit of the police dossier on a crime, with the assistance of lay-persons (who may also be jury members in cases of serious crime) and independent experts.

In some jurisdictions the trial judge may participate in the fact-finding inquiry by questioning witnesses even in adversarial proceedings. The rules of admissibility of evidence may also allow the judge to act more like an enquirer than an arbiter of justice. International tribunals intended to try crimes against humanity, such as the Nuremberg War Crime Trials and the International Criminal Court, have used the inquisitorial system rather than the adversarial system.

Restorative justice

Restorative justice is an umbrella concept that refers to many things. As applied to criminal matters, it 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. To date, restorative justice has been used primarily in cases where people have admitted they have done something wrong; it thus focuses on the penalty phase of the criminal process, not on the fact-finding phase.

Restorative justice may refer to diversion from formal court decisions, and to meetings between offenders and victims at any stage of the criminal process (arrest, pre-sentencing, sentencing, and prison release). It is used not only in responding to adolescents and adult crime, but also in a range of civil matters.¹⁸³

Restorative justice emphasises the repair of harms and ruptured social bonds caused by crime; it focuses on the relationships between crime victims, offenders and society¹⁸⁴. According to Braithwaite and Strang, restorative justice has two important aspects: first it is 'a process that brings together all stakeholders affected by some harm that has been done and secondly, it denotes the values that distinguish restorative justice from traditional punitive state justice'¹⁸⁵.

Alternative ways of working with the existing service system

Cherbourg Critical Incident Group

The Cherbourg Critical Incident Group (CCIG) was formed by several women from the Wakka Wakka nation in Queensland to deal with the increasing incidence of child abuse in the Cherbourg community. The CCIG, Qld Department of Child Safety and Qld Police all work together to protect the children in the community by ensuring information is shared and that issues are raised and acted upon accordingly.

¹⁸³ Daley (1999)

¹⁸⁴ Daley & Immarigeon (1998), p.22

¹⁸⁵ Braithwaite and Strang (2001), p. 1

The CCIG meets monthly to discuss current family violence, child abuse and youth issues in the community. They then meet bi-monthly with government agencies at a 'negotiating table', where both government service providers and community members can raise their issues and develop a plan to address them. This ensures that the government provides an adequate response to the community's issues. It has also proven invaluable in building relationships between the community and government.

The Cherbourg Critical Incident Group is a 'thing that works'

The CCIG has been upheld as an example of 'things that work' in the recent report *Overcoming Indigenous Disadvantage Key Indicators 2005*.¹⁸⁶ As at April 2005, twelve months since its inception, there had not been a single reported incident of sexual abuse in Cherbourg. While this does not mean it does not exist, significant progress has been made in raising awareness of, and addressing, the abhorrent issue of child sexual abuse.

Before the issue became public, it was estimated that up to 80 per cent of the children in a community of about 2,000 were affected by sexual abuse. Until then, child sexual abuse was a taboo subject that was continually swept under the carpet for fear of uncovering the real extent of the problem. Following the revelation of the scope of the problem, the past year has seen the group of women continue to fight violence and justice issues in Cherbourg with the formal establishment of the Cherbourg Critical Incident Group.

The CCIG has made 58 recommendations to the Queensland State Government. As at April 2005, 34 of the recommendations had been completed and the remaining are ongoing.¹⁸⁷ Spokesperson for the CCIG, Grace Stanley, has said the CCIG believes that the community is now much stronger and no longer in crisis. "We are moving into a healing phase where we are focusing on taking mothers away to a camp for group therapy. Our next aim is to take children away to camps to start rebuilding their self-esteem and help them learn how to trust others again," she said.

As the government champion for Cherbourg, the Department of Child Safety's Director-General, Robin Sullivan, said she was proud of the Cherbourg community. "The process has not always been easy, but the Cherbourg community is renowned for its loyal and committed citizens and this is proof of what can be achieved through pure people power," Dr Sullivan said.

Alternative models for addressing child sexual assault

Expanding concepts of restorative justice to support victims and heal communities

Community consultations and research suggests that many Indigenous people believe that improving the situation for Indigenous victims requires a holistic process of community healing. This is grounded in a belief that a zero tolerance retributive approach, based on the increased criminalisation of Indigenous people, may simply intensify the cycle of violence in Indigenous communities. Restorative justice practices need to be developed that support community healing and genuinely empower Indigenous people.

¹⁸⁶ See <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/keyindicators2005.pdf>

¹⁸⁷ Building Blocks April 2005, QLD Department of Child Safety Newsletter

Healing, in the Indigenous sense of the term, describes a dynamic and unfolding process of individual and collective problem solving. It has a practical dimension, in relation to changing community structures and ameliorating social conditions, and a therapeutic dimension, in relation to changing the embedded negative value systems, which have accompanied cultural marginalisation and dispossession.

In order to be relevant to Indigenous struggles for justice, restorative justice movements need to extend their gaze beyond the single issue ‘conference’ as the sole purpose for intervention, and develop a restorative vision. Supporting Indigenous initiatives on sexual violence, in ways that promote Indigenous self-determination and community healing, would be a restorative practice. The principle of self-determination needs to be placed at the centre of restorative initiatives because, as Cunneen maintains, the ‘cultural and physical survival of Aboriginal people is dependent on self-determination.’¹⁸⁸

Wherever possible models of intervention should work through existing community structures and be focused on addressing sexual violence as a community service issue rather than simply a criminal justice problem. Restorative justice practices around child sexual assault should ‘add value’ to these initiatives, providing a diversity of healing, peacemaking opportunities – and resist the temptation to capture the issue or impose non-Indigenous structures and solutions.¹⁸⁹ These need to be offered, wherever possible, as genuine alternatives to the non-Indigenous system, or, where this is not entirely possible (where there is no alternative to incarceration, for example), spaces need to be opened up within the non-Indigenous system for family-based healing.

Interventions will only become meaningful when they actively reduce the reliance on non-Indigenous systems. Therefore, intervention should aim to divert, wherever possible, away from unnecessary contact with the formal, non-Indigenous justice system and into community based Indigenous systems of control. Depending on the seriousness of the offence, and the willingness of the victim(s), diversion should be an option at a number of points in the system (front end, pre-court, court).¹⁹⁰

The Community Holistic Circle Healing process of Hollow Water, Canada

One process for addressing child sexual assault that particularly stood out to ACSAT was the Community Holistic Circle Healing (CHCH) process currently being used in Aboriginal communities in Canada. This model was established by the Hollow Water community, and due to its overwhelming success, has been rolled out to other Aboriginal communities across the country.

The Hollow Water model has been referred to as an icon for Aboriginal people in Canada, as Indigenous communities have begun to heal themselves from unhealthy behaviours such as violence and sexual assault.

Background

Prior to the late 1980s, the Ojibwa people of Hollow Water acknowledged that they lived in a culture with little insight into the trauma of sexual abuse and denied the existence, and extent, of the abuse in their community. When they did seek help, they often encountered systems that exacerbated the problem and compounded the experience of victimisation.

¹⁸⁸ Cunneen (1999):124

¹⁸⁹ Blagg (1998); Indermaur, Atkinson and Blagg (1997)

¹⁹⁰ Blagg (2002)

Then the Hollow Water community began to face some devastating truths about the levels of sexual abuse experienced by its members. These included¹⁹¹:

- Estimates that three out of four members of the Hollow Water community were victims of sexual abuse and that one in three people had been an abuser
- An understanding that virtually no community member was untouched by victimisation and
- A realisation that many of today's abusers were yesterday's victims and that all victims were acquainted with, or related to, their abusers

They identified an enormous healing task and began a search for healing which evolved into the Community Holistic Circle Healing process (CHCH).

The philosophy of Community Holistic Circle Healing

The CHCH is a process that is informed by the physical, mental, spiritual and emotional aspects of the Ojibwa culture and that works with the victims and offenders of child sexual abuse, their families and the community to promote healing and restore harmony to the community.

The Ojibwa people of Hollow Water believe that nothing happens in isolation and that all beings are connected to all other beings, to what will come and to what went before.¹⁹² Similarly, they believe that sexual abuse does not happen in isolation and therefore always leaves more than one victim. As stated in Aboriginal People's Collection (APC) report:

'Dealing with it is often a battle that must be waged on more fronts than can be easily counted.'¹⁹³

The Ojibwa people believe that healing must take place under the steady gaze of the traumatic reality of sexual abuse. The healing takes place in the community, and it is the community that:

'refuses to give up on any of its members no matter how deeply they have been wounded, nor how despicable their act.'¹⁹⁴

The Ojibwa people do not believe in incarceration as they believe it allows the perpetrator to hide from, rather than face, their responsibilities for the damage and pain they have caused. In the CHCH process:

'offenders face their responsibilities with the love, respect, and support which the Anishnabe people believe are due to all creatures.'^{195 196}

The people of Hollow Water believe that you need to treat offenders and victims together, as this permits the reintegration into the community and assists in alleviating fear. The Hollow Water CHCH process reflects the view presented by Chief David Keenan of the Teslin Tlingit people at a conference on Aboriginal justice held in Whitehorse:

'There is no such thing as a disposable person anywhere in this country. We must quit treating them as such.'¹⁹⁷

The Hollow Water people report that in order to gain a sense of community and community structure again it was necessary for them to find a way in justice matters for the community to have a direct input with the offenders and victims and also with the families of both.

¹⁹¹ Aboriginal People Collection (1997), *The Four Circles of Hollow Water*, p. 116

¹⁹² *Ibid*, p. 7

¹⁹³ *Ibid*, p. 9

¹⁹⁴ *Ibid* p.

¹⁹⁵ Aboriginal People Collection (APC), 1997: p10

¹⁹⁶ Note: The Anishnabe people are also known as the Ojibwa or Chippewa.

¹⁹⁷ *Ibid*

The process

The CHCH healing process usually begins when a child discloses sexual assault. When a child discloses, a CHCH team is immediately called together to hear from the child and secure their safety. If the child discloses an incest situation, the team may remove the child and place them with someone safe within the community. However, if the victimiser is a third party or doesn't live at the home, then the child stays with their parents provided the parents are okay with the information and can guarantee safety for the child. If the victimiser lives in the child's home but they are not one of the parents, they are removed from the home and the child stays.

Then a team is set up for the child and the child's nuclear family and each member of the family is connected up with a worker or other appropriate person in the community. A case manager is identified and another team is set up for the offender. The offender team also contacts the police and lets them know they have another case and then keeps them informed of what they are doing. Then they begin the process of confronting the victimiser and ask him or her to acknowledge the abuse. They stay with the victimiser until he/she admits the abuse. If, after a period of time, they do not admit the assault happened, the matter is handed over to the child protection and police authorities.

Once the offender acknowledges the abuse, the team explains the process to them and the offender is offered a choice. They may enter the criminal justice system or they can go with a team member to the police, be charged, plead guilty, be placed on probation, and begin the healing circle work with the community.

Sentencing circles for offenders

Once the offender enters the guilty plea, CHCH asks the court to allow them four months, called a session, to work with the offender. This timeframe is to ascertain the offender's commitment to the process and their commitment to peace.

There are four main circles the offender must go through in a session. In between these circles are many smaller circles designed to support and prepare the offender for what they do in the main circles. Briefly, the role of each main circle is:

- The first circle is with the offender's team. The offender pleads guilty and talks about the crime they have committed. The circle members tell the offender that they must attend weekly sessions with their abuse worker, weekly sessions with a therapist and weekly sessions at a human sexuality program
- The second circle is where the offender begins to work with their nuclear family. The offender brings their partners and children to the circle and tells them what they have done. This circle is ongoing
- The third circle is where people can speak to the offender so the offender can understand they have violated a person. But it doesn't stop there because the crime that the offender has committed has not only touched the victim, it has also touched the family, the kinship system and the community. In this circle, people speak directly to the offender about the crime committed and how it has impacted on their life and what their expectations are for that person. The offender must also start working with their family of origin – their mothers and fathers, their sisters and brothers. Again they have to tell what they have done
- The fourth circle is the sentencing circle. This is where the offender must tell the whole community what they have done and what they are being charged with. The community gives recommendations to the courts on what they believe needs to happen to these people

The CHCH believe that if a person can go through these four circles then it demonstrates his or her commitment to his or her own healing. If the offender is not able to complete a circle, then the court process will take over. In the Hollow Water approach, the work of healing begins as soon as the offender admits to the crime and so too does the process of re-integrating in to the community.

Ongoing monitoring

Six months after sentencing, the community is called to a circle to get a report on the offender. The circle reviews the recommendations that went to court and a report is prepared for the court about all the healing work that has taken place in the last six months. The offender is to report on their progress to the community every six months for a five-year period.

Differences in the Hollow Water process

The CHCH team acknowledge that their approach is very different to traditional Western models of responding to child sexual assault. However, they believe their process is more effective for their community for a number of reasons.

The threat of jail is no deterrent

In the Western system, the offender is considered to be showing accountability through serving gaol time. However, the Hollow Water's team argue that incarceration has been ineffective in breaking the cycle of violence within their community. They argue that victimization has become so much a part of who they are as a people and a community that the threat of jail does not deter offending behaviour. In their view, all the threat of incarceration does is keep people from coming forward and taking responsibility for the hurt they are causing.¹⁹⁸

In addition, the CHCH team argues, community members who are charged with violent acts usually remain in the community, often for months, awaiting a court hearing. They are presumed innocent until proven guilty and during this period, there is often no accountability to the community and re-offending often occurs.¹⁹⁹

In the Hollow Water's process, the offender is called to account as soon as a disclosure is made and the safety of the victim is ensured. The CHCH team works with the offender until he/she acknowledges the abuse. The CHCH process is based on the belief that the healing and re-balancing begins as soon as the offender admits their guilt.

When one Hollow Water community member was asked 'why won't people abuse the process, you know, use it as a way to avoid gaol', she responded by saying 'gaol is easy compared to having to front up to what they have done.'

¹⁹⁸ Ibid, p. 94

¹⁹⁹ Ibid, p. 94

The inevitability of the victim confronting the offender

The Hollow Water's program is a holistic approach that integrates the treatment of the offender and the victim, their families, and the whole community. This is distinctly different from non-Aboriginal responses to sexual abuse, which separates treatment for offenders and victims and are often very hostile to the reintegration of sexual offenders into the community.

The Hollow Water's approach is based on the belief that everyone in its community is important, valuable and capable of healing. It is trying to restore community. It argues that because of the many connections among abusers and abused through kinship and residency in the same place, restoration at some level is important in the healing. A victim's life is still constricted if symptoms of trauma intercede in their day-to-day movements within their community.²⁰⁰

The aim is for offenders to attain genuine contrition, as it is compatible with healing. From the first disclosure of the offender's involvement in the offence the offender is being guided, helped, supported, and rebalanced, so that he or she may become truly aware of his actions and their effects. A concomitant goal is his or her reintegration in a supportive community and the strengthening of self and community as a result.

The people of Hollow Water believe that offenders need a healing community, a safe place where they feel safe to talk about the crimes that they have committed. As Hollow Water community member Berma Bushie states:²⁰¹

'It's only when people are open and can support these people that offenders interact and begin to change their lives and come back into balance. We see them as being out of balance. So we tell the courts we want these people here. They've committed the crime in this community. It affected the people in this community. It's their responsibility to start paying restitution for the pain they've caused. They're no good to us sitting in jail. It's easy for them to do the jail.'

Western therapy models of healing are often inappropriate for Aboriginal communities

The Hollow Water process promotes healing for the victim by helping them to name the problem, securing their safety, and building a circle of community support around the victim and drawing them into this circle.

The CHCH team argues that this is preferable for most Aboriginal people as a model of healing as most western models of therapy can²⁰²:

- Increase the feeling of aloneness experienced by the victim, as they are already likely to feel disempowered by the mainstream system and then they are then expected to work alone with the therapist and then at the end of the session, will often walk out alone
- Be frightening for the victim as they are asked to relive trauma with a therapist they don't know
- Be irrelevant to the victim if it does not have an appropriate cultural fit. The victim may not understand the process and may feel that it is his or her fault that they are not able to benefit from the therapeutic process

Government support and resources

The tasks of the CHCH are challenging. It is a small community and there are few people to complete all the tasks necessary to heal the community. Members of the team work directly with offenders, and are available any time a disclosure of abuse or assault is made. They also commit as much time as is required to support victims, offenders, and families as these individuals

²⁰⁰ Ibid, p. 120

²⁰¹ Ibid, p. 134

²⁰² Ibid, p ?

grapple with the realities a disclosure brings. They are all survivors themselves. English is a second language. They are not lawyers.

The CHCH team acknowledge the importance of getting support from police, defence lawyers and magistrates who know what the Hollow Water community is trying to achieve and are supportive of their processes.

It is also clear that consistent government policies and regular funding would be a great help to their cause. With so few resources to do the important work of healing, the community can ill-afford to spare people to decipher changes in government policy and prepare funding submissions.

The results so far

In 1997, the Hollow Water CHCH process had been evolving for about seven years. During that time, it had taken 48 offenders into its process. At the time of the APC report, none had yet completed the full healing process but only 2 had re-offended.

The costs and benefits of CHCH

A cost benefit analysis of the different dimensions of the CHCH process, compared to the costs of mainstream responses, has been completed.²⁰³ A summary of the findings are outlined below.

The basis for comparison

To compare the costs of the mainstream criminal justice system with CHCH, two assumptions have to be made. First, that the average Aboriginal offender spends 60% of his/her sentence incarcerated and second, that the individuals who have participated in the process would have been found guilty and given sentences that are equal to the national average. In addition, all pre-incarceration costs are indicated to be the responsibility of the provincial government and conservatively estimated to be \$19,500 per offender.

To compare the costs of the family and therapeutic services provided by CHCH with those provided by government, an average cost of government workers was ascertained. The community development work that is completed was seen as incomparable to any service available from either the province of Manitoba or the federal government.

The costs

The CHCH process has been formally operating for over ten years, during which time the federal and provincial government have contributed a combined total of approximately \$240,000 per year, or an estimated total of \$2.4 million. For the same services, a conservative estimate for ten years of provincial and government run services would be between \$6,212,732 and \$15,901,885. (The range in amounts is accounted for by taking the actual inmate costs (low end) and the total operational costs of housing inmates (high end)).

²⁰³ Native Counselling Services of Alberta 2001, *A Cost-benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Ontario Canada, p. iv

To put these figures in context, for every dollar the provincial government has spent on the CHCH program, it would have had to spend \$3.75 for pre-incarceration costs, prison and probation costs. For every dollar the federal government has spent on the CHCH program, it would have had to spend between \$2.46 to \$12.15 on incarceration and parole costs. Combined, for every \$2.00 the provincial and federal government spend on CHCH, the community receives well over \$6.21 to \$15.90 worth of services and value-added benefits.

Added benefits

It is clear from the cost analysis above that the CHCH process is providing governments and taxpayers with value for their money. It is also important to note that CHCH provides a community capacity development and a healing component that is incomparable in mainstream services.

Further, the estimates above do not take into consideration costs associated with victimizer re-offending nor their victims who would also require additional assistance. Research indicates that the recidivism rate for sex offenders is approximately 13% and if considering any form of recidivism, the figure rises to approximately 36%.

The cost-benefit analysis concluded that, given the very low recidivism rate for participants of the CHCH process (only 2 clients [approximately 2%] have re-offended during the past 10 years.²⁰⁴), it is appropriate to state that the value of services to both the government and community has been significantly understated.

²⁰⁴ The data collected for the cost-benefit analysis suggests that, at the time of the research, a total of 107 victimisers had taken part in the CHCH program.



CHAPTER 6

Creating the future



Creating the future

ACSAT has completed a thorough review of child sexual assault in Aboriginal communities and the way the NSW Government and non-government sectors respond.

This review found that Aboriginal communities across NSW overwhelmingly agree that child sexual assault is a huge issue in their community and it is having a devastating impact. All communities were also clear and resolute in wanting the violence against their children to stop and healing for their people to begin.

This review has also revealed a comprehensive government system of child protection and criminal justice that has, for the most part, a strong commitment to providing an effective response to Aboriginal communities. However, ACSAT identified many barriers and gaps in the way these services are provided that renders this response ineffective for most Aboriginal people seeking help for child sexual assault.

ACSAT has formulated many recommendations that aim to overcome barriers to access and eliminate service gaps. Once implemented, these measures will allow both the government and the community to work together more effectively and in turn, provide more positive outcomes to Aboriginal people.

However, ACSAT believes that still more is required. Overwhelmingly, participants said that they wanted a community driven response to child sexual assault. They wanted to work in real partnership with the existing service system to protect their children and heal their communities. They wanted a recognized model where they can work along side service providers rather than just providing information in consultations. In addition, people wanted options. Some people want to use the criminal justice system; some want treatment and healing for the offender and some just want the assault to be acknowledged.

The community, research, ACSAT and government all agree that child sexual assault needs to be addressed in a holistic way. This is especially important for Aboriginal communities where everyone is so interconnected. Past government practices and a breakdown in traditional ways has left community networks fragile and child sexual assault has become entrenched within them. ACSAT believes that communities must be empowered to strengthen these networks again so they can stop the devastating spread of child sexual assault. This means addressing child sexual assault in a coordinated way and at the same time as addressing the other issues that are impacting on the lives of children, families and the community.

ACSAT draws on Hollow Water Community Holistic Circle Healing process as an example of a model that is working well for Indigenous communities. In Hollow Water, Canada, a disclosure of child sexual assault triggers an immediate *community* response. The police are notified that a disclosure has occurred but it is the community that ensures the safety of, and support for, the child and begins working with the offender. The government service system remains available and on 'stand-by' and it is accessed by the community when appropriate.

ACSAT believes that such a model could be effective in NSW. However, it also believes it needs to be comprehensively researched, and developed, in partnership with Aboriginal communities, and any support (including education and funding) required to make this a reality for Aboriginal communities should be provided.

ACSAT recommendation 119

In consultation with the Aboriginal community, research, develop and implement a new model to address child sexual assault in Aboriginal communities through the continuum of the legal process from initial investigation through to sentencing.

ACSAT recommends that the new model be developed around the following key principles:

- Aboriginal communities are the primary decision makers
- Education about child sexual assault is provided to all communities
- Aboriginal communities identify the issues at a local, regional, state level and are involved in developing service responses
- Service delivery models are tailored to suit the local community
- Responses to child sexual assault are delivered in a holistic way, including understanding Aboriginal communities holistically as well as providing coordinated responses and addressing child sexual assault at the same time as addressing social and economic disadvantage
- Communication protocols are developed and agreed on, outlining the responsibilities of service providers and communities to share information as required and keep each other informed about what is happening
- Anyone working in Aboriginal communities or with Aboriginal people must have an understanding of the community dynamics and the potential impacts that a disclosure of child sexual assault may have on them
- Support is provided to Aboriginal communities as required for them to develop and implement solutions to child sexual assault

The focus of this new model will be on stopping the cycle of abuse and healing the community. Such a model, where children, young people and families know they will get a response, they know what that response will be and that they will be supported within their community, is likely to result in more children and young people coming forward and disclosing. The offender, who is more than likely part of the community, will be held accountable for their actions but will also get the treatment and support they need to reduce the likelihood of them re-offending.

ACSAT believes that in order to realise the vision of Aboriginal communities – that is an effective, cooperative, community driven response to child sexual assault – the recommendations of this Taskforce need to be implemented at the same time as a new model for responding to child sexual assault in Aboriginal communities is researched and developed.

List of abbreviations

ABS	Australian Bureau of Statistics
AbSec	Aboriginal Child, Family and Community Care State Secretariat
ACLO	Aboriginal Community Liaison Officer
ACS	Approved Counselling Scheme
ACSAT	Aboriginal Child Sexual Assault Taskforce
ACWA	Association of Children's Welfare Agencies
ACYFS	Aboriginal Child, Youth and Family Strategy
AEA	Aboriginal Education Assistant
AECG	NSW Aboriginal Education Consultative Group Inc.
AETD	Aboriginal Education and Training Directorate
AFHS	Aboriginal Family Health Strategy
AGD	NSW Attorney General's Department
AHMRC	Aboriginal Health and Medical Research Council
AHO	NSW Aboriginal Housing Office
AHP	Aboriginal Housing Program
AIHW	Australian Institute of Health and Welfare
AJAC	Aboriginal Justice Advisory Council
AJP	NSW Aboriginal Justice Plan – Beyond Justice 2004-2014
AMS	Aboriginal Medical Service
AOSP	Aboriginal Offenders Strategic Plan 2003-2005
ASLO	Aboriginal Student Liaison Officer
ATSIC	Aboriginal and Torres Strait Islander Commission
AWDSP	Aboriginal Workforce Development Strategic Plan (2003-2007)
BOCSAR	Bureau of Crime Statistics and Research
CACS	Child and Adolescent Counselling Services Inc.
CAP	Crisis Accommodation Program
CASAC	Child and Adolescent Sexual Assault Counsellors Inc.
CCIG	Cherbourg Critical Incident Group
CCTV	Closed-Circuit Television
CCWT	Centre for Community Welfare Training
CCYP	NSW Commission for Children and Young People
CDEP	Community Development Employment Program
CEIU	Child Exploitation Internet Unit
CEO	Chief Executive Officer
CHCH	Community Holistic Circle Healing
CJSOT	Criminal Justice Sexual Offence Taskforce
CLRD	Criminal Law Review Division
COALS	Coalition of Aboriginal Legal Services NSW
COS	Community Offender Services
CPC	Child Protection Caseworker
CPCU	Child Protection Coordination Unit
CPR	Child Protection Registry
CPWT	Child Protection Watch Team

CSC	Community Service Centre
CSCPS	Community Solutions and Crime Prevention Strategy
CSGP	Community Services Grants Program
CPCSAP	Child Protection and Child Sexual Assault Program
CPPO	Child Protection Prohibition Order
CSGP	Community Services Grants Program
CPSCS	Child Protection and Sex Crimes Squad
CUBIT	Custody Based Intensive Treatment
DAA	NSW Department of Aboriginal Affairs
DASB	DoCS Aboriginal Services Branch
DCS	NSW Department of Corrective Services
DET	NSW Department of Education and Training
DIMIA	Commonwealth Department of Immigrations, Multicultural and (formally) Indigenous Affairs
DJJ	NSW Department of Juvenile Justice
DoCS	NSW Department of Community Services
DoH	NSW Department of Housing
ECAV	Education Centre Against Violence
EIP	Early Intervention Program
FaCSIA	Commonwealth Department of Family, Community Services and Indigenous Affairs
FOI	Freedom of Information
FVPLS	Family Violence Prevention Legal Service
FVPP	Family Violence Partnership Program
FVRAP	Family Violence Regional Activities Program
ICC	Indigenous Coordination Centre
IFBS	Intensive Family Based Services
JIRT	Joint Investigative Response Team
LAC	Local Area Command
NAHSP	NSW Aboriginal Health Strategic Plan
NCOSS	NSW Council of Social Services
NGO	non-government organisation
OCH	Office of Community Housing
ODPP	Office of the Director of Public Prosecutions
OIPC	Office of Indigenous Policy
PADV	Partnerships Against Domestic Violence
PANOC	Physical Abuse and Neglect of Children
PDHPE	Personal Development, Health and Physical Education
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RCMG	Regional Coordination Management Groups
REG	Regional Engagement Group
RTO	Registered Training Organisation
SAAP	Supported Accommodation and Assistance Program
SAS	Sexual assault service
SMNPP	Standard Minimum Non-Parole Period

SOP	Sex Offender Program
SRA	Shared Responsibility Agreement
STI	Sexually Transmitted Infection
TAFE	Technical and Further Education
TWT	Two Ways Together, NSW Aboriginal Affairs Plan (2003-2012)
VAB	Victims Advisory Board
VCB	Victims of Crime Bureau
VCT	Victims Compensation Tribunal
VET	Vocational Education and Training
VS	Victims Services
VSL	Victims Support Line
WAS	Witness Assistance Service
WRM	Women's Refuge Movement
WWCC	Working With Children Check

Bibliography

Aboriginal Justice Advisory Committee (2003), *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014*.

Aboriginal Justice Advisory Council (2003), *Speak Out, Speak Strong: An Inquiry into the Needs of Aboriginal Women in Custody NSW*

Aboriginal People Collection (1997), *The Four Circles of Hollow Water*

Ashgate, Aldershot, and, Lynch, P. (2001), Keeping them home: The best interests of Indigenous children and communities in Canada and Australia. *Sydney Law Review*, vol. 23, no. 4, pp. 501-542.

Atkinson, J. (ed.)(1990), *Beyond violence: Finding the dream*, Aboriginal & Islander Sub-Program, National Domestic Violence Education Program, Office of the Status of Women, Canberra cited in Hazelhurst, K. (1994), *A Healing Place*. Rockhampton: Central Queensland University Press p. 27.

Atkinson, J. (2001), *Trauma trails, Recreating Song lines: the Transgenerational Effects of Trauma in Indigenous Australia*.

Atkinson, J. (1994), Recreating the circle with We AL-Li. *Aboriginal and Islander Health Worker Journal*, 18(6), 8-13.

Australian Bureau of Statistics, (2001), *Indigenous profile* from <http://www.abs.gov.au>

Australian Institute of Health and Welfare (2005), *Overcoming Indigenous Disadvantage, Key Indicators*

Blagg, H. (1998), 'Restorative Visions and Restorative Justice Practices: Conferencing Ceremony and Reconciliation in Australia', *Current Issues in Criminal Justice*, 10:1, pp 5-14.

Blagg, H. (2002), 'Restorative justice and Aboriginal family violence: Opening a space for healing' in H. Strang & J. Braithwaite (eds) *Restorative justice and family violence* Cambridge University Press, Cambridge.

- Bureau of Crime Statistics and Research (2005), Information provided on request from ACSAT
- Cashmore (2005) unpublished in Criminal Law Division submission to ACSAT
- Cashmore, J., Taplin, J. & Green, V. (2002), *Evaluation of the Joint Investigation Team (JIT)/Joint Investigation Response (JIR) Strategy*.
- Cashmore, J. & Trimbolei, L. (2005), *An Evaluation of the NSW Child Sexual Assault Jurisdiction Pilot*, NSW Bureau of Crime Statistics.
- Commonwealth Attorney Generals Department (2004), *Family Violence Prevention Legal Services, Operational Framework*, Canberra
- Crime Prevention Division (2005), *Crime Prevention Circle Sentencing Factsheet*, Attorney General's Department of NSW.
- Cunneen, C. (1999), 'Criminology, genocide and the forced removal of Indigenous children from their families', *Australian and New Zealand Journal of Criminology*, vol. 32, no. 2, pp. 124-38.
- Cunneen, C., & Libesman.T. (2000), 'Postcolonial trauma: The contemporary removal of Indigenous children and young people from their families in Australia'. *Australian Journal of Social Issues*, 35(2), 99-115.
- Daly, K. & Immarigeon, R. (1998), 'The past, present and future of restorative justice: Some critical reflections', *Contemporary Justice Review*, Vol. 1, No. 1, pp. 21-46.
- Garbarino, J. (1995), *Raising children in a socially toxic environment*. San Francisco: Jossey-Bass Publishers
- Goddard, C. & Hiller, P. (1993), 'Child sexual abuse: Assault in a violent context', *Australian Journal of Social Issues*, vol 28, no. 1, pp. 20-33.
- Gordon, S., Hallahan, K., Henry, D. (2002), *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.
- Hill, A. (2000), 'A First Nations Experience in First Nations Child Welfare Services', (pp.157-176), in Callahan, M., Hessle, S. & Strega, S. (eds) (2000), *Valuing the field: child welfare in an international context*
- Indermaur, D., Atkinson, L., and Blagg, H. (1997), *Working with adolescents to prevent domestic violence* Crime Research Centre.
- Kelley, S.J. (1994), 'Abuse of children in day care centres: characteristics and consequences', *Child Abuse Review*, vol.3, pp.15-25.
- Layton, R. QC, (2004), *Child Protection Review, Protecting Children Through Sex Offender Treatment*, 16.7, South Australian Government.
- Lievore. D. (2003), *Non-reporting and Hidden Recording of Sexual Assault: An international literature review*. Commonwealth Office of the Status of Women, Canberra, Australia.
- Lievore D (2004), *Recidivism of sexual assault offenders: rates, risk factors and treatment efficacy*. A report prepared for the Office of the Status of Women by the Australian Institute of Criminology Canberra.

McCloskey, Figuero, and Koss (1995), citing Williams-Meyer and Finklehor (1992).

Mullender, Audrey / Morley, Rebecca (1994), *Children living with domestic violence. Putting men's abuse of women on the child care agenda*. London.

Native Counselling Services of Alberta (2001), *A Cost-benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Ontario Canada.

NCOSS 2004, *Working Together for NSW (2004) – An agreement between the NSW Government and NSW non-government human services organisations*.

NSW Department of Community Services *Annual Report 2005*

NSW Department of Community Services, NSW Police and NSW Health 2001, *Joint Investigative Response Teams policy and procedures manual*, NSW.

NSW Department of Community Services, Corporate Research, Evaluation and Statistics Unit, statistical data provided to ACSAT 19 January 2006. Check if DCS or DoCS

NSW Department of Corrective Services (2005), *Programs for sex Offenders*, Offenders Programs Unit

NSW Department of Education and Training (2004), *The Report of the Review of Aboriginal Education, Yanigurra Muya: Ganggurrinyrna Yaarri Guurulaw Yirringin.gurray Freeing the Spirit: Dreaming an Equal Future*

NSW Department Of Juvenile Justice Annual Report 2000/02

NSW Department of Juvenile Justice Annual Report, 2003/2004

NSW Department of Juvenile Justice (2005), *Sex Offenders Program*, Psychological and Specialist Services Information, Series No. 1

NSW Government (2005), *NSW Guidelines for Child Protection Intervention 2000*, revised edition.

NSW Health (November 1993), *Aboriginal Health Goals for NSW*

NSW Health (June 1994), *A Healthy Future: A Framework for Health in NSW*

NSW Health, *NSW Aboriginal Health Strategic Plan 1999*

NSW Health, *Ensuring Progress in Aboriginal Health, A policy for the NSW Health System 1999*

NSW Health (2003), *NSW Health Aboriginal Health Impact Statement and Guidelines, Incorporating Aboriginal health needs and interests in health policies and programs*

NSW Ombudsman (2005), *Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)*

NSW Parliamentary Standing Committee on Law and Justice, 2000

Review of the Commission for Children and Young People Act 1998 and the Child Protection (Prohibited Employment) Act 1998

Robertson, B. (2000), *The Aboriginal and Torres Strait Islander women's task force on violence report*. Brisbane: Queensland Department of Aboriginal and Torres Strait Islander Policy and Development.

Sanderson, C. (2004), *The Seduction of Children: Empowering Parents and Teachers to Protect Children from Child Sexual Abuse* Jessica Kingsley Publishers New York.

Stanley, J, Tomison AM and Pocock, J (2003), *Child abuse prevention issues no. 19: Child abuse and neglect in Indigenous Australian communities*, Spring 2003, Australian Institute of Family Studies, Melbourne.

Truesdale, D., McNeil, J. & Deschner, J. (1986), 'Incidence of wife abuse in incestuous families', *Social Work*, March-April, pp.138-140.

CRC/C/15/Add.268, Concluding Observations, Committee on the Rights of the child, Australia, 40th session, consideration of reports submitted by state parties under article 44 of the convention, 30 September 2005.

The Review of Aboriginal and Torres Strait Islander claims lodged with the Victims Compensation Tribunal 2001-2003, NSW Attorney General's Department.

Legislation and Regulations

NSW Crimes Act 1900

NSW Summary Offences Act 1988

NSW Children and Young Persons (Care and Protection) Act 1998

NSW Commission for Children and Young People Act 1998

NSW Child Protection (Prohibited Employment) Act 1998

NSW Pre-Trial Diversion Act 1985 No 153

NSW Evidence (Children) Act 1997

NSW Young Offenders Act 1997

Websites

<http://www.aboriginaleducation.nsw.edu.au>

http://www.dcs.nsw.gov.au/offender_management

<http://www.lawlink/victimsservices>

http://www.police.nsw.gov.au/community_issues/children as at 6 February 2006

http://www.community.nsw.gov.au/documents/policy_aborig.pdf

http://www.mcmc.qld.gov.au/resources/documents/government_champions.doc

http://203.147.192.57/public/s26_homepage/default.aspx as at 7 November 2005

http://www.community.nsw.gov.au/html/comm_partners/childprotection_guidelines.htm

http://www.oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/

<8WorkingWithStatesTerritories.asp> as at 24 October 2005.

http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/indigenous_policy.htm

http://www.indigenous.gov.au/sra/kit/what_are.pdf as at 24 October 2005

<http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-fvp.htm>

http://www.facs.gov.au/internet/facsinternet.nsf/family/parenting-child_abuse_prevention.htm

<http://www.community.nsw.gov.au/documents/apology.pdf>
<http://www.housing.nsw.gov.au/>
<http://www.absec.org.au/about/index.html>
<http://www.ahmrc.org.au/index.htm>
<http://www.rosebankcsa.org.au/casac/>
<http://www.ncoss.org.au/about/index.html>
http://www.community.nsw.gov.au/html/news_publications/insideout/insideout_2004/MarApril04/04MA_achievingmoretogether.htm
<http://www.info.gov.za/aboutgovt/justice/npa.htm>
<http://www.info.gov.za/aboutgovt/justice/npa.htm>
<http://www.info.gov.za/aboutgovt/justice/npa.htm>
<http://www.info.gov.za/aboutgovt/justice/npa.htm>
http://www.doj.gov.za/2004dojsite/m_speeches/sp2004/2004%2005%2028_min_sxoc%20george.htm
<http://www.lawrights.asn.au/docs/kruger2005.pdf>
http://www.doj.gov.za/2004dojsite/m_speeches/sp2004/2004%2005%2028_min_sxoc
http://www.centacare.org/_sec/news/nswinquirychildsexualassaultmatters.pdf
<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/keyindicators2005.pdf>
http://en.wikipedia.org/wiki/Adversary_system
<http://www.polity.org.za/pdf/Report.pdf>
<http://www.acwa.asn.au/CCWT/AboutCCWT.html>



Appendices



APPENDIX ONE:

Biographies of the Aboriginal Child Sexual Assault Taskforce Members

Marcia Ella-Duncan (Chair)

Ms Ella-Duncan is an Aboriginal woman who has worked extensively in Aboriginal Affairs within NSW. She has previously managed issues such as the 2004 Redfern Riot and has been a particularly strong advocate of interventions in the Sydney Aboriginal community to combat violence and sexual violence and in particular sexual violence against Aboriginal children in her Role as ATSIIC Chair. Ms Ella-Duncan has extensive experience in both a service delivery and policy capacity in juvenile justice and child protection issues in NSW.

Joan Dickson

Ms Dickson is an Aboriginal woman who has worked extensively with Family Violence and child protection issues in the Far West region of NSW. She has experience with both government and non-government agencies in violence prevention, crisis service delivery, and Aboriginal affairs. She currently works with the Department of Community Services as the Client Service Manager of the Bourke Grouping which provides child protection responses for Brewarrina, Bourke, Walgett and Cobar.

Melva Kennedy

Ms Kennedy is an Aboriginal woman who has extensive experience in child sexual assault. She has over ten years experience in sexual assault counselling for the Aboriginal Medical Service at Redfern. She currently provides training as a consultant, for the Educational Centre Against Violence on child sexual assault in Aboriginal communities. Her experience includes; member of the NSW Child Death Review Team; NSW Child Protection Council trainer; and an International Indigenous child sexual assault representative.

Greg Telford

Mr Telford is an Aboriginal man who has an extensive history in child protection, Aboriginal Intensive Family Based Services and Men's and Women's support and programming. Mr Telford is currently the Coordinator of the Rekindling the Spirit Program in Lismore/Casino, which is a holistic program working with both Aboriginal men and women on behavioural change, primarily in relation to family violence and child protection issues.

Chris Cunneen

Professor Cunneen has written extensively on the relationship between Indigenous people and the law and is currently the Director of the Institute of Criminology, University of Sydney Law School. He has worked as a research consultant with numerous Inquiries and organisations, including the Royal Commission into Aboriginal Deaths in Custody; the Human Rights and Equal Opportunity Commission; the National Inquiry into Separation of Aboriginal and Torres Strait Islander Studies; and various Aboriginal organisations such as the Committee to Defend Black Rights and Aboriginal Legal Services in New South Wales and the Northern Territory.

Luke Penrith

Mr Penrith is a young Aboriginal man, who is currently employed with the Aboriginal Legal Service as a youth field officer. In this role Mr Penrith has shown strong leadership and extensive skills in working with Aboriginal communities and youth issues. Mr Penrith is also chair of the Riverina Aboriginal Medical Service Youth Group, Regional representative for the Aboriginal Youth Justice Advisory Council, Member of the National Indigenous Youth Leadership Program and co-founder of the Black Suns Inc., an Aboriginal non-profit organisation that facilitates cultural programs for young people in the Riverina area.

APPENDIX TWO:

Crown Solicitor's Office advice regarding the confidentiality of community member's submissions and consultations





Crown Solicitor

Advice

Aboriginal Child Sexual Assault Taskforce and Freedom of Information Act

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Prepared for: Attorney General’s Department
Date: 19 August 2005
Client ref: Brendan Thomas
CSO ref: AGD010.10027 T1 Christa Ludlow

1. Summary of advice

- 1.1 Please note this is a summary of the central issues and conclusions in my advice. Other relevant or significant matters may be contained in the advice, which should be read in full.
- 1.2 The documents recording information gathered by ACSAT are subject to the *Freedom of Information Act 1989* if its documents are held either by the Minister or the Attorney General's Department, since it is not an exempt agency under the Act or regulations.
- 1.3 However personal information gathered would be exempt from access by members of the public in my view because of its sensitivity. Other information obtained in confidence may be exempt if it is the case that disclosure might prejudice the future supply of such information, by inhibiting people from coming forward. However I do not think this could apply to Government agencies which provide information to ACSAT.
- 1.4 Opinions, advice and recommendations obtained from agencies might be exempt. However it must be shown that the information was obtained in the course of or for the purpose of the decision making functions of the Government, a Minister or the agency, and that disclosure would on balance be contrary to the public interest. Once the decision making has been finalised, it is less likely that the disclosure would be contrary to the public interest.

2. Advice sought

- 2.1 You have requested my advice on the application of the *Freedom of Information Act 1989* ("the *FOI Act*") to information received by the Aboriginal Child Sexual Assault Taskforce (ACSAT). The ACSAT is a Ministerial taskforce appointed by the Attorney General to inquire into child sexual assault in Aboriginal communities. It will report its findings and strategies to address this issue in October 2005.
- 2.2 ACSAT collects information through consultation with Aboriginal communities, youth health services, counselling services and related organisations. You have asked me to advise as follows:
 1. Is the information that ACSAT receives through community consultations and submissions subject to the *FOI Act*? Consultations are held in strict confidence.
 2. Is the information received from Government sectors in the form of submissions to ACSAT subject to the *FOI Act*?

3. Background

3.1 I note from the ACSAT website that the terms of reference of the taskforce are as follows:

“The Aboriginal Child Sexual Assault Taskforce will work for a period of twelve months to its terms of reference as follows:

1. Examine how State Government agencies respond to evidence of child sexual abuse that may be occurring in Aboriginal communities generally; particularly the barriers and capacity of agencies to address the issue of sexual violence in Aboriginal communities;
2. Identify key areas to be addressed by Government in its response to the incidents of child sexual abuse;
3. Examine how family violence impacts on/or contributes to child sexual abuse in Aboriginal communities;
4. Propose measures to assist Aboriginal communities to develop their governance and economic capacity;
5. Recommend practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures;
6. Comment on the possible adaptation of alternate sentencing and restorative justice processes as an adjunct to the criminal justice system;
7. Examine how non-government organisations respond to child sexual abuse;
8. Propose safety and support measures for children reporting abuse.”

3.2 I note also there are some “prompter questions” on the website for communities to consider before they talk to the Taskforce. Some of these are personal in nature, eg.:

“What is your experience with child sexual assault?

How did you deal with it?

What did you do?

Who did you tell? Eg Police DoCS, School, Family members

How did they react?

How long did the assault go on for?”

Others are more general in nature such as:

“What services have been developed by Government to look at child sexual assault and abuse in your community?

Can everybody use these services? If not, why not?

How do the services respond when you talk to them? eg health, police, community services?

Are the services culturally appropriate? Why or why not?

Are services being funded adequately? If not, can you suggest the best way to use more funding?

Is the Government giving funding to Communities in the best way to deal with the issue of child sexual assault and abuse?"

3.3 Questions directed to agencies are somewhat different. Examples are:

"What services/programs/procedures have been developed by your agency in response to child sexual assault and abuse?"

Are there other barriers that stop Aboriginal people accessing the services? What strategies have been implemented to address these barriers?

Does your agency provide any specific services to assist Aboriginal communities or individuals who have experienced child sexual assault?

What is the funding allocation for such services in 2004/05 financial year?

How does your agency work in with other Government Departments to address child sexual assault?

What training is provided to your staff and clients in relation to education and response to child sexual assault in Aboriginal communities?"

4. Relevant legislation

4.1 Section 7 of the *FOI Act* provides:

"7 Public authorities

- (1) In this Act, a reference to a public authority is a reference to:
- (a) a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the provisions of a legislative instrument, other than:
 - (i) an incorporated company or association, or
 - (ii) a body that, under subsection (2) or (3), is not to be taken to be a public authority, or
 - (iii) the Legislative Council or the Legislative Assembly or a committee of either or both of those bodies, or
 - (iv) a Royal Commission or a Special Commission of Inquiry, or
 - (v) a local authority, or

- (b) a body (whether incorporated or unincorporated) established for a public purpose otherwise than by or under the provisions of a legislative instrument and declared by the regulations to be a public authority, or
 - (c) any other body (whether incorporated or unincorporated) declared by the regulations to be a public authority, being:
 - (i) a body established by the Governor or by a Minister, or
 - (ii) an incorporated company or association over which a Minister is in a position to exercise direction or control, or
 - (d) the Police Service, or
 - (e) the Teaching Service, or
 - (f) a statutory State owned corporation (and its subsidiaries) as defined in the *State Owned Corporations Act 1989*.
- (2) An unincorporated body (being a board, council, committee, subcommittee or other body established or continued by or under the provisions of a legislative instrument for the purpose of assisting, or exercising functions connected with, an agency) shall not be taken to be a separate public authority but shall be taken to be included in the agency.
- (3) The regulations may declare that a specified body is not to be taken to be a separate public authority but is to be taken to be included in a specified agency.”

4.2 Section 16 of the *FOI Act* provides:

“16 Right of access to agencies’ documents

- (1) A person has a legally enforceable right to be given access to an agency’s documents in accordance with this Act.
- (2) (Repealed)”

4.3 Section 35 of the *FOI Act* provides:

“35 Right of access to Ministers’ documents

A person has a legally enforceable right to be given access to a Minister’s documents in accordance with this Act.”

4.4 Clause 6 of Schedule 1 to the *FOI Act* provides:

“6 Documents affecting personal affairs

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (whether living or deceased).

- (2) A document is not an exempt document by virtue of this clause merely because it contains information concerning the person by or on whose behalf an application for access to the document is being made.”

4.5 Clause 9 of Schedule 1 to the *FOI Act* provides:

“9 Internal working documents

- (1) A document is an exempt document if it contains matter the disclosure of which:
 - (a) would disclose:
 - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded, or
 - (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency, and
 - (b) would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause if it merely consists of:
 - (a) matter that appears in an agency’s policy document, or
 - (b) factual or statistical material.”

4.6 Clause 13 of Schedule 1 to the *FOI Act* provides:

“13 Documents containing confidential material

A document is an exempt document:

- (a) if it contains matter the disclosure of which would found an action for breach of confidence, or
- (b) if it contains matter the disclosure of which:
 - (i) would otherwise disclose information obtained in confidence, and
 - (ii) could reasonably be expected to prejudice the future supply of such information to the Government or to an agency, and
 - (iii) would, on balance, be contrary to the public interest.”

5. Advice as to Question 1

- 5.1 The ACSAT is not an “agency” within the meaning of s. 6(1) of the *FOI Act*, which is “a Government Department, public authority, local authority or public office”. It is not a Department; it is not a public authority as it is not a body (whether incorporated or unincorporated) established or continued for a public purpose by or under the

provisions of a legislative instrument, nor declared to be one under the Regulations (s. 7). It is not a public office within the meaning of s.8. The Taskforce as I understand it is however supported within the Attorney General's portfolio. It is either part of the Department or part of the Attorney General's Office.

5.2 Section 16 provides that a person has a legally enforceable right to be given access to an agency's documents in accordance with the Act; s. 35 provides that a person has the same right of access to a Minister's documents. Section 6(2)(e) provides that a reference to a document "held" by an agency includes a reference to a document to which the agency has an immediate right of access and a document that is in the possession, or under the control of a person in his or her capacity as an officer of the agency. A reference to a document held by a Minister includes a reference to a document to which that Minister has an immediate right of access and a document that is in the possession, or under the control of a person in his or her capacity as a member of that Minister's staff. Therefore if the Department or the Attorney-General "holds" the documents of ACSAT in the sense described above, a FOI application can be directed to them for those documents. ACSAT is not a body which is exempt from the *FOI Act* (s. 9, Sch. 2). Therefore it appears that the ACSAT and its documents are subject to the *FOI Act*. I now turn to deal with what exemptions may apply.

5.3 You instruct me that consultations are held in strict confidence. This may mean that clause 13(a) or (b) of Schedule 1 to the *FOI Act* will apply.

5.4 In relation to clause 13(a) it is necessary to identify whether the disclosure of information would found a breach of confidence. This depends on whether the following questions could be answered in the affirmative:

- (a) whether the information is of itself confidential;
- (b) whether the information was communicated in confidence or in such a way that there was an obligation of confidentiality;
- (c) whether disclosure would be an unauthorised use of the information.

The disclosure would have to satisfy the requirements of a legal action of breach of confidence. This can be difficult to satisfy, therefore it is often easier to rely on cl. 13(b).

5.5 In the present case it appears that the information was obtained in confidence. It does not matter that a number of people may know the facts in question (*Attorney General's Department v Cockcroft* (1986) 64 ALR 97) as long as it is not in the public domain (*Re Cockcroft and Attorney General's Department, Australian Iron and Steel Pty Ltd* (1987) 13 ALD 623). The next question is whether disclosure of the information could reasonably be expected to prejudice the future supply of such information to the Government or an agency. It has been said that this requires the decision maker to:

“...characterise the nature of the material sought to be protected on the present occasion; to identify the extent to which material of that kind can only be obtained, or can only reasonably be obtained, by confidential communication; the extent to which guarantees of confidentiality may be necessary. We agree with the dicta of Young CJ in *Ryder v Booth* [1985] VR 870 as to how a similar question arising under the Victorian FOI Act’s in-confidence exemption (whether disclosure would be reasonably likely to impair the ability of an agency to obtain information communicated in confidence) should be approached. His Honour said at 872:

‘The question then is, would disclosure of the information sought impair (i.e. damage) the ability of the [agency] to obtain similar information in future. ... It may be noted that it is the ability of the [agency] that must be impaired. The paragraph is not concerned with the question whether the particular doctor whose report is disclosed will give similar information in future but with whether the agency will be able to obtain such information. ...’

(*Director-General, Department of Education and Training v Mullett* (GD) [2002] NSWADTAP 13 at [58])

- 5.6 In *Saleam v Director-General, Department of Community Services* [2002] NSWADT 41, (upheld on appeal) the Tribunal upheld a cl. 13(b) exemption for reports used by the Department in its child protection responsibilities, as disclosure might prejudice the future supply of information about child abuse relied upon by the Department. President O’Connor said:

“Again in principle it is clear that child abuse notifications and the like if disclosed might prejudice the future supply of such information, by inhibiting people from coming forward for fear of being identified and then harassed or sued by the carer adversely affected by the notification. Ordinarily disclosure of such material would be contrary to the public interest.” (at [61])

The above comments would apply in this case to the information about child abuse, but I am not sure that it would apply to all the information, in particular the less sensitive information not related to personal experiences, eg. information about funding and services. There may be arguments why such information should be disclosed in the public interest.

- 5.7 Another exemption which may be relevant is cl. 6 which relates to personal affairs. It has been said that:

“The general object of the clause is to protect private information of third parties who may be referred to in agency documents but who may be unaware that their private affairs stand subject to exposure by a claim for access made under the

Act. In its context, the words 'personal affairs' means the composite collection of activities personal to the individual concerned ." (*Commissioner of Police v District Court of NSW* (1993) 31 NSWLR 606 ('*Perrin's case*'))

It seems that some of the information will be very personal and sensitive in nature, namely that relating to specific instances of child abuse, specific reactions to it, the identities of victims and perpetrators, actions taken and personal experiences of services provided. Information regarding family matters have been held to be "personal affairs" (*Department of Social Security v Dyrenfurth* (1988) 80 ALR 533) as has information regarding an assault (*Akers v Victoria Police* [2003] VCAT 397).

- 5.8 The next question is whether the disclosure will be unreasonable. In *Re Chandra and Minister for Immigration and Ethnic Affairs* (1984) 6 ALN N257, the AAT said:

'(51) ... [I]t is not every document, the disclosure of which would involve the disclosure of information relating to the personal affairs of a person, that is exempt from disclosure under the Act. Exemption is only attracted if the disclosure would involve the unreasonable disclosure of information relating to those affairs. Whether a disclosure is "unreasonable" requires, in my view, a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance. Plainly enough what s 41 [the Commonwealth FOI Act exemption equivalent to cl 6] seeks to do is to provide a ground for preventing unreasonable invasion of the privacy of third parties.'

- 5.9 In *Saleam* (cited above) President O'Connor found that disclosure of personal information in child protection files would be unreasonable given the sensitivity of the information. The purpose of the applicant is generally irrelevant (*Saleam*, at [46]).
- 5.10 The documents might also be exempt under cl. 9 (internal working documents) although this would only cover opinions, advice and recommendations (see below).

6. Advice as to Question 2

- 6.1 Based on the kinds of questions asked, the information which would be provided by agencies to ACSAT would be less likely to contain information relating to personal affairs, although where information relates to private individuals that exemption could be relied upon.
- 6.2 Also I think that it is less likely that cl. 13(b) could be relied upon. While the information might have been asked for and given in confidence, because the persons

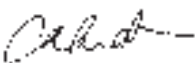
giving it are officers of agencies, and could be directed to give what appears to be fairly standard information about that agency's performance, I do not think it could be said that disclosure of the information might prejudice the future supply of such information, by inhibiting people from coming forward.

- 6.3 Clause 9 might be more useful because the information concerned could contain opinions, advice and recommendations. However it must be shown that the information was obtained in the course of or for the purpose of the decision making functions of the Government, a Minister or the agency, and that disclosure would on balance be contrary to the public interest. Once the decision making has been finalised, it is less likely that the disclosure would be contrary to the public interest (*Director-General, Department of Community Services v Latham* [2000] NSW ADTAP 21). It might also be argued that disclosure would be contrary to the public interest because agencies would be less likely to be frank about their deficiencies if they knew they would be exposed. However in recent years arguments based on this line have not been so readily accepted. Two NSW cases are *Simpson v Director-General, Department of Education and Training* [2000] NSWADT 134; and *Bennett v Vice-Chancellor, University of New England* [2000] NSWADT 8 where it was said "clear, specific and credible evidence" would be required (at [63]).

7. Conclusion

- 7.1 See summary of advice above.

Signed:



Christa Ludlow
Senior Solicitor
for Crown Solicitor

APPENDIX THREE:

Community Confidentiality – Release of Information form





Permission Request Form

Please complete your personal details below and tick the relevant box that applies to how you wish to have your information recorded in the final report.

Name: _____

Community: _____

Agency: _____

I, _____ (your name) would like the information that have provided to the Taskforce recorded in the final report in the following way:

- By Name (eg “CSA is a problem in our community”, by Jane Doe)
- By Community (eg “CSA is a problem in our community”, Lismore)
- By Agency (eg “CSA is a problem in our community”, by Family Services, Orange)
- Anonymous (eg “CSA is a problem in our community”, anonymous)
- Information not to be used (no information from your consultation/submission will be used)

Please sign here: _____

Date: _____

Aboriginal Child Sexual Assault Taskforce

NSW Attorney General's Department ACSAT GPO Box 6 SYDNEY NSW 2001

Tel: (02) 9228 8053 Fax: (02) 9228 8040 Email: acsat@agd.nsw.gov.au

APPENDIX FOUR:

Community Information Register:

Audio Recorded Consultations – Transcripts

Non-audio Recorded Consultations

Submissions

Information Sessions



Audio Recorded Consultations – Transcripts

Number	Name	Agency	Community
1	Withheld	Agencies	Hunter
2	Withheld	Agencies	Withheld
3	Withheld	Agency	Withheld
4	Withheld	Agency	Withheld
5	Withheld	Agency	Withheld
6	Withheld	Agency	Withheld
7	Withheld	Agency	Withheld
8	Withheld	Individuals	Withheld
9	Withheld	Agency	Withheld
10	Withheld	Agency	Withheld
11	Withheld	Many Rivers Aboriginal Legal Service	Hunter
12	Withheld	Agency	Withheld
13	Withheld	Agencies	Withheld
14	Withheld	Agencies	Withheld
15	Withheld	Agency	Withheld
16	Withheld	Individual	Withheld
17	Withheld	Individual	Withheld
18	Withheld	Sport and Rec	Withheld
19	Withheld	Agency	Withheld
20	Withheld	Individuals	Withheld
21	Withheld	Individuals	Withheld
22	Withheld	Agency	Nerrandera
23	Withheld	Agency	Withheld
24	Janelle Cameron Lynn Kendall Kay Humphries Gemma Evans	Community Health Sexual Health Sexual Assault Service	Wagga Wagga
25	Withheld	Individual	Albury
26	Withheld	Family	Withheld
27	Withheld	Family	Withheld
28	Withheld	Agency	Withheld

Number	Name	Agency	Community
29	Withheld	Agency	Withheld
30	Withheld	Joint Investigative Response Team	Tamworth
31	Withheld	Individual	Withheld
32	Withheld	Individuals	Taree
33	Withheld	Individuals	Taree
34	Withheld	Individual	Withheld
35	Withheld	Agency	Taree
36	Withheld	Individuals	Withheld
37	Withheld	Individual	Broken Hill
38	Leisa Lavella	Individual	Casino
39	Withheld	Agency	Withheld
40	Withheld	Agency	Withheld
41	Withheld	Sexual Assault Service	Moree
42	Withheld	Agency	State-wide

NON-AUDIO RECORDED CONSULTATIONS

Number	Name	Agency	Community
1	Withheld	Individual	Withheld
2	Withheld	Individuals	Withheld
3	Withheld	Agency	Tumut
4	Julie Baker	Family Support Network Inc	Lismore
5	Withheld	Individuals	Withheld
6	Withheld	Individuals	Withheld
7	Withheld	Individuals	Withheld
8	Withheld	Agency	Withheld
9	Withheld	Individuals	Withheld
10	Withheld	Agencies	Withheld
11	Withheld	Individuals	Withheld
12	Withheld	Agency	Withheld
13	Withheld	Agency	Withheld
14	Withheld	Individuals	Withheld
15	Withheld	Individuals	Withheld

COMMUNITY GROUP/INFORMATION SESSIONS

Number	Community
1	Orange
2	Brewarrina
3	Bourke
4	Forbes
5	Nowra
6	Bateman's Bay
7	Bega
8	Narrandera
9	Wagga Wagga
10	Albury
11	Wallaga
12	Tamworth
13	Moree
14	Kempsey
15	Casino
16	Lismore
17	Taree
18	Menindee
19	Broken Hill
20	La Perouse
21	Redfern
22	Mt Drutt

SUBMISSION REGISTER

	Date Received	Submission Title	Author	Location
1	31 January	ACSAT	Individual (Withheld)	Wellington
2	25 February		Agency (Withheld)	Charlestown
3	1 March		Individual (Withheld)	Ramsgate
4	2 March	Failures of a Society and Government Systems	Individual (Withheld)	Nowra
5	4 March	Response to request for submissions to ACSAT	Agency (Withheld)	State Wide
6	8 March	Protection Children and Creating a Safe Future	Agency (Withheld)	State Wide
7	4 April		Agency (Withheld)	Sutherland
8	26 April	Submission to AGD ACSAT	Agency (Withheld)	State Wide
9	29 April		NSW Department Aboriginal Affairs	State Wide
10	6 May	NSW Aboriginal Family Health Strategy	NSW Dept. Health	State Wide
11	13 May		Director Of Public Prosecutions	State Wide
12	17 May		Ministry of Police	State Wide
13	24 May		Minister for Justice (Corrective Services Commission)	State Wide
14	3 June		Commission for Children and Young People	State Wide
15	6 June		Department of Education and Training	State Wide
16	17 June		Department of Housing	State Wide
17	30 June		Department of Juvenile Justice	State Wide
18	4 August		Agency (Withheld)	Nowra
19	8 August		Educational Centre Against Violence	State Wide

	Date Received	Submission Title	Author	Location
20	16 August		Department of Community Services	State Wide
21	22 August		Legislation and Policy Division – AGD	State Wide
22	22 August		Legal Aid Commission	State Wide
23	22 August		Criminal Law Review Division – AGD	State Wide
24	23 August		Children’s Court Clinic	State Wide
25	26 August		NSW Judicial Commission	State Wide
26	5 September		Aboriginal Justice Advisory Council	State Wide
27	7 September		Victims Services – NSW Attorney General’s Department	State Wide
28	12 September		NSW Justice Health	State Wide
29	12 September		Child Protection Learning and Development Coordination Unit	State Wide
30	7 October		Individual (Withheld)	Sydney
31	2 December		Agency (Withheld)	NGO
32	5 December		Individual (Withheld)	Individual/ Private Psychologist

APPENDIX FIVE:

Training courses and resources about child sexual assault delivered by the Education Centre Against Violence

Course delivered by ECAV include²⁰⁵:

Understanding and responding to child sexual assault

Foundations for working with adults sexually assaulted as children

Targeted at health workers and counsellors whose role brings them into contact with adults who experienced sexual assault in childhood (for example midwives, early childhood nurses, alcohol and other drugs counsellors).

This course provides participants with an understanding of the dynamics of child sexual assault and the link between these dynamics and presentations to health services in adult life. It will include information on how to respond to disclosures of sexual assault. Key issues in working with survivors will be explored including safety, trust, and boundaries, acknowledging strengths and engaging the client in the counselling relationship.

NSW Health specialist sexual assault services training

Target group: counsellors employed by NSW Health sexual assault services

The course includes: the dynamics and impact of adult and child sexual assault, interagency functioning, legal issues, crisis intervention, therapeutic approaches, community education, vicarious trauma and worker self-care.

There is a more intensive focus on specialised areas of work, including: mental health, disability, male sexual assault and cultural competence in accessing Aboriginal communities in the latter part of this three-part course. It will also examine ways of working with culturally diverse populations to ensure better access to sexual assault services.

In the shadow of the offender

Target group: Counsellors and interagency professionals in government and non-government services who are working with children who have been sexually assaulted and their non-offending family members.

Child sexual assault research consistently finds that the most critical factor in a child's recovery from sexual assault is being believed and supported by the non-offending carer. (This is usually the mother of the child). Workers attempting to respond to families in the crisis of disclosure and beyond are often confronted with powerful and confusing dynamics that act to restrain the mother from fully believing and supporting her child. These restraints are linked to the way in which the offender has created divided loyalties within the child and mother's networks, effectively dividing them and undermining the relationship between them. This course explores the impact of the offender's behaviour on the relationships between the child who has been assaulted, the siblings and the mother. A range of key systemic (interagency) interventions is also identified.

²⁰⁵ All ECAV course information was sourced from <http://www1.health.nsw.gov.au/ecav> as at 8 February 2006.

Who Can A Man Tell?

Target Group: Workers in health, welfare and other services coming in contact with men affected by sexual assault in childhood or as adults.

This course examines a range of issues experienced by men who have been sexually assaulted as adults and those who are survivors of child sexual assault. The relationship between the dynamics of child sexual assault and dominant social constructions of masculinity is explored. The child's coping strategies and later difficulties as an adult are highlighted. Therapeutic approaches with men who have been sexually assaulted, either as adults or as children, will be explored. Male and female therapists will have the opportunity to examine gender issues that may arise in their work with male clients.

Training for Aboriginal workers

Child sexual assault for Aboriginal workers

Target group: Aboriginal workers from government and community sectors.

This course covers the dynamics of child sexual abuse and discusses Aboriginal cultural issues in child protection. It provides an overview of child sexual abuse including: the nature and extent; dynamics; indicators and effects; case management; roles and responsibilities of agencies; the influence the offender has on the child and non-offending parent(s); and prevention strategies.

Skills in child protection for Aboriginal workers

Target group: Aboriginal workers from government and non-government sectors.

Aboriginal community workers and identified child protection advocates are encouraged to attend this course.

This course examines common community attitudes and the nature, extent and dynamics of physical and emotional abuse and neglect. The indicators and impact of abuse on children and young people and the interface between physical and emotional abuse and neglect of children and domestic violence will be outlined. Workers will have the opportunity to explore what is meant by risk of harm to children and young people and workers legislative responsibilities will be addressed. Relevant cultural factors will be discussed and community development strategies in child protection will be identified.

Certificate IV Family/Domestic Violence and Sexual Assault (Aboriginal Family Health)

Target Group: this course is only available to Aboriginal applicants

This innovative course, the sixth of which will start in February 2006, has been developed by ECAV, in partnership with Aboriginal Health Branch, NSW Health. It considers the ways in which Aboriginal Family Health is based in family and community solutions. The historical, cultural, legal, social, political and personal power relations affecting Aboriginal communities are taken into account. Gender issues are addressed within this context. It is recognised that child and adult sexual assault, family/domestic violence and physical and emotional abuse and neglect of children and young people impact on ongoing community development.

This course was specifically designed for Aboriginal Family Health Workers and provides a career pathway for Aboriginal Health Workers who work or wish to specialise in child protection, family/domestic violence and sexual assault.

Adult Sexual Assault in Aboriginal Communities

Target Group: Aboriginal workers from both government and community sectors

Aboriginal communities have recognised for some time that sexual assault is an issue affecting many people. Knowing what to do about it can be difficult and overwhelming. This workshop will examine some issues for Aboriginal people in relation to sexual violence. We will discuss definitions and statistics, the impact of media reporting and the dynamics of sexual assault and tactics of offenders. We will explore the effects and possible mental health outcomes, as well as survival strategies used by victims/survivors. Confidentiality, in the context of providing support to those whose lives have been affected will be considered. There will be an overview of legal issues. To conclude we will look at what communities can do to begin to address the problem and explore strategies to prevent further violence from occurring.

Training for specific service provider groups

Sexual assault in the correctional environment

Target group: Justice Health workers only.

It is increasingly recognised that many inmates in correctional facilities have been sexually assaulted, either as children or as adults. This course provides Justice Health workers with information about the incidence, dynamics, indicators and effects of both adult and child sexual assault. It includes information on how to identify and respond to disclosures of sexual assault in the correctional environment. Participants are invited to explore the application of this information in their current work, and to develop strategies they can use to manage issues that arise for them related to the management of sexual assault.

Adult & child sexual assault for mental health workers:

Target group: Mental health workers in community health, crisis teams, psychiatric hospitals and accommodation services.

It is increasingly recognised that many clients of mental health services have been sexually assaulted either as children or adults. This course provides mental health workers with information about the incidence, dynamics, indicators and effects of both adult and child sexual assault. Recent research showing significant links between mental health issues and sexual assault will be discussed together with ways of responding to disclosures of past and recent sexual assault.

Working with adult survivors of child sexual assault

Working with adults who are experiencing complex sexual assault trauma

Target group: Mental health workers in community health, crisis teams, psychiatric hospitals and accommodation services, sexual assault workers in NSW Health sexual assault services.

Clinical practice within mental health has sometimes failed to meet the needs of clients with a complex trauma history. This is a skills based course that provides a framework that will assist

workers to effectively respond to the needs of adult clients who have experienced child sexual assault. Particular focus will be given to self-harming behaviours, suicidality, dissociation and affect regulation. It also examines ways of working within traditional mental health to ensure further traumatisation is minimised.

Working with children and young people

Children under 10 who sexually abuse other children:

Target group: Sexual assault counsellors, child and adolescent sexual assault counsellors, PANOC counsellors, child and family health counsellors and child and adolescent mental health counsellors.

This course looks at the sexual development of children and at the views of leading practitioners and researchers about when a child requires a specialist treatment response. It outlines a treatment approach based on a child protection framework and the involvement of all relevant systems that impact on the child and family.

Responding to children & young people who have been sexually assaulted

Target group: Interagency workers in government and non-government services whose work involves contact with children, or with adults who were sexually assaulted as children.

This course provides an overview of child sexual assault: community attitudes, incidence, indicators, dynamics, effects, agency roles, the responsibilities of health and other workers in reporting suspected cases of child sexual assault and working effectively using the *Interagency Guidelines for Child Protection Intervention*. The relationship between perpetrator tactics and impact issues for the child and non-offending parent/s are explored.

Therapeutic work with children & young people who have been sexually assaulted

Target group: Counsellors working with children and young people who have experienced child sexual assault and/or other forms of abuse.

This course provides an overview of child sexual assault including the incidence, dynamics and effects of sexual assault on children, young people and non-offending family members. In particular the relationship between perpetrator tactics and impact issues will be explored and ways such knowledge can be incorporated into the counselling setting. Days two and three will provide participants with both theoretical foundations and practical ideas to engage and work with children, young people and non-offending family members in the therapeutic setting.

There will also be input about group work, aiming to challenge common ideas and resistances about group work and to consider instead the foundations of group work (principles and models, practicalities of planning, formulating programs and evaluation) to open up consideration of the many possibilities available in this area of work. Throughout the course particular emphasis will be given to play and creativity as tools in this work, using case studies and 'hands on' space to explore the many ways we are able to connect to our clients, the stories they hold and the knowledge and skills they bring to enrich the counselling process.

Training for Aboriginal communities

Weaving the Net

Aboriginal communities wanting to promote community and family-based solutions to child abuse and family violence can ask ECAV to deliver the *Weaving the Net* program.

Weaving the Net is a series of consultative, educational and community development modules that aim to increase capacity in Aboriginal communities to respond to child abuse. It consists of a two-day consultation process followed by training on child sexual assault, physical and emotional abuse and neglect of children and child protection in the context of family/domestic violence. The community education module is offered with resources that support information sharing and is followed by a community-building module to develop a community plan on child protection.

Resources about child sexual assault and child protection offered by the Education Centre Against Violence

Resources offered by ECAV are covered in the following²⁰⁶:

Training Videos

Anyone's Story

Target Group: Sexual Assault Counsellors and NSW Health Workers working with clients who have experienced adult sexual assault

Description: 'Anyone's Story' is an important contemporary resource in understanding and responding to adult sexual assault. The video is in two parts.

Part 1: 'Anyone's Story Understanding adult sexual assault' provides a profile of adult sexual assault, drawing on interviews with victims, police, counsellors and sexual assault doctors/examiners.

Part 2: '*Simone's Story Responding to Adult Sexual Assault*' is a dramatisation of the sexual assault of 'Simone', and the subsequent responses to her by police and health professionals.

Identifying and Responding to Children and Young People at Risk of Harm

Target Group: NSW Health and Child Protection Workers

Description: This video presents five vignettes that explore the impact of different circumstances which can lead to risk of harm to children and young people. It provides examples of worker' responses to concerns about risk of harm, including making reports to the DoCS Helpline.

Big Shame

Target Group: Aboriginal workers and people working with Aboriginal communities

Description: This is the story of Emma, who is being sexually abused by her grandfather, and the effect this has on her. The video shows the difficulties facing a family and the community where

²⁰⁶ All ECAV course information was sourced from <http://www1.health.nsw.gov.au/ecav> as at 8 February 2006.

sexual abuse is happening, and encourages discussion about what needs to happen to protect children. Includes a pamphlet with ideas for using the video.

Who's the Loser

Target Group: Aboriginal workers and people working with Aboriginal communities

Description: This video achieves a number of unique outcomes. Whilst exploring one woman's struggle to reconcile her love for her partner and the impact of his violence on herself, her children and her community, it shows some of the things that men and women can do to make a difference. This outstanding video and booklet break new ground by showing with humour and honesty, how domestic violence affects children and what practical violence prevention strategies can look like in communities and amongst friends.

Caught Out: Witness Under Cross Examination

Target Group: Health Workers attending court as witnesses in sexual assault cases

Description: This video has been developed for health workers who are attending court as witnesses in sexual assault cases. It depicts a series of role-plays with a doctor and a social worker appearing in the District, Local, Children's and Family Courts. Strategies for responding to a range of cross-examination techniques are illustrated.

Training Packages

Nothing but the Truth – Court preparation for adult and child witnesses in sexual assault criminal proceedings

Target group: Professionals who are preparing child and adult witnesses in criminal court sexual assault proceedings

Description: This manual is designed for use by professionals who are preparing child and adult witnesses in criminal court sexual assault proceedings. It aims to improve the witnesses ability to answer questions in court, to increase the knowledge of the witness about the court process and legal system. It also aims to reduce the fears and concerns held by witnesses by dispelling common misconceptions and to reduce the stress associated with the process of giving evidence by providing accurate information. The manual provides specific practical strategies for preparing adults, children and their supporting parents or carers for court. It contains exercises, fact sheets, resources and comprehensive information for use in preparing people for court.

Community Education Pamphlets

Who Can a Man Tell?

Target Group: Men who were sexually assaulted as children, workers coming into contact with men

Description: Provides accessible information, validation and support for male survivors of child sexual assault. Topics include accounts by male survivors of childhood sexual assault, facts and figures, impact issues, and seeking help and support.

Helping to Make it Better - Helping your child. Important information for parents and carers about the sexual assault of children

Target group: Parents and carers whose children have been sexually assaulted

Description: This user friendly information package addresses the questions commonly asked by parents, provides information about the nature of child sexual assault and some possible effects on children and families. Also included is practical information about how parents can assist and support their children in the aftermath of sexual abuse. Information is provided about the services that are involved after child sexual assault is reported to the Department of Community Services. It explains ways in which sexual assault services can assist parents and children.

The information package is a colourfully illustrated folder containing 15 fact sheets. It has been designed in this way so parents can easily refer to the relevant information as the need arises and add information to the package.

APPENDIX SIX:

NSW Children and Young Persons (Care and Protection) Act 1998

Aboriginal and Torres Strait Islander principles

Part 2, Sections 11-13 of the NSW Children and Young Persons (Care and Protection) Act 1998

11 Aboriginal and Torres Strait Islander self-determination

- (1) It is a principle to be applied in the administration of this Act that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible.
- (2) To assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination.

12 Aboriginal and Torres Strait Islander participation in decision-making

Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.

13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles

(1) The general order for placement

- Subject to the objects in section 8 and the principles in section 9, an Aboriginal or Torres Strait Islander child or young person who needs to be placed in out-of-home care is to be placed with:
- (a) a member of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, or
 - (b) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or it would not be in the best interests of the child or young person to be so placed – a member of the Aboriginal or Torres Strait Islander community to which the child or young person belongs, or
 - (c) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or (b) or it would not be in the best interests of the child or young person to be so placed – a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of residence, or

(d) if it is not practicable for the child or young person to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the safety, welfare and well-being of the child or young person to be so placed – a suitable person approved by the Director-General after consultation with:

- (i) members of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, and
- (ii) such Aboriginal or Torres Strait Islander organisations as are appropriate to the child or young person.

(2) Relevance of self-identification and expressed wishes of child or young person

In determining where a child or young person is to be placed, account is to be taken of whether the child or young person identifies as an Aboriginal or Torres Strait Islander and the expressed wishes of the child or young person.

(3) Child or young person with parents from different Aboriginal or Torres Strait Islander communities

If a child or young person has parents from different Aboriginal or Torres Strait Islander communities, the order for placement established by paragraphs (a), (b), (c) and (d) of subsection (1) applies, but the choice of a member or person referred to in those paragraphs is to be made so that the best interests of the child or young person will be served having regard to the principles of this Act.

(4) Child or young person with one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent

If a child or young person has one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent, the child or young person may be placed with the person with whom the best interests of the child or young person will be served having regard to the principles of this Act.

(5) If a child or young person to whom subsection (4) applies:

- (a) is placed with a person who is not within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her Aboriginal or Torres Strait Islander family, community and culture, or
- (b) is placed with a person who is within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her non-Aboriginal and Torres Strait Islander family, community and culture.

(6) Placement of child or young person in care of person who is not an Aboriginal or Torres Strait Islander

The following principles are to determine the choice of a carer if an Aboriginal or Torres Strait Islander child or young person is placed with a carer who is not an Aboriginal or Torres Strait Islander:

- (a) Subject to the best interests of the child or young person, a fundamental objective is to be the reunion of the child or young person with his or her family or Aboriginal or Torres Strait Islander community.
- (b) Continuing contact must be ensured between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture.

These principles are subject to subsection (2).

(7) Exceptions: emergency placements and placements of short duration
Subsection (1) does not apply to:

- (a) an emergency placement made to protect a child or young person from serious risk of immediate harm, or
 - (b) a placement for a duration of less than 2 weeks.
- (8) Where an emergency placement is made to protect an Aboriginal or Torres Strait Islander child or young person from serious risk of immediate harm, the Director-General must consult with the appropriate Aboriginal or Torres Strait Islander community as soon as practicable after the safety of the child or young person has been secured.

Note. In the course of any consultation under this Part, the Director-General must have regard to the right of Aboriginal or Torres Strait Islander children and young persons and their families to confidentiality.

APPENDIX SEVEN:

Peak bodies for non-government agencies responding to child sexual assault in Aboriginal communities

Aboriginal Child, Family and Community Care State Secretariat (AbSec)

AbSec is primarily funded by the NSW Department of Community Services (DoCS). It is recognised as the peak NSW Aboriginal organization to provide child protection and out-of-home care policy advice, respond to issues for Aboriginal families involved in child protection and Out-of-Home Care (OOHC) services, and provide advice regarding funding decisions for child protection and associated services.²⁰⁷

AbSec was formed to strengthen links between Aboriginal child and family service provider agencies and to support the organisations to provide effective and high quality services for children and young people. The group also acts as a central point of advice, consultation and advocacy on children and young people's care and protection issues.

The current membership of AbSec includes most of the NSW non-government Aboriginal controlled agencies providing out-of-home care services, as well as other indigenous and non-indigenous organisations and individuals who are supportive of our aims and objectives.

Aboriginal Health and Medical Research Council

The Aboriginal Health and Medical Research Council of New South Wales (AH&MRC) is the peak body for Aboriginal health in NSW and is comprised of over 60 Aboriginal Community Controlled Health Organisations throughout the state.²⁰⁸ The AH&MRC provides vital health and health related services in association with its member organisations and these combined services include:

- Health service delivery
- Supporting Aboriginal community health initiatives
- Development and delivery of Aboriginal Health education
- Research in Aboriginal Health
- Collecting, evaluating and disseminating Aboriginal health data
- Policy development and evaluation
- Project and program planning, implementation and evaluation
- Ethical evaluation of Aboriginal Health research and data
- Advocacy and networking

These activities fall within the AH&MRC's dominant objective to ameliorate ill health, suffering, distress and helplessness in Aboriginal communities by the direct provision of primary health care, including social and emotional well being services and support programmes for Aboriginal communities.

²⁰⁷ <http://www.absec.org.au/about/index.html>

²⁰⁸ <http://www.ahmrc.org.au/index.htm>

Aboriginal Medical Services

Aboriginal Medical Services (AMSs) are situated around the state to enhance the health and living standards of Indigenous communities around the state. At the AMS, Aboriginal and Torres Strait Islander people can talk about any health concerns they might have with sensitive, culturally aware medical professionals.

The AMS also offers pregnancy tests and women's health care, immunisations, hearing tests, quit smoking counselling, diabetes and heart disease screening, monitoring and care, aged care assessments, podiatry care, ear, nose and throat care, children's health care and sexual assault counselling, and cultural awareness. There is also a dental clinic, drug and alcohol unit, eye clinic, mental health service, chiropractor and generalist GP's.

Association of Children's Welfare Agencies

The Association of Children's Welfare Agencies (ACWA) was founded with the aim of improving the quality of care available to 'at risk' dependent children and young persons who need substitute care in NSW and the ACT. The Association provides the following services:

- Policy development and research on current issues in the child, youth and family welfare sector
- The design provision, evaluation, and co-ordination of training and development for the community services industry with priority to the child, youth and family services sector, such as the Centre for Community Welfare Training (CCWT) – the largest non-government training provider in the social and community services sector
- Advocacy to bring about positive change and improvement for disadvantaged children, young people and their families
- Information and publications such as *Project Speakout* and the *Leaving Care Project*
- Forums and working groups to promote discussion and debate to develop best policy and practice for the sector
- Promoting the development of a planned and co-ordinated framework of quality services for children, young people and their families such as State Network of Young People in care (SNYPIC)
- Resource material to assist organisations in service management and provision; website design and maintenance; technology consultancy and training

Child and Adolescent Sexual Assault Counsellors

CASAC Inc. is a network of Child and Adolescent Sexual Assault Counsellors in New South Wales.²⁰⁹ The primary aim is to provide counselling and support services to children and adolescents who have experienced sexual assault and also to their non-offending family or carers. Adult survivors of child sexual assault may receive counselling from some services.

²⁰⁹ <http://www.rosebankcsa.org.au/casac/>

They are located within the community to promote easy access for children, adolescents and adults who need sexual assault counselling. They provide:

- Counselling
- Information and support
- Family Therapy
- Groups
- Court preparation and support for witnesses
- Advocacy and information

Coalition of Aboriginal Legal Services NSW (COALS)

COALS is the peak body representing the six regional Aboriginal Legal Services (ATSILS) in NSW. Its primary role is to undertake research and policy development on behalf of ATSILS in NSW.

Combined Community Legal Centres Group (NSW) (CCLCG)

CCLCG is the peak body for community legal centres in NSW. Community legal centres work for the public interest, particularly for disadvantaged and marginalised people and communities. They promote human rights, social justice and a better environment by advocating for access to justice and equitable laws and by providing legal services, community education and law reform campaigns.

The Council of Social Service of New South Wales

The Council of Social Service of New South Wales (NCOSS) is the peak body for the social and community services sector in New South Wales.²¹⁰ Its members range from the smallest community-based services to the largest welfare organizations and include refuges, charities, church groups, local councils, consumer organisations, hospitals, and aged, disability and child care services. They also include peak support and advocacy groups that represent services at a regional and statewide level. NCOSS plays a coordination, advocacy, policy development, leadership and information role for the social and community services sector in New South Wales.

Coordination

NCOSS convenes sector-wide forums and advocacy groups, including FONGA (the Forum of Non-Government Agencies), the Regional Forum, the Aged Care Alliance, the HACC Issues Forum, the Emergency Relief Forum and the Children's Services Forum.

Advocacy

NCOSS represents the interests of disadvantaged people and the community welfare sector to the New South Wales Government. This work includes presenting a major pre-Budget submission to the Government each year and coordinating the sector response to the Budget once handed down. NCOSS staff and Board members are appointed to a range of Ministerial advisory committees, departmental committees and taskforces.

Policy Development

NCOSS helps shape the public policy agenda both by responding to government proposals and by initiating projects that take up the concerns of the community sector and consumers.

²¹⁰ <http://www.ncoss.org.au/about/index.html>

NSW Family Service Inc.

NSW Family Services Inc is the peak organisation that represents over 150 non-government organisations that provide a range of services to families throughout NSW.

Its submission to ACSAT reports that its member services provide support via approximately 240 outlets, to families with dependent children whose capacity to function is limited by internal or external stresses. The submission reports that these outlets operate as preventative services and adopt a strengths-based focus, which builds on family members existing skills.

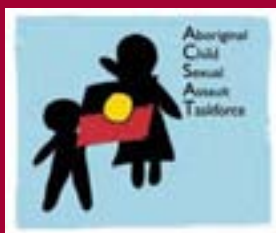
In 2001, the submission reports, 17% of family services who were members of NSW Family Services provided services that were specifically designed for and directed to Aboriginal people. Family services provide support to families across a continuum of three preventative stages. These are:

- **Prevention** – These are activities that are offered universally to all families. They provide encouragement and information that all parents need to carry out their parenting role to the best of their abilities
- **Early intervention** – These are activities which target families in stress or living in ‘high risk’ settings
- **In crisis** – This may be where highly vulnerable families face long-term difficulties, eg where there is an imminent risk that a child may be removed from a family’s care

NSW Women’s Refuge Movement

The Women’s Refuge Movement is a network of women’s refuges across NSW that provide emergency, short and mid-term accommodation for women and children escaping domestic violence.





Aboriginal Child Sexual Assault Taskforce

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