

Department of Corrective Services (DCS) (Western Australia) Submission to House of Representatives Inquiry:

Indigenous Juvenile Over-representation in the Criminal Justice System

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Introductory Remarks

While Aboriginal young people in WA make up about 6% of the youth population, they comprise around 75% of the juvenile custodial population, and are significantly over-represented in most areas of the justice system. One study reported that in 2007-08 around 7% of the population of Aboriginal young males had been in detention at some time during the year. This same study noted that WA also had the highest number of receptions into juvenile custody of any state¹ (AIHW, 2009).

In WA, there is also a significant trend that the majority of receptions are remands in custody, rather than young people beginning a custodial sentence. Notably, only a small percentage of remands into custody end up being finalised with a custodial sentence; most young people are dealt with by a community-based sanction or a fine.

Studies have shown generally that Aboriginal young people are more likely to come into contact with the justice system, are generally less likely to be diverted or receive an informal penalty, and are more likely to be incarcerated (Snowball 2008). A 2005 report on the management of offenders in WA noted that around 80% of non-Aboriginal young people were diverted away from court, while only about 55% of Aboriginal young people were diverted in this way (Mahoney 2005).

This over-representation has been apparent for some years, and in general can be attributed to a multitude of systemic biases against Aboriginal people at all levels. This is reflected in the wide-ranging scope of the COAG reforms, but has been in the consciousness of government since at least the 1991 Royal Commission into Aboriginal Deaths in Custody. The cumulative effects of disadvantage on the individual and on the Aboriginal community as a collective have a powerful influence in driving people into contact with the criminal justice system. These factors are outside the scope of any one department or agency, ranging through justice, welfare, education, health, employment and economic well-being, to name only a few. Action to address these must be a concerted whole-of-government effort. This Department supports the notion of whole-of-government action, and is committed to participating in cross-agency solutions wherever necessary to address disadvantage and thereby over-representation.

In recent years there has been an increased focus on law and order which results in an increased police presence and stronger enforcement of the law. Legislative changes have also provided greater penalties for certain crimes.

Background in WA – recent

The general approach to youth justice is underpinned by the *Young Offenders Act 1994*. The YOA sets out a number of important principles concerning the treatment of young people in contact with the criminal justice system. These include:

¹ With the exception of NSW, which did not feature in this study.

- The young person taking responsibility for their conduct
- Promoting the use of diversion at the earliest possible point
- The use of detention as a last resort
- Encouraging involvement of adults with responsibility for the young person
- Encouraging the participation of victims in dealing with the young person.

The YOA's focus on diversion includes explicit references to informal and formal cautioning for young people by Police, and provides for the use of Juvenile Justice Teams (JJs), which are described in more detail under 'Best Practice Diversions' in this submission.

Over the last few years, WA has seen a shift in focus as regards youth justice issues. This has been, in part, a response to a shift in the way in which children and young people are perceived, and a growing recognition of the need to address their specific needs in the community. Probably one of the most profound signals of this overall change in focus was the establishment of the office of the Commissioner for Children and Young People in 2007. This office has a mandate to advocate for the welfare and wellbeing of all children and young people in the State.

Since that time, there have been a number of reports into the youth justice system in WA. Two of these, 'The Overrepresentation of Young Aboriginal People in the Western Australian Juvenile Justice System' by the Aboriginal Legal Service of WA (Jan 2008) and the Office of the Auditor General's 'Performance Examination: The Juvenile Justice System: Dealing with Young People under the *Young Offenders Act 1994*' (June 2008) provided the focus for an inter-agency examination of the juvenile justice realm. This response was a direct result of representations by the Commissioner for Children and Young People for a response to the ALS report, the Auditor-General's report being included following its publication. A third report, also by the ALS, 'The Stranding of People after Contact with the Criminal Justice System' was included in this group as far as it concerned young people.

Arising from these reports, DCS has worked closely with a number of other related departments to develop a Draft Strategic Framework for Youth Justice, under the auspices of a Youth Justice Steering Committee. The Department for Corrective Services will lead the YJSC and the implementation of the Framework, with participation from other key agencies including WA Police, the Department for Child Protection and the Department of the Attorney General. It is anticipated that the Draft Strategic Framework will be finalised by March 2010. By having an overall state-based framework and a cross-agency steering committee in place, there will be opportunity for more effective information sharing and application of appropriate resources to the needs of young people. In doing this, the intention is to address rates of offending and re-offending for all young people at risk of contact with the system, in particular Aboriginal young people.

The Strategic Framework has been built around the following principles:

- Young offenders, and children and young people at risk of offending, should have access to services that strengthen their family and assist family members develop their own means of dealing with the young people's behaviour.

- All aspects of the youth justice system should ensure that a young offender has the opportunity to develop a sense of social responsibility and otherwise develop in beneficial and socially acceptable ways.
- Detaining a young person in custody for an offence, whether on remand or as a penalty, should only be used as a last resort and for as short a time as necessary.
- Victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders, where this is feasible.
- In line with the Substantive Equality Framework, service providers must specifically address the barriers experienced by Aboriginal young people and those experienced by young people from culturally and linguistically diverse backgrounds.
- To ensure their effectiveness, services aimed at assisting Aboriginal young people must be developed in partnership with Aboriginal community representatives and adhere to culturally secure practice principles.
- While each agency named in the strategic framework retains responsibility for delivery of services within its own mandate, agencies will also work collaboratively to identify and overcome any gaps and barriers and be jointly accountable for the achievement of improved outcomes for children and young people.

Philosophy and Policy Framework

The Department's overall direction is determined by its own Departmental Strategic Framework. Within this, there are three key result areas, and strategies to address these. Of interest to this submission is Key Result Area 2 *Reduce reoffending by making a positive difference to offender behaviour* and three of six strategies underneath this:

- Address the special needs of young offenders and detainees through targeted interventions and offender management services
- Integrate an Aboriginal perspective into all our endeavours
- Develop a Youth Justice Strategy for Western Australia

As a result of this increasing focus on youth justice issues, DCS began investigating a more effective service model for youth justice. In early 2009 the former Community and Juvenile Justice area was reorganised into the Community and Youth Justice Directorate, with divisions covering Adult Community Corrections and Youth Justice Services. Importantly, the creation of Youth Justice Services also marked the beginning of a shift into a hub-based model of service delivery, in which multi-disciplinary youth justice centres would be established to provide a range of services from early intervention and prevention, through to intensive intervention services. It is recognised that young people have different needs to adults, and are at different stages of maturity in their lives. By having an arm of the Department focussing solely on young people, there is a greater possibility of addressing their offending behaviour appropriately and effectively. Existing services are to be amalgamated into four metropolitan youth justice centres, and a number of regional centres. This process has begun and will continue into 2010.

Finally, and in keeping with the cross-agency approach referred to above, DCS has developed a Youth Justice Policy to support this new approach to youth justice. This policy reflects on the actions that can be taken within the Department to address the issues of young people, with emphasis on Aboriginal young people as the largest client group. The principles are in accord with the broader policy instruments described above, and include:

- Empowerment of young people to prevent offending
- Diversionary options as paramount, and detention as a last resort
- Partnerships with Aboriginal people and organisations to guide interventions, and to provide services
- A focus on young people taking responsibility for their actions
- Matching interventions and responses to the needs of individual young people

Alcohol and drug issues

The links between alcohol and drug use and offending behaviour have been fairly clearly established. However, there are also other issues related to alcohol and drug use which have ongoing effects for young people.

Data on drug and alcohol use by young people in detention revealed that very high percentages were regular users of drugs, in particular cannabis and alcohol. Aboriginal young people were more likely to have used drugs than non-Aboriginal people. Numbers of young people reported daily or frequent use of alcohol or cannabis, and these were clearly the preferred drugs of young people. Of particular concern is the age at which young people started using drugs – data showed the mean age was around 12 for cannabis, alcohol, nicotine and volatile substances.

Drugs and alcohol do not just have a direct effect, in that the young person offends due to demonstrating drug or alcohol-affected behaviour or as a possession offence, or offends primarily to obtain drugs and alcohol. There are also family and community-based effects, ranging from family income being used for alcohol in preference to food, disruption to family life due to alcohol use, young people becoming victims of offending as a result of another's drug and alcohol use, and the normalisation of excessive alcohol and drug use in the family.

The Pre-Sentence Opportunity Program (Youth), commonly known as YPOP, provides early intervention and diversion for young people who are charged with a non-drug related offence, but are identified by their JJT as having a significant drug issue. YPOP is available in Perth and in major regional centres. Young people referred to YPOP are interviewed, and project officers attend the JJT meetings to make recommendations concerning the young person's treatment. Part of the limitation with YPOP is that the funding requirements prevent it from being used for young people with only alcohol use as an issue.

In addition, the Department is in the process of acquiring a service provider for a drug rehabilitation and counselling program to be provided in the metropolitan area. This service will cover drug and alcohol use, and a young person on a community-based order may be mandated to attend counselling and treatment through this program. In addition a young person could be referred by a supervising officer at the JJT as part of the young person's treatment plan.

Best Practice Diversion

DCS provides a number of diversion options for young people. The Department has introduced Juvenile Justice Teams (JJTs) as a way of dealing with young people who have committed minor offences or are in early stages of offending. Teams consist of representatives from DCS (a youth justice officer), Police, and if required representatives from agencies dealing with education or welfare. Meetings with the teams include the offender and their parents or guardians, and give opportunity for the victim to be included. The intent of the JJT meeting is to allow for mediation, and work out an action plan for the young person. The action plan may include conditions on the young person such as an apology, or a restriction on behaviour, compensation, or a work condition. Critical to this is the need for the young person to accept responsibility for the offence. If the young person meets their conditions, the matter is concluded and no conviction recorded. Most minor offences can be referred to a JJT, although certain scheduled offences cannot. These are detailed in the *Young Offenders Act 1993*, and include serious offences against the person, sexual offences, and major property offences. JJTs are available in most areas of the state. Young people can be referred to a JJT either by police or by the court. While when first introduced most referrals were generated by police, in recent times the percentage has shifted, and the majority of referrals are now generated by courts.

Where it is not practical or possible to convene a formal JJT meeting, through remoteness or lack of availability of personnel, the Department has made provision for Regional Community Conferencing, in which approved elders, wardens or significant community members who are approved by the Commissioner of Police and the Commissioner of Corrective Services can take on the roles of the Police Officer and/or the Regional Community Conferencing Coordinator. Regional Community Conferencing is particularly designed to assist Aboriginal communities, and allow Aboriginal young people in remote areas to have opportunities to access the conferencing and diversion aspect of JJTs. Protocols have been developed by Police and DCS to ensure that Regional Community Conferencing is available as widely as possible.

The Supervised Bail Program has been developed to address the high rate of remands in custody for young people, in particular Aboriginal young people. Young people are required to be bailed into the care of a responsible adult. However, there are ongoing issues where a responsible adult cannot be located, or is unwilling to sign the bail undertaking. The Supervised Bail Unit can take the place of a parent or other responsible adult as required. The responsibility for influencing the conduct of the child and providing support and direction then falls on the Bail Coordinator, rather than on the parents or guardians. This has a number of effects – the Bail Coordinator can link the young person to supports and services to assist them in maintaining their obligations, or addressing their behaviour; and if the young person breaches bail, the decision to withdraw is made outside the family, and so potentially reduces additional hostility between family members. While Supervised Bail is not intended solely for Aboriginal young people, due to the higher rates of contact for Aboriginal young people the clientele for Supervised Bail is predominantly Aboriginal, being approximately 60% of placements each year.

The issue of bail and remands into custody is also one element in the establishment of a Regional Youth Justice Service in Kalgoorlie-Boulder and in Geraldton. The issue of responsible adults is particularly problematic in regional areas, as in general if a responsible adult cannot be located, the Police have no option other than to remand the young person into custody. As a result they must be transported from the location of their arrest to the juvenile remand centre in Perth. This often results in stressful situations for that young person, being removed from their family and location, only to be returned in some cases fairly soon after. It was also recognised that there was a lack of coordinated services around young people in regional areas. In a similar role to the Supervised Bail team in the metropolitan area, the RYJS teams can take on the role of responsible adult to assist a young person in getting bail. The service includes the provision of a small number of bail beds in Geraldton and Kalgoorlie-Boulder, so that young people have a safe place to stay while bail is being arranged, and for short-term accommodation while establishing the services needed by that young person.

As well as this role as a bail coordinator, the RYJSs also have a strong focus on prevention and diversion for young people in the area, and on developing relationships in the community to assist in provision of these services. They also incorporate the existing Family Intensive Teams (FITs, described below) to allow justice and social agencies to work with the families to address offending and at-risk behaviour. Although the strategy is still in the relatively early stages of establishment, initial reports are positive.

The RYJS centres are based in part on a model introduced through the Killara Youth Support Services. Killara provides an outreach service in the metropolitan area for young people and their families who are having problems with minor offending behaviour, or are at risk of such behaviour. Young people can be referred through police or families if there are concerns about behaviour.

Youth options such as the RYJS and Killara incorporate elements of diversion into their overall work and philosophy. This might be simply through the work of the Juvenile Justice team itself. In other cases, more intensive diversionary work is done through the Family Intensive Teams (formerly known as the Intensive Supervision Program). There are FITs at each of the youth justice hubs in the metropolitan area, as well as at the RYJSs in Geraldton and Kalgoorlie-Boulder. The FIT approach is based on the Multi-Systemic Therapy model developed in the United States. The MST model takes an intensive supervision approach to young people who are seen as systemic offenders, and works with the offenders and their families for up to six months, addressing aspects including family and peer relations, school or vocational performance and community factors to address offending behaviour. Staff work with small caseloads to enable the high levels of supervision required. Each FIT includes an Aboriginal Team Advisor, to ensure that the interventions are culturally sensitive and matched to the needs of the individual clients, families and communities.

In terms of programs and services provided in detention centres, the Department has recently finalised an agreement for the delivery of the RAW – Real Aboriginal Warriors – program in Banksia Hill Detention Centre. This program has been designed for the specific needs of Nyoongar² young men, 15-18, as these are the

² The Nyoongar nation is broadly speaking the South-West of WA, including the metropolitan area.

predominant group in juvenile detention. The RAW program has been developed by experienced Aboriginal practitioners to address the offending behaviour of this group of young men. It is based on personal discovery, pride and healing. The program provides services to this group in detention and following their release for up to six months. Young people at risk of offending can also be referred to the community aspect of the program.

Co-ordination of services

As already stated above, the Strategic Framework for Youth Justice and the Youth Justice Steering Committee, the Department's Youth Justice policy and the underlying philosophies for addressing youth justice issues, all encompass the notion of coordination of services across agencies. This recognises that there are many influences on young people, and many issues that need to be addressed. In working collaboratively and in a coordinated way, departments are able to direct services appropriately to the issues faced by that young person. Dealing with issues in isolation, while it may be done with the best will in the world, is prone to failure simply because the other influences on a young person remain unaddressed.

In 2008 the Department was involved in a project, led by the President of the Children's Court, to pilot a multi-agency approach to dealing with the needs of identified offenders. The intent was to explore protocols and methods of attaining multi-agency responses to cases in what was effectively a case management model.

Twelve cases were referred to this pilot project by the President of the Children's Court and the Chairman of the Supervised Release Review Board. Of these, ten were Aboriginal young people. In evaluation of this pilot project, it was noted that significant progress had been made in increasing the responsiveness of agencies (other than the Department of Corrective Services) in contributing to the development of case management strategies for the subjects of the pilot project. However, in the course of this it was recognised that mainstreaming the approach that had been used would not be the most effective and appropriate use of resources. Instead it was recommended that a 'multi-layered' approach be implemented, involving appropriate early intervention strategies for young people under 10, targeted prevention earlier in the justice system and increased service provision to enhance protective factors for young people re-entering the community. It was acknowledged that in some cases the young person would need a more intensive intervention, along the lines of the pilot project model.

Since the 2008 evaluation the project has continued. In mid 2010 it is intended that a further evaluation take place via the Youth Justice Steering Committee, to examine how coordination of services is functioning operationally, and to better examine how the case management strategy is being put into action.

The issue of co-location of agency representatives to assist the provision of services has been under examination for some time. Under the COAG Partnership for Indigenous Early Childhood Development, services are provided through a 'hub and spoke' model in which appropriate services are co-located at the 'hub', in a regional centre from which they operate to service the outlying areas via the 'spokes'. This model is seen to be effective in maximising the reach of limited resources in providing services to a geographically diverse population.

Separately from this process, discussions are presently under way to determine how a number of social service agencies (Departments of Health, Education and Child Protection and the Drug and Alcohol Office) could co-locate with the DCS Youth Justice hubs to enable better provision of services to clients. Under this proposed arrangement, representatives from each of these social service agencies would be located in each Youth Justice hub, to enable each agency's services to be accessed as required, and to promote a case management model for each young person.

The Multi-Functional Police Facilities (MFPPFs) in a number of remote locations are another example of co-location of services. While primarily a policing facility, MFPPFs were established to place a number of government services into locations where it was not practical to provide a full-time officer. Agency representatives can travel to areas where MFPPFs are established, and use the facilities there to provide their services as required.

Preventative health

The Department recognises the influence that health-related issues can have on life outcomes and consequent offending behaviour. The Department has a limited role in providing health services, confined to young people in detention only.

DCS is currently in negotiations for provision of ear health assessment and treatment services for young Indigenous people in detention. By improving ear health, it will affect educational outcomes, and potentially social outcomes for these young people, and may in turn affect their contact with the justice system.

Reference documents

Australian Institute of Health and Welfare (AIHW) 2009 'Juvenile Justice in Australia 2007-08', Juvenile Justice Series No. 5, AIHW, Canberra

Mahoney, Hon D 2005 *Inquiry into the Management of Offenders in Custody and in the Community*, Perth

Snowball, L 2008 'Diversion of Indigenous Juvenile Offenders', Australian Institute of Criminology Trends and Issues Paper no 265, June 2008