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INQUIRY INTO THE HIGH LEVELS OF INDIGENOUS JUVENILES AND YOUNG ADULTS IN THE CRIMINAL JUSTICE SYSTEM

Please find below the submission of Western Australia (WA) Police in accordance with the terms of reference provided by the Standing Committee on Aboriginal and Torres Strait Islander Affairs.

This submission is provided in response to the written invitation of the Secretary of the Standing Committee on Aboriginal and Torres Strait Islanders Affairs, Ms Anna Dacre received in December 2009.

Three terms of reference will be addressed in this submission.

(i) The scope for clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system.

Western Australia introduced provisions for the diversion of young people in the justice system, through the Young Offenders Act (YOA) 1994.

The YOA requires consideration be given to directing young people away from Courts and detention, by the use of cautions and referrals to a conference process. The conferences are managed through inter-agency Juvenile Justice Teams (JJT's). The YOA legislates that WA Police will participate in the JJT process.

In 2008 the Office of the Auditor General (OAG) conducted a Performance Examination *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*. In January 2008 the Aboriginal Legal Service of Western Australia (ALSWA) made a submission to the Western Australian Government and Commissioner of Police *The Overrepresentation of Young Aboriginal People in the Western Australian Juvenile Justice System*. The ALSWA submission sought changes to the administration of Juvenile Justice and the OAG report highlighted the following key findings:

- The rate at which police have directed young people away from court, through the use of cautions and referral to JJTs has declined by 13% over the past five years.
- JJTs are not working as intended due to poor targeting, lack of timeliness and inadequate monitoring and evaluation of action plans to support rehabilitation.

- Western Australia's rate of incarceration for Aboriginal youth is the highest in Australia.
- There has been a decrease in granting of bail and a consequent increase in remand in custody. This is particularly evident in regional areas as there are no regional juvenile detention facilities. Where a young person is arrested and refused bail, they must be transported to Perth to be detained.
- Western Australia's two juvenile detention facilities have been operating close to capacity for some time, and for a short period in early 2008 exceeded operational capacity. Remanded juveniles often comprise approximately half of the juvenile detention population.
- The financial costs to the State are significant, as are the social costs to the youth involved.

WA Police supported the performance examination on juvenile justice because of a demonstrated need to fully examine the value and extent of effort by all government agencies, and because of real and perceived shortfalls in this regard. WA Police committed significant resources to the performance examination, through making police officers available across the State, by interrogating systems and supplying information, data and statistics, and by making available resources to assist with the coordination of the examination within the agency.

Both reports make specific reference and recommendations on WA Police's policy and practice and highlight an expectation that practices will be improved. They include intended amendments to the YOA, policy changes, increased training and a more coordinated focus by WA Police on juvenile justice issues to be more aligned with Government direction. Copies of the Western Australia Police Response to the OAG and ALSWA recommendations are attached.

In March 2008, the WA Commissioner for Children and Young People wrote to the Director General of the Department of the Attorney General and requested that a cross-agency working group develop a solution-oriented response to the submission of the WA Aboriginal Legal Service on the juvenile justice system.

A cross-agency working group was convened in May 2008. After the Auditor General tabled his report to Parliament, on dealing with young people under the Young Offenders Act 1994, agencies agreed that the findings and recommendations of the OAG report should also be considered by the cross-agency working group. The Commissioner for Children and Young People wrote again to the Department of the Attorney General to request that the cross-agency working group also consider the submission by the ALSWA *The Stranding of People After Contact with the Justice System* (June 2008) in relation to juveniles.

The Director General of the Department of Attorney General convened the Juvenile Justice Project Working Group (JJPWG) in recognition of the need for an Action Plan in response to these developments. The JJPWG developed

a Plan for responding to the key challenges and issues highlighted by the recent reports to government. At the end of 2008 the JJPWG formulated a combined Action Plan *Juvenile Justice in Western Australia: New Ways Forward* and the *Western Australian Strategic Framework for Youth Justice 2009-2014*.

The Strategic Framework focuses on a relatively small number of strategically important responses, many of which will operate across a number of agencies. WA Police has participated with the development and endorsement of the Strategic Framework, which makes it imperative that it will be able to meet its commitments and responsibilities to the Framework in its present model of administration.

The Strategic Framework, endorsed by the departmental heads of the participating agencies, was forwarded to the Attorney General (AG). Approval was granted by the AG for the Department of Corrective Services to lead the implementation with signatory agencies participating in the Youth Justice Steering Group (YJSG). The WA Commissioner for Children and Young People was to be advised of the progress.

The WA Commissioner for Children and Young People has taken a strong interest in the outcomes of Agency responses to the OAG report and in February 2009 wrote to the Minister for Police to pursue issues regarding WA Police administration of juvenile justice. The Commissioner's interest has continued with the development of a report *Youth Justice* by Dr Harry Blagg in December 2009 to further the debate on youth justice in WA.

In keeping with the continuing focus on juvenile justice in WA, in July 2008, the President of the Children's Court, Judge Reynolds, established the Pilot Youth Justice Initiative (PYJI). The project was designed as an intensive coordinated case management model to report on the systemic impacts of juvenile offending. This project is a whole of government and non-government response to the management of all aspects of the young person's social and personal behaviour. WA Police have participated in and supported this project.

In late 2009, as a result of the increasing focus on youth justice, an evaluation forum was held by Judge Reynolds with participating agencies. At this forum it was unanimously agreed by all participating agencies that, as a successful initiative, the PYJI will become an ongoing strategy. All agencies have responded by providing a senior manager within their juvenile justice structures as a specific coordination point to support this initiative.

Internal Review of Police Administration of Juvenile Justice

WA Police have recognised the findings of the OAG report and have acknowledged issues other commentators made on juvenile justice. It is recognised that a dedicated focus on all aspects of youth justice requires direction and resources to maintain ongoing consistent and accountable responses.

In March 2009 the WA Police Strategy and Performance Division's Frontline Business Improvement Office, in response to meeting the growing demands for police to improved business services, commenced a internal review of WA Police Juvenile Justice responsibilities and business practices.

This review was to examine WA Police policy and operational management of the YOA and Juvenile Justice Teams. This was to ensure Police responsibilities and obligations are resourced and managed effectively, as a response to the findings of the Office of Auditor General (OAG) review of the administration of Juvenile Justice and development of the subsequent Juvenile Justice Project Working Group (JJPWG) inter-agency action plan.

In October 2009, the Commissioner of Police initiated a further review of the administration of juvenile justice by the Police Management Audit Unit (MAU), to ascertain the level of police officers awareness and compliance with the requirements of the YOA and WA Police policy. The MAU report supported the findings of the Frontline Business Improvement report.

Findings of Internal Review

The review findings supported aspects of criticisms being levelled at WA Police and recommended there are growing requirements for increased interagency cooperation and more focus on whole of government responses. It recognises that administration of juvenile justice requires specialised corporate knowledge and practice that is distinct from adult practices. A model for the realigning of business practices was proposed and a number of agency wide recommendations, were endorsed by the WA Police Corporate Executive Team (CET) in August 2009.

To address compliance with legislation and policy WA Police is moving to implement key elements of the recommendations:

Organisation & Structure

- Re-structure Juvenile Justice for Western Australia under a command portfolio.
- Address resource levels in Regional Western Australia, to enhance juvenile diversion opportunities in regional WA.
- Coordinate and manage the WA Police response to the JJPWG report and the Strategic Framework for Youth Justice. Develop a collaborative implementation framework with Department of Corrective Services. Also consider the OAG response and follow up of their original report tabled in Parliament.
- Manage and support WA Police commitment to the Pilot Youth Justice Initiative.
- Coordinate and manage Ministerial Council on Police and Emergency Management – Police (MCPEM-P) – commitment to identified priorities to Indigenous law and justice and National Indigenous law and Justice Framework 2008 -2015 that relate to juvenile justice issues.
- Coordinate and support the implementation of the Cross Border Justice Bill legislative responsibilities as they relate to the Juvenile Justice Service agreement with Northern Territory and South Australia.

- Coordinate and manage negotiation with the Department of Corrective Services to transfer the responsibility of escorting of juvenile offenders.

Procedure and Systems

- Implement enhanced training, education and awareness for all frontline officers and supervisors, in line with the current development of supervisor training.
- Review of the current cautioning policy, with a view to providing clear direction on the rules and numbers of Cautions that can be administered.
- Development of a mandatory function within Briefcase, in order to ensure that 'Notes to Prosecutor' has been fully completed, explaining why an officer has not considered a juvenile for a caution or other Court diversion.
- Development of key performance indicators in relation to the number of juvenile offenders that have been cautioned or referred to the JJT, in order to provide District accountability for the management of juvenile diversion.
- Development of more effective ethnic recording, including ethnic descriptors, to improve the ability to provide clear data on Indigenous, or other ethnic offending patterns.

The recommendations align the oversight of Juvenile Justice in WA Police to the newly created Community Engagement Division within the Strategy and Performance Directorate. This will enable strategic alignment on juvenile justice issues and provide high level collaboration with other government and non-government agencies. The link to operational policing will be strengthened by providing District accountability for court diversions, Juvenile Justice Team referrals and juvenile cautions with reporting mechanisms within the District Operational Performance Report Card process.

Youth Justice Steering Group

WA Police is presently engaged with the YJSG which was formed with the intention to implement the *Western Australian Strategic Framework for Youth Justice 2009-2014* which is part of the '*Juvenile Justice in Western Australia: New Ways Forward*' report (March 2009).

The YJSG is currently in the process of developing a memorandum of understanding to provide the framework to establish how the signatory agencies and additional members of the YJSG will work together to address the social issues and costs related to children and young people offending or at risk of offending in Western Australia. A stated objective of this inter-agency group is to reduce the overrepresentation of Aboriginal children and young people in the WA justice system.

The Youth Justice Steering Group is to assure co-ordinated and integrated strategies across agencies in the achievement of the Western Australian Strategic Framework for Youth Justice 2009 to 2014 by:

- Finalising the Strategic Framework in consultation with relevant stakeholders.

- Guiding the implementation of the Strategic Framework.
- Negotiating responsibility for strategic actions and timelines.
- Reporting on the achievements within the Western Australian Strategic Framework for Youth Justice 2009 to 2014.
- Receiving, monitoring and reporting on specific youth justice initiatives.
- Receiving and publishing to critical stakeholders' performance reports.
- Overseeing Cross-Agency collaboration in relation to youth justice issues.
- Ensuring appropriate Memoranda of Understanding are in place between relevant agencies responsible for the provision of services for children and young people either formally involved in the youth justice system or at risk of becoming involved in the youth justice system.
- Monitoring the implementation of the Framework through the development of annual action plans.
- Ensuring that the initiatives, outcomes and performance indicators specific to the Framework are met, and reported to the CEO Group.

(ii) Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime and provide support for those returning from such centres;

Police and Community Youth Centres (PCYC's)

The WA PCYC manages a large number of programs designed to divert youth who have offended from further offending. PCYC operates diversion programs in the metropolitan and regional areas and collaborates with other local and State government agencies, and the not for profit and commercial sectors. The PCYC programs are conducted to be inclusive of Indigenous Youth.

In 2009 the range of programs conducted by PCYC's includes:

Back on Track Program - Scarborough PCYC

The Back on Track Program identifies a young offender through a written Caution, Juvenile Justice Team (JJT) meeting or Children's Court appearance. The program is offered to the young offender (in addition to further penalty evoked by the JJT or the Children's Court). Young offenders are engaged with a PCYC Instructor and Manager (mentor). This program utilises reconciliation to assist young offenders in their return to the community by establishing positive relationships between police and young people.

Back on Track (One on One - Mentoring) - Scarborough and Northam PCYC

The program provides a service to the Department of Corrective Services in accommodating the needs of those youth, being referred by Juvenile Justice Teams. It is also made available to all those young people who are identified as being at risk either through contact with Police, or feedback from other local youth agencies, schools or parents.

Rewards Program - Northam PCYC

This program targets individuals who are referred from JJT, Police, and the local Children's Court. The young person's behaviour is monitored, and meetings are held with them, parents, teachers and the PCYC Police representative.

If a young person genuinely shows his/her offending behaviour has stopped, or that behaviour has improved etc, they may be rewarded with excursions etc.

Youth Space Activities - Rockingham PCYC

Proactive Crime Prevention Program targeting young people 12 to 17 years, attending Shopping Centres on Thursday evenings.

Activities are provided in an attempt to redirect anti social behaviour and provide a safer community. This program will also provide Police and Youth Mentors, the opportunity to communicate with these young people in a friendly environment other than in a time of crisis or whilst being in the Justice system. Presently being piloted in Rockingham.

Graffiti Removal Program

PCYC employs a youth worker to do one-on-one mentoring and graffiti removal as part of their Community Service Order when referred from Juvenile Justice Teams. This program is currently operating at Midland PCYC and has recently been expanded with pilot programs at Joondalup and Victoria Park.

Chop Shop Program – Gosnells PCYC

This program is run in partnership with youth workers and the City of Gosnells, targeting priority 1 & 2 youth who are likely to offend. The program involves repairing bicycles using recycled parts. The revamped bikes are then given to the participants themselves or donated to other youth in need.

Community Service Hours – All Centres

The WA Department of Corrective Services issues young offenders with varied community service hours. WA Police work in partnership with the Department to provide PCYC venues for the completion of community service hours by young offenders. Offenders assist the PCYC management in constructive maintenance programs in and around the club with a view of learning interpersonal and varied home handyman skills. During this time, positive relationships are established between the young offender and police to assist in diversion from re-offending behaviour. This program is utilised extensively in the Wheat Belt, in conjunction with JJT.

Training and Education

The consistent utilisation of diversionary options for juvenile offenders by police officers can be attributed to the information sessions provided at both recruit and station level by members of District Juvenile Justice Teams.

Police Juvenile Justice officers pair with their Department of Corrective Services Juvenile Justice Team coordinators to present Police Academy recruits with a comprehensive Juvenile Justice course covering the principles of restorative justice and diversionary strategies including juvenile cautioning options and management of Team referrals.

Consistent Juvenile Justice training and education is similarly provided by District Juvenile Justice Team Officers attending their local police station to inform management of Team cautioning or referral trends, over or under reporting and to re-familiarise officers with Juvenile Justice Team options for offending youth.

Youth at Risk Diversion Programs

The PCYC also operate programs designed to divert youth who are at risk of offending. These programs are run in the metropolitan and regional areas and are a collaboration between local and state government agencies, and the not for profit and commercial sectors. A range of programs include:

Welding Program - Rockingham PCYC

The Rockingham PCYC Welding Program has been designed to accommodate young offenders, 12 to 17 years, needing to complete JJT or Community Service Order hours. The program enables them to learn welding, improve relations with police and gain an accreditation in Cert 1 in Metals and Engineering through TAFE. This program has been funded by the Department for Corrective Services, the Office of Crime Prevention and PCYC Rockingham.

Positive feedback has been received from participants who have attended the program and from their parents. A majority of the young participants have gained employment within this field. Participants are repeat offenders who have been referred to the program by their schools, parents, the Department for Child Protection, Juvenile Justice Team or the courts.

The Weld for Life program was recognised at the 2009 Australian Crime and Violence Prevention Awards. The program was announced as a National Winner in the project category. The program also received a Recognition of Excellence.

Girls Taking Charge Program - Midland PCYC

A program aimed at increasing the self confidence and self esteem in young women aged 12 to 16 years. The program is designed for young women who have been identified as at risk by other agencies. Participants gain skills in personal presentation, etiquette as well as participate in education on drugs, alcohol, and sexual health.

Juvenile and Family Fire Awareness (JAFFA) Program

The JAFFA is operated by the Fire and Emergency Services Authority (FESA) of Western Australia, and specifically targets juveniles between 4 and 16 years of age who are involved in unsanctioned and deliberate fire lighting activities. The program is available in Perth and Albany. The JAFFA program aims to minimise the loss of life and injury, property and environmental damage caused by juveniles in Western Australia.

Strong links have been developed between the JAFFA program and a number of other agencies, including WA Police. WA Police currently refer young people to the JAFFA program who demonstrate a fascination with fires or fire lighting or are suspected of having lit a fire, in an attempt to divert further criminal activity.

Referral to the JAFFA program is made in conjunction with WA Police and the Department of Corrective Services. Young people must be willing to attend the program with a suitable adult and undergo a psychological assessment determining they are a suitable candidate.

Street Net Youth Outreach Service

The Street Net Youth Outreach Service has been operating successfully in the WA Police Peel District since 1999 and provides a number of interventions for young people who are identified as at risk of offending. The Service utilises the skills of police officers working in partnership with local youth workers, operating from a local government youth centre.

Using a community capacity approach, Street Net connects at-risk youth with school, community, education and employment. Street Net conducts outreach patrols aimed at identifying at-risk youth and follows up with support, advocacy, counselling and referrals. Street Net provides a contact point for parents, schools, agencies and individuals who require assistance with issues relating to young people.

In Albany, WA Police officers work closely with local youth workers, schools, the Department for Education and local council members to connect with 'at-risk' youth and link them into education, counselling and employment assistance.

Albany Youth Outreach Services (Formerly Juvenile Action Group)

The Albany Youth Outreach Service delivers valuable programs to regional youth. WA Police are formally represented on the Board of Management. Police officers provide informal ad hoc liaison between youth workers and young people and continues to promote the positive benefits of being associated with the Service.

On-TRACK Program

On-TRACK involves a partnership program between WA Police and Mission Australia. On-TRACK is designed to ensure the safety of young people by providing a safe and supportive environment as an alternative to police custody.

The service operates from 2pm to midnight on Thursday, and 6pm to 4am on Friday and Saturday and targets young people who are intoxicated or disoriented on city streets, and are at risk of being taken into custody. Over half of the attendees of the program are aged between 13 to 15 years. The program is staffed by skilled workers and volunteers who offer supervision and informal counselling to the young people at the centre.

On-TRACK also works in partnership with the WA Police Juvenile Aid Group and other crisis care associations.

Clontarf Foundation

The Clontarf Foundation exists to improve the discipline, life skills and self esteem of young Aboriginal men. WA Police have supported the football academies located around the State, by providing referrals of young Aboriginal men and by supporting programs that contribute to their meaningful participation in society.

(iii) The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;

The WA Government's approach to improved service delivery to indigenous communities, is built on the foundations of systemic reform as a result of the Government's response to the Gordon Inquiry (2003).

The goal of improved safety for children and families is the fundamental driver to reform in Indigenous Affairs in WA. WA Police supports this agenda and is a key strategic stakeholder in this process. It is the view of WA Police that alcohol and substance abuse should be viewed in this broader context and the following outlines initiatives undertaken by WA Police in this regard.

This aspect of the WA Police submission specifically addresses the key areas where WA Police are presently involved in delivering policing services to Indigenous communities through the following:

- National and State Agenda on Indigenous Justice issues
- Remote Service Delivery Project – Remote Police facilities
- Oombulgurri Police Post Initiative
- Indigenous Safety Task Force
- Cross Border Justice Scheme
- Liquor Licensing, and
- Aboriginal Justice Agreements

National Agenda on Indigenous Justice Issues

WA Police have supported the broad principles of program and initiatives at State and National level that demonstrate a capacity to advance policy, programs and service delivery to Indigenous people.

Remote Service Delivery Project

One of the most successful reforms of the Gordon Inquiry response was the Multi Functional Police Facility (MFPF) initiative which co-located Police and Child Protection workers on a permanent basis in some of the most remote Indigenous communities in the State.

These new co-located services work closely with Indigenous communities to build trust and confidence so that disclosures of child sexual abuse and family violence can be acted upon.

The introduction of mandatory reporting of children with sexually transmitted infections also provides WA Police and Child Protection agencies with timely intelligence to investigate alleged perpetrators of these crimes.

This resulted in the much publicised and effective police prosecutions in the Kimberley region resulting in the conviction of perpetrators of child abuse and family violence.

The Remote Service Delivery Project (RSDP) undertaken by WA Police has been an important component of the Western Australian Government's response to the findings of the Gordon Inquiry into Family Violence and Child Abuse in Remote Aboriginal Communities.

Currently the MFPF concept operates at several locations in the Kimberley, Pilbara, Goldfields and Mid-West Gascoyne districts. Whilst the construction and asset process was an important phase, the focus of the program was to better address the issues facing Aboriginal communities in relation to family violence and child abuse.

These were identified as being:

- strengthening responses to incidents of child abuse and family violence;
- strengthening support for vulnerable children and adults at risk;
- meeting community safety needs; and

- meeting the longer-term needs of future generations of Aboriginal children through building sustainable communities.

The establishment of the MFPP's have allowed for police to stabilise communities and provide safety for other government agencies to provide their core services in the communities. Previously this was difficult due to the degree of instability and inconsistency of police presence.

Service delivery is coordinated at each MFPP through a tailored Service Delivery Model (SDM) detailing community history, policy, agency roles and responsibilities.

The MFPP approach has resulted in police being able to provide an immediate and consistent response to unlawful behaviour and community safety, offender apprehension, and more particularly family violence and child abuse matters.

WA Police are maintaining the roll out of the MFPP program in partnership with the Department for Child Protection, Department of Corrective Services, Department of the Attorney General and several other related agencies.

Further Commonwealth funding of \$20M has resulted in a further two MFPP operating at Burringurrah, Blackstone and a planned MFPP at Looma.

Oombulgurri Police Post Initiative

In addition to the MFPP's currently operating, a Police post has been established at the remote Aboriginal Community of Oombulgurri to address:

- A cluster of youth suicides that occurred in the community
- Anecdotal evidence of systemic child abuse
- Evidence of significant Domestic Violence
- Evidence of general violence and antisocial behaviour
- Alcohol abuse

The State Government endorsed the commitment of \$1.5M to establish the Oombulgurri Police Post and the Police Post became fully functional in October 2008. The Department for Child Protection operate from the Police Post.

Since the introduction of a permanent police presence and liquor restrictions, the incidence of violent behaviour in the community has been considerably reduced and safety and security significantly improved.

This initiative was the first time WA Police implemented such a strategy to intervene in a community that was experiencing a widespread law and order crisis. The ability to initiate such a strategy again in the future would be greatly enhanced by the capacity to permanently procure transportable accommodation and police facilities that could be deployed expediently.

Indigenous Safety Task Force

The Indigenous Safety Taskforce commenced in April 2007 when Detectives from the Child Abuse Squad assisted Kununurra Detectives to investigate allegations in the community of Kalumburu. Since this date the Child Abuse Squad has completed a further 26 operations in the Kimberley Region.

The operations were conducted in Kalumburu, Halls Creek, Balgo, Fitzroy Crossing, Derby, Oombulgurri, Bidyadanga, Kununurra and Broome.

By working closely with our external partner agencies, such as DCP, Health, Education and the DPP, we have significantly streamlined and improved our approach with far better outcomes for the child victims and their families.

The WA Police Sex Crime Division (SCD) has focussed on improving service delivery to Regional WA with the addition of 21 FTE.

Regional Response – Community Engagement and Capacity Building

The Child Abuse Squad (CAS) has commenced a project to map and collate information in relation to each of the Indigenous communities throughout regional Western Australia. This project will collect data holdings for communities in a comparative database and enable the early identification of known risk factors for child abuse in remote and regional communities.

In response to Department of Health (DoH) representatives at the interagency sexually transmitted infection (STI) monitoring group a preliminary review was conducted of communities in the Eastern Midwest Gascoyne (Murchison) region.

The CAS partnered and engaged community representatives and enhanced the capacity of those communities to respond to child abuse.

This proactive initiative in the Mid West Gascoyne is ongoing and has shown an increase in arrests for a variety of child sex offences. A similar initiative has commenced in the Pilbara towns of Roebourne and Wickham.

Cross Border Justice Scheme

The Cross Border Justice Scheme will facilitate the delivery of effective justice services to communities in the region where the borders of WA, South Australia (SA) and the Northern Territory (NT) meet. The scheme will enable police, magistrates, fines enforcement agencies, community corrections officers and prisons of one jurisdiction to deal with offences that may have occurred in another of the participating jurisdictions.

Aspects of the cross border justice scheme have been under consideration and development by Governments since 2003. The NT, SA and WA signed the initial Cross Border Justice Inter-Governmental Agreement in November 2007 and the cross border justice scheme will commence in 2010.

It is anticipated that the new laws will provide improved justice outcomes for the residents of the cross border region and remove the ability of violent offenders to move between jurisdictions to avoid apprehension.

Liquor Licensing Enforcement

The misuse of alcohol is a significant contributing factor to a wide range of health and social problems including crime and anti social behaviour.

The impacts of the misuse of alcohol are magnified in rural and remote Aboriginal communities which are characterised by limited government service provision, poor access to services and endemic social disadvantage. There are also worrying indications that the use of illicit drugs such as cannabis and amphetamines has increased in these communities.

Alcohol restrictions

WA Police have actively utilised the provisions of the Liquor Control Act 1988 to advocate for restrictions on the supply of alcohol in remote communities.

Police have worked closely with the Department of Racing Gaming and Liquor (DRGL) and Aboriginal community groups in remote WA to develop strategies to restrict the supply of liquor and illicit drugs and to address sly groggin' and the movement of people between communities in search of alcohol.

Successful examples include:

- In collaboration with DRGL, Police consulted with the Wangkatjungka Aboriginal community regarding use of the Liquor Control Act 1988 to have the community declared a restricted area to prohibit the import and possession of liquor in their community. The regulation came into effect on 23 April 2008 and has resulted in a decline in crime and anti social behaviour in the area.
- In 2007/08 Police provided advice and assistance to the Director Liquor Licensing and Aboriginal community groups at Fitzroy Crossing concerning the imposition of conditions on the liquor license of the Crossing Inn in that town under s 64 of the Liquor Control Act.
- Following consultations the Director Liquor Licensing prohibited the sale of take away liquor in excess of 2.7% for a trial period and subsequently for an indefinite period.
- An evaluation of the impact of these measures at Fitzroy Crossing concluded that the restrictions led to significant reductions in alcohol related crime during the trial.
- Police analysis indicates that during the 17 months after restrictions were imposed at Fitzroy Crossing in late 2007 there was a 41% reduction in calls for police to attend domestic/disturbance/assault incidents.
- In addition there have been significant declines in the range of other crimes associated with the misuse of alcohol.

The declines in crime and anti social behaviour which have resulted from tighter liquor restrictions have generated strong interest from other remote Aboriginal communities interested in similar initiatives to address alcohol related harm.

In support of other regional and remote Aboriginal communities, LED, the Department of Indigenous Affairs and the Department of Health conducted an audit of all regional towns experiencing alcohol related harm. As a result of this work, a submission was submitted proposing additional restrictions at Laverton, Leonora, Leinster, Kookynie, Agnew and Menzies, which have now been implemented.

WA Police, DoH and DRGL are currently partnering submissions that will implement a suite of alcohol restrictions in the Kimberley, Pilbara and Mid West Gascoyne districts.

Local Council Bylaws

In remote locations within the Kimberley, Pilbara, Mid West Gascoyne and Goldfields districts communities operate within the confines of their local council bylaws. These bylaws also restrict the possession, consumption and sale of alcohol and deleterious substances.

WA Police actively police these bylaws and conduct vehicle stops, searches and education programs to identify illegal usage of alcohol and deleterious substances such as paints, glues and solvents. Alcohol is seized and destroyed and offenders are brought before the local court.

Operation Midrealm

Operation Midrealm is a Commonwealth Government funded program jointly operated between the NT SA and WA Police. The operation is focussed on the Ngaanyatjarraku Pitjantjatjara Yangkuntjatjara Lands (NPY), encompassing the central desert region of Western Australia including Warburton, Warakurna, Blackstone and associated remote communities.

The tri-state operation targets the sale and supply of illicit drugs, predominately cannabis and amphetamine, alcohol, petrol and solvents. WA Police stationed at MFPP provide ongoing operational focus and intelligence to the Substance Abuse Intelligence Desk (SAID) located in Alice Springs, NT.

Quarterly reports are provided on seizures, arrests and intelligence gathered to comply with the Commonwealth Government's, Department of Families, Housing, Community Services and Indigenous Affairs (FHCSIA) management plan.

Conclusion

The overrepresentation of Indigenous juveniles and young adults in the criminal justice system is a complex and multifaceted problem. It is simplistic in the extreme to assume this circumstance is a failure by WA Police to fully understand and commit to the intent of the WA YOA.

Recent focus on juvenile justice in WA has highlighted systemic issues that impact the YOA and its intent. WA Police has supported and participated in all the processes that have arisen. It has recognised areas that it can move towards improving as well as working in cooperation with other partner agencies.

The submission is intended to demonstrate that WA Police:

- is acting to address issues that impact its responsibilities within the YOA, not in isolation but with the broader context of the administration of juvenile justice and the government framework within the State;
- is committed to diversionary processes in supporting many initiatives through Police and Community Youth Centres; and
- understands the consequences of the effects of tragedy and trauma on the development of children through the much highlighted issue violence and abuse impacting Aboriginal communities.
- WA Police has played a significant role in improving safety and security in remote communities and supporting strategies that deal with the debilitating consequences of drugs and alcohol. Clearly, the effects of early childhood trauma are well known and the overrepresentation of young Aboriginal people in this regard are going to have later consequences, if not addressed, in the need for greater special educational services, mental health and criminal justice intervention.

Should you wish to discuss this submission further, the contact person at WA Police is Barbara Etter, Assistant Commissioner, Strategy and Performance. Assistant Commissioner Etter can be contacted on 9222 1244 / 1395 or at barbara.etter@police.wa.gov.au.

CJ DAWSON APM
ACTING COMMISSIONER OF POLICE

19 February 2010

**OVERREPRESENTATION OF YOUNG PEOPLE IN WA'S JUVENILE JUSTICE SYSTEM – WA
POLICE RESPONSE TO ALSWA'S RECOMMENDATIONS**

Recommendation 1

A Police Cautioning and Youth Diversion Pilot Project should be implemented in WA similar to that which has been implemented in Victoria. Extensive consultation with the Aboriginal community and relevant stakeholders should be done on a state-wide basis to develop a WA version of the Pilot Project.

Comment

Western Australia Police does not support the recommendation that a Victorian style Police Cautioning and Youth Diversion Pilot Project be implemented in Western Australia (WA).

The WA Police considers WA's current Juvenile Justice Team (JJT) system to be a more appropriate model. The Victorian model has similarities with the current WA JJT referral process. Management of a Victorian style model would be resource intensive and time consuming for WA Police and is not consistent with the current WA integrated multi-agency approach.

Adopting the Victorian model, which is a police program, would reduce the effectiveness of the multi-agency partnership between Department of Corrective Services WA Police and JJT other subject matter experts who contribute to diversion on offending youth. In addition, moving away from a multi-agency approach places a greater onus on police, potentially reducing frontline resources.

The current modes of diversion which are:

1. do nothing;
2. verbal caution;
3. written caution; and,
4. JJT referral;

offer a progressive escalation of youth diversionary options before the Children's Court becomes involved.

Recommendation 2

An extensive session on diversionary options for young people should be reinstated as a compulsory part of police training. The instruction provided at police training level should involve the Western Australia Police Service and JJT. Input from other related agencies such as ALSWA should also be invited.

Comment

Training related to diversionary options for young people is already a core component of police training.

Recently, the diversity training component on the Recruit Curriculum was reviewed and a new program was developed, covering specific elements for youth and Indigenous issues appropriate to a contemporary police environment.

Police training relating to 'young people', 'the law' and 'juvenile justice issues' is undertaken as part of training for Police Recruits and Police Officers. Recruits currently undertake 5 hours of formal classroom-based theory training on the management of Juveniles. To achieve this standard, the trainees must be able to;

- Outline the purpose of Children and Community Services Act;
- Define the term child;
- child in need care and protection and that of parent and relative;
- Explain the provisions for apprehending children;
- Identify offences in relation to adults;
- Explain power of apprehension without Warrant;
- Outline intent and purpose of Young Offenders Act;
- Explain requirements re notification when;
 - (a) Intending to charge a young person; and
 - (b) Intending to interview young person.
- Explain diversionary options under the Young Offenders Act;
- Explain guidelines for Police, before juvenile can attend a JJT;
- Apply the Agency's ethical expectations to this subject in the context of an ethical dilemma.

In addition to this session, the material is further reinforced during the legal theory sessions relative to:

- Powers of arrest;
- Criminal responsibility (Immature Age);
- Confessional evidence;
- Bail;
- Protective Custody Act; and again in;
- Crime Investigation Training when the requirements of the Young Offenders Act are applied to the conduct of interviews. Representatives from the Specialist Child Interviewing Unit also present and provide a practical insight into the issues involving children.

Police JJT officers are also allocated three hours to reinforce the theory and provide a practical insight into the operation and importance of the JJT process.

Recruits are also exposed to 14 days of scenario-based training during which their theoretical knowledge is applied and practised under supervision. The scenarios include the interview and management of juveniles. Assessment is undertaken by means of both personal observation and written examination.

Upon completion of Recruit Training and between the third and fifth year of service, officers undertake mandatory learning for promotion and are required to complete distance learning modules that including the subject of prosecutions. The module covers the existing policy relating to the management of juveniles.

Between the fifth and ninth year, officers must complete advanced distance learning modules that includes prosecutions and related matters. The successful completion of this unit is a pre-requisite for promotion to the rank of Senior Constable and again reinforces the use of discretion and availability of diversionary options.

The study is accessible to all officers throughout the State by means of a web based e-learning system and reinforced by written examinations.

WA Police support the view that training is an issue for all partners at the local level. Training should be delivered by the Dept of Correctives services; Police who are on the JJT; Police Prosecutors that deal with Children's Court matters; and Children's Court Magistrate. Training of ALS and Youth Legal Services should be considered as a part of the broader training requirements of the JJT framework. However, this level of training is not viewed as a part of the training curriculum for police recruits at the Police Academy.

Recommendation 3

The Western Australia Police Service should be adequately resourced so as to make participation in the JJT process a priority. In regional areas, particular consideration should be given to issuing a specialised police officer to the JJTs.

Comment

WA Police support the intent of this recommendation. It is recognised, and acknowledged that in recent times the imperatives of meeting community expectations for better frontline services across all government agencies has impacted the ability to fully resource the JJT and other programs. The Office of Auditor General's (OAG) current review is supported and is considered timely. This review may help all government agencies refocus and further improve youth diversionary processes.

The OAG review is also timely as there are other issues and considerations that have been highlighted in this ALSWA submission that WA Police would support to improve the JJT's functioning and the administration of juvenile justice within the State.

Recommendation 4

The Outcome Based Management framework of WA Police Service be changed so that the number of juveniles diverted from the criminal justice system is inserted as a main performance indicator for Outcome 2.

Comment

The WA Police Outcome Based Framework outcome 2 is;

"Offenders apprehended and dealt with in accordance with the law".

Outcome 2 has two key performance indicators (KPI);

1. "selected offences cleared" and
2. "support to judicial process resulting in successful prosecution. An offence cleared is where an offender is apprehended or processed by arrest, summons, juvenile caution, drug caution or infringement."

Unless the wording of Outcome 2 were to change, altering the KPI as recommended would be inappropriate, as this would be setting policy following targets, instead of the other way around.

The definition provided of "cleared" in the paper is incomplete, as "clearance" is currently defined as follows:

An offence is *cleared* (clearance) where an offender(s) is apprehended or processed (such as by arrest, summons, Juvenile Justice Team referral, juvenile caution, drug caution or infringement) or where, for some substantial reason, police investigations cannot be continued. These reasons include: the offender has died; the offender is in another jurisdiction and extradition is not desired or available; insufficient evidence exists to proceed against a suspect; there is a statute bar to proceedings where an offender is under age or claims diplomatic immunity; admittance to a psychiatric facility; false or mistaken reports; withdrawn complaint; civil action recommended.

There is currently a proposal being considered by WA Police to amend the definition of cleared to the following:

An offence is deemed to be *cleared* when an offender has been identified for a *substantiated offence* and action taken against them (such as arrest, summons, caution, court diversion, penalty notice, or warning), or where police have been prevented from acting due to circumstances outside police control (such as the complaint being withdrawn, the offence being outside a statute of limitations, or the offender being deemed not criminally responsible (Chapter V Criminal Code), deceased, covered by diplomatic immunity, in another jurisdiction and extradition is not desired or available, or in a psychiatric facility).

The difference between the two definitions is that only substantiated offences are considered (i.e. mistaken or falsely reported offences are discounted), and "insufficient evidence" is removed as a clearance, since in that case the offender has *not* been dealt with in accordance to the law.

However, there are other means of meeting the intent of the Aboriginal Legal Service's recommendation. For example, WA Police currently use many performance indicators internally for performance management which are not KPIs, (number of offences reported) against which area managers are held accountable by the Commissioner. Internal Performance Indicators (PIs) are used by the Commissioner to assess performance and to enforce policies of this nature.

In line with the recommendations relating to Timeliness of Service made by the Auditor-General in 2006, additional information; PIs, but not KPIs can be supplied to the public. This can be done through the Annual Report and/or online. In this instance, whilst the KPI should remain as this reflects the Outcome required of police by the WA Government, WA Police could provide additional information on apprehensions to the public on this matter, broken down by method of apprehension, Indigenous status, age and gender.

In summary;

- the KPI should reflect the Outcome as defined by Government;
- the KPI should change only if it better describes the Outcome, or if the Outcome changes;

- altering a KPI is a lengthy process requiring passage through a number of bodies; and
- developing, using, and publicising new performance indicators is a relatively rapid process, and can be done internally.

Recommendation 5

Section 29 of the Young Offenders Act 1994 should be amended to provide that, subject to the young person's consent and acceptance of responsibility for the offence, a police officer must refer to a JJT for a non-scheduled offence if the young person has not previously offended against the law.

This section only applies in the police officer has first determined that it is not appropriate to take no action or to administer a caution pursuant to s22B of the *Young Offenders Act 1994 (WA)*.

Comment

This recommendation is recommendation 46 of the *Law Reform Commission of Western Australia - Aboriginal Customary Laws Final Report (Project 94)*.

Recommendation 5 has no major impact to the operation of policing and simply prescribes a course of action at the end of police intervention. This prescriptive approach removes police discretion (other than exceptional circumstances) to determine whether an accused is afforded the diversionary option of JJT for their first offence against the law.

To mandate a diversionary response to JJT does not allow the view of a Magistrate to refer the offender to JJT as is the case, presently. Juvenile Justice Teams can only return a Police Referral if deemed inappropriate (scheduled offence or otherwise) or if the offender has failed to complete an Action Plan as determined by the JJT process.

The mechanism to ensure that serious offences are not dealt with by JJT is already contained in the schedule of offences within the *Young Offenders Act 1994*. It is considered appropriate that determination of the course of action for an unscheduled offence should remain with the attending officers who are well positioned to assess each situation pertaining to severity, enormity, damage, and/or injury to affected parties and/or property.

Recommendation 6

The categories of offences in Schedule 1 and Schedule 2 of the *Young Offenders Act 1994 (WA)* be changed to enhance the availability of the police cautioning option and diversion to JJTs. The following offences should be removed:

Schedule 1

Criminal code

s.317A – Assault with intent to resist or prevent arrest or detention.

Misuse of Drug Act 1981

s.6(1)(a) – Having in possession drug with intent to sell or supply it to another.

s.691)(c) – Selling or supplying, or offering to sell or supply drug to another.

s.7(1)(a) – Having in possession or cultivating prohibited plant with intent to sell or supply it, or drug obtained there from, to another.

s.7(1)(b) – Selling or supplying, or offering to sell or supply, prohibited plant to another.

Road Traffic Act 1974

s.49 – Driving without the appropriate license.

s.60 – Reckless driving.

Schedule 2

Criminal Code

s.444 – Criminal damage

Comment

This recommendation is partly formed by recommendation 47 of the *Law Reform Commission of Western Australia - Aboriginal Customary Laws Final Report (Project 94)*.

The Department of Attorney General, Department of Corrective Services and the Western Australian government are considering a review of the offences in the schedules which has been underway since 2004.

WA Police is of the view that there are significant implications in removing some of the offences as per Recommendation 6 of the ALSWA report. The examples provided by ALSWA are considered serious offences that are high in the areas of public concern relating to crime and road trauma. Comments are provided on the following points:

Schedule 1 Criminal Code s.317A Assault with intent to resist or prevent arrest or detention

WA Police would not support a recommendation that lessens the criminal responsibility of any person alleged in an assault against a police officer. This offence is also similar to Serious Assault s.318.

The failure to instigate criminal sanction for an assault on a police officer would significantly erode the protection and lawful order of the community by greatly reducing the effective intervention and safeguarding police officers performing their role.

Misuse of Drug Act 1981.

The offences in the schedule with reference to drugs are for the possession and cultivation of prohibited drugs with intent to sell and supply. These are not simply possession offences and contain elements of considered and premeditated criminal actions that negatively impact the social issues of local and wider communities. Such acts are appropriately dealt with by the Courts, as this offending perpetuates offending by the buyer. That is, the buyer needs cash/property, from thefts and burglaries, to pay for the drugs.

Road Traffic Act 1974 s.49 driving without appropriate license and s.60 reckless driving.

The anecdotal example provided by ALSWA is that a juvenile was charged with no Motor Drivers License (MDL) for sitting behind the wheel of a car with the key in the ignition does little to inform this debate. The debate is whether or not the offence of No MDL is serious enough to warrant criminal sanction in the first instance. Driving without a license does on

the surface appear a regulatory indiscretion unlikely to warrant judicial intervention in the first instance. Nevertheless there are many considerations with regard to 'driver' licensing which compound when a young person is involved.

It could be argued that a person who is driving a vehicle with little or no training poses a grave risk to themselves and the wider community. Criminal sanctions must be available to have a significant deterrent effect on the offender and protect the community.

Schedule 2 Criminal Code s.444 Criminal Damage.

The very nature of the offence of criminal damage is that it captures a wide range of offences. The simple removal of criminal damage from the schedule because it encompasses minor indiscretions subverts the fact that the offence also includes willful acts such as arson and racially motivated damage with penalties ranging up to 20 years imprisonment.

Should the offence of criminal damage be removed from the schedule and mandatory JJT introduced, police would be unable to prosecute a young person for even the most severe arson or attacks on property.

Consideration could be given to creating another offence provision to encompass the less serious matters that currently fall within the scope of a charge of criminal damage.

Recommendation 7

The JJT Aboriginal support workers would be employed on a full time basis.

Comment

WA Police supports the view that to tackle youth offending is through a multi-agency approach. This approach could include incorporating Aboriginal support workers to support the JJT employed by Education Department, local authorities and relevant non-government service providers.

Recommendation 8

A JJT Aboriginal support worker should be employed at each Regional Community Justice Services office in WA on a full time basis.

Comment

As per recommendation 7.

Recommendation 9

The state government should fund an independent consultant to complete a state-wide evidence based evaluation of services that exist whose primary function is to assist young people.

Comment

As previously indicated, the Office of the Auditor-General is currently conducting a review into the involvement of young people in the criminal justice system from a wide range of perspectives. WA Police suggests that the outcomes of this report need to be considered before Recommendation 9 is explored.

Recommendation 10

That JJTs should be funded to run appropriate programs as identified through consultation with JJT staff, Aboriginal and non-Aboriginal clients and other relevant stakeholders. ALSWA recommends that the development of these programs be done by community development workers who are employed as part of JJT.

Comment

WA Police supports the intent of this recommendation and is of the view that it is essential for an effective support to the functioning of diversion programs and the functioning of the JJTs.

There appears to be a void with respect to programs and alternatives for dealing with dysfunctional young offenders who contribute significantly to the drain on Police and community resources whilst continuing mayhem across society. A move to permit the temporary removal of recidivist offenders beyond their "environment" but not incarceration should be investigated.

There are a limited number of programs available to JJT that are tailored to support the overrepresentation of Indigenous youth through cultural activities and crafts through traditional skills exchange and tuition.

WA Police would not support that program development be exclusively done by community development workers. Currently, there are programs developed and conducted within the WA Police and Citizens Youth Clubs that support the JJTs but are not a part of the JJT framework.

Recommendation 11

Section 42 of the *Young Offenders Act 1994 (WA)* should be amended to provide that if the issuing of a caution or referral to JJT is inappropriate then a notice to attend court should be given and that arrest should be the option of last resort.

Comment

The basis of this recommendation is formed around recommendation 49 of the *Law Reform Commission of Western Australia - Aboriginal Customary Laws Final Report (Project 94)*. Since the release of the LRC final report, in September 2006, the *Criminal Investigation Act 2006* has been enacted. This Act codifies arrest

practices and has created a prescriptive approach to arrest and related matters for police. The *Criminal Investigation Act* clearly places arrest as an **option of last resort** for all persons and further requires the unconditional release (not on bail - i.e. summons or notice-to-attend) of an accused unless they meet stringent requirements under the Act.

Recommendation 12

The *Young Offenders Act 1994 (WA)* should be amended to provide that children aged 12 years and under cannot be remanded in custody unless police can demonstrate exceptional circumstances as to why the child is not granted bail.

Comment

WA Police does not support the recommendation as it is a simplistic view of a more complex situation. The figures provided in the ALSWA submission may well identify the increased likelihood that young Aboriginal persons do not make bail, but the figures do little to examine the causal factors of the offence.

While the figures show that a high proportion of young Indigenous persons do not make bail, it does not automatically equate to a police reluctance to grant bail or arbitrarily refuse bail. Rather, it highlights the constraints faced by police and the judiciary when suitable supporting environments cannot be found to where young offenders can be released. Presently, there are limited options to custody when a parent or responsible adult cannot be located. In many cases, it is not appropriate to release a young person into the community where he/she is either likely to be at risk or to re-offend. WA Police cannot abrogate its duty of care therefore, in many cases this will result in young persons remaining in custody due to lack of appropriate options.

WA Police supports consideration to be given to providing viable alternatives to young offenders being remanded in custody. It is essential that non-police support and welfare services are available on a 24-7 basis to assess and process young offenders.

Offender Management Units have identified a number of prolific offenders who are aged twelve years or under. In instances where such persons have been arrested in breach of an order or protective condition, it would be inappropriate and not in the best interests of the offender or the community for them to be released on bail. It is the case that these offenders are often living in environments where there is little or no supervision, a dysfunctional family life, inadequate care, exposure to substance abuse and other influences generally contributing to their offending lifestyle. 'Exceptional circumstances' are referred to in the Bail Act and WA Police Commissioner's Operations Manual as a means to grant bail rather than refuse bail. Generally the serious nature of the offences committed, subsequent breaches of protective conditions and the commission of further serious offences, give rise to exceptional circumstances why bail should not be granted. It should be noted that juvenile offenders are not held in police lock-ups for any length of time greater than is required to arrange for their transportation to Rangeview Remand Centre.

Recommendation 13

The *Bail Act 1982 (WA) Sch 1, Pt C, cl 2* should be amended to provide that bail must not be refused on the sole ground that the child does not have any or, any adequate, accommodation or that a responsible adult cannot be located.

Comment

This proposal is based on the *Children, Youth and Families Act 2005* of Victoria. This act provides that young people should not have their bail refused on the sole ground that *the child does not have any, or adequate accommodation*.

The ALSWA recommendation takes this further to include that a young person cannot be refused bail even if a responsible person cannot be located.

Having regard to the response to Recommendation 12, WA Police cannot support this recommendation. However, ALSWA gives examples of possible solutions such as the Victorian Central After Hour Bail Placement Service operated by the Juvenile Justice Program. WA Police would support examination of appropriate options for juvenile bail support. It is vital that this type of accommodation be available at all hours and be easily accessible. See also Recommendations 12.

Recommendation 14

The state government should hold a forum with all relevant government and non-government agencies with the objective of developing a state-wide interagency policy on how to best provide bail assistance to young people.

Comment

As per recommendation 13. It is believed there are relevant and viable solutions in existence in Australia and overseas which should be examined. WA Police would support an informed examination rather than a forum. This should be a matter of urgent consideration.

Recommendation 15

All regional and remote Aboriginal communities should have adequate technologies to facilitate telephone conferencing and video link up with the nearest regional centre. The Cops Manual should be amended to provide that in remote communities the police officer must consider the accused's case for bail in the community where the arrest took place. If the officer does not have power to grant the accused bail they should use video linkup to bring the accused before an authorised officer¹ who shall consider the accused's case for bail as soon as practicable.

Comment

¹ *Bail Act 1982 (WA)*

The *Bail Act 1982* currently does not provide for remote bail applications, refusals or grants.

Courts have legislation that supports video and audio links and as such bail may be considered via this manner when a court is sitting. However a court is not convened to consider bail for a first appearance in court.

Police would welcome any mechanism to make bail applications more flexible, but contend that an initial bail assessment should be conducted in person to enable an authorised person to assess an accused person's demeanour, and by a person with an appreciation of the local community and culture.

With the development of Multifunctional Police Facilities in remote communities consideration has been given to appropriate technologies. However, in many circumstances there are complex considerations that preclude the simple implementation of these technologies. The intent is supported; however, the application is currently limited.

Recommendation 16

The *Bail Act* should be amended to provide that where an adult or child has been refused bail by police, JP or authorised community services officer or the accused is unable to meet the bail conditions that have been set, the accused is entitled to apply to a magistrate for bail by telephone application if he or she could not otherwise be brought before the court (either in person or by video or audio link) by 4.00pm the following day.

Comment

This recommendation is Recommendation 31 of the of the *Law Reform Commission of Western Australia - Aboriginal Customary Laws Final Report (Project 94)*.

It is proposed as a measure to decrease the number of children and adults traveling long distances to Perth in police custody. WA Police is of the view that the recommendation should be viewed in context with the previous recommendations and would support development of supports that would ease requirements for police holding and transporting juveniles.

Recommendation 17

Legislation should be introduced in WA that allows the appointment of Bail Justices similar to that outlined in s120 of the *Magistrates' Court Act 1989 (Vic)*.

Comment

This recommendation is not supported as the solution is more complex than the appointment of Bail Justices. Refer to response at recommendations 12 and 13.

Recommendation 18

The practice of issuing curfew as a bail condition to young people should be reviewed by both the Courts and the police and other alternatives should be considered.

Comment

Refer also to Recommendation 12 and 13.

Bail with a curfew is a compromise to detention as a means of ensuring community safety. A curfew condition should always be transparent and linked to the nature of the offence a person is subject to bail.

WA Police is considerate of the welfare of young persons should they live in a home fearing moral or physical danger as such WA Police does do not see the blanket removal of curfews as a solution.

The need for such a compromise further demonstrates the unenviable situation police and judiciary find themselves when considering bail for a young person and weighing up community and child safety. The simple solution from the police view that if there are concerns in the home, bail would be refused based on the safety of the child.

Conditional bail options pursuant to the Bail Act are recognised as important tools underpinning the successful management of offenders in the community. The advantages gained by imposing a curfew on a prolific juvenile offender are numerous and benefit the community, the offender and parents/carer givers of the offender. These being:

1. a curfew reduces the opportunity for the offender to commit further offences and become further entrenched in the justice system;
2. increased supervision through a curfew inhibits the opportunity for offenders to obtain and abuse drugs/substances or alcohol and enhances the opportunity for offenders to overcome addictions/habits;
3. a curfew reduces the opportunities an offender may otherwise have to socialize with criminal associates or other poor role models;
4. a curfew provides societal support to parents/care givers who in many instances have lost control or influence over the behaviour of juvenile children (particularly those with substance abuse problems).

Recommendation 19

The administrative process by which police records are updated when bail conditions are changed by the courts should be reviewed and improved.

Comment

WA Police supports the intent of this recommendation and is to be part of the ongoing Information Management System (IMS) enhancements. WA Police is currently reviewing the means by which the exchange of information between Courts (DoTAG) can be streamlined. This includes developing automated processes to simultaneously update Police and DoTAG records, including Bail.

Recommendation 20

The *Bail Act 1982 (WA)* should be amended to include that Part C 3A of the Act does not apply to young people.

Comment

Part C 3A provides that if a person is on bail for a serious offence (schedule 2 Bail Act) and they commit another serious offence on that bail they cannot again be granted bail except in exceptional circumstances.

WA Police does not support this recommendation. Refer comments 12 and 13. This legislation specifically relates to serious offences. Amendment of this section would be a disregard for community safety and that of the young people involved.

Recommendation 21

The allocation and expenditure of funds given to police for the purpose of transporting juveniles from country areas should be reviewed.

Comment

WA Police supports the recommendation that transporting juveniles from country areas should be reviewed. This matter is under review currently between WA Police and the Department of Corrective Services.

Recommendation 22

The Commissioner for Children and Young People should investigate and review the transportation and lockup conditions of young people from country areas on an annual basis.

Comment

Refer recommendation 21.

Recommendation 23

The state government should initiate and resource policy with a similar operational framework to the Young People in Northbridge Policy (not including the curfew) that aims to keep young people out of the juvenile justice system. The development of such policy should occur on a state-wide basis and should be developed in full consultation with the local community and the relevant local government and non-government agencies.

Comment

WA police is of the view the introduction of the Northbridge Policy in 2003 has provided significant benefits in the Perth CBD and Northbridge. Key outcomes to date are:

- Improved community confidence;
- A 35% reduction in the number of young people on the street late at night; and
- A reduction in the number of young people charged.

The principle of the policy is that children deemed "at risk" are apprehended under the provisions of the Children and Community Services Act 2004 on welfare grounds. Young people identified as having committed offences are dealt with in accordance with the law, prescribing that an expanded policy would not divert offenders from the justice system but would take young people into custody prior to any offence being committed. While there are indirect diversionary benefits in that young people apprehended are prevented from committing offences, the principle of the policy is not diverting them from the justice system.

WA Police view any strategy to enhance the safety of unsupervised young people in the community as having significant merit. Such policy would require significant Government support external to WA Police. It is essential that non-police support and welfare services are available on a 24-7 basis to assess and process young people apprehended. This type of initiative is not a core WA Police function and requires appropriate levels of support from other sectors.

Recommendation 24

The Children's Court policy on early listing should be reviewed. The impact that it has on young people from regional and remote areas should be particularly investigated.

Comment

WA Police supports the intent of this recommendation.

Recommendation 25

The time frame, mode of transport and conditions of transport for young people being taken from country areas to Rangeview Remand Centre needs urgent review. Improved procedures should be implemented as identified through consultation with the police, AMSWA, Aboriginal Visitor Services and the young people transported.

Comment

WA Police supports the intent of this recommendation. Refer Recommendation 21.

Recommendation 26

Legislation should be amended so that young people cannot be remanded for non-imprisonable offences.

Comment

The example provided shows that a child was remanded not as a result of the type of offence committed, but because police could not locate a responsible adult. See response to recommendations 12 and 13.

DRAFT

Your Ref:
Our Ref: TF/2008/000179

Ms Katrina Carlisle
Acting Chief Executive Officer
Aboriginal Legal Service of
Western Australia Inc
PO Box 8194
PERTH BUSINESS CENTRE WA 6849

Dear Ms Carlisle

**Over-representation of Young Aboriginal People in WA's Juvenile
Justice System: ALSWA's Submission**

Thank you for your letter of 31 January 2008, providing a copy of ALSWA's Submission into the Western Australian Juvenile Justice System in reference to young Aboriginal people. Attached is a copy of the Western Australia Police response to each of the recommendation made in the Submission.

I have also referred your correspondence to Mr Robert Skesteris, Executive Manager, of our Indigenous, Community Diversity and Corporate Research Unit, who I understand has contacted your office and made an arrangement to meet and discuss issues in regards to the ALSWA Submission and the Western Australia Police response.

Yours Sincerely

Karl O'Callaghan APM
Commissioner of Police

March 2008

WA Police Response to the Office of Attorney General Coordinated Response on the:

YOUTH JUSTICE STRATEGY STEERING COMMITTEE COORDINATED RESPONSE TO THE AUDITOR GENERAL'S REPORT 4 JUNE 2008 RECOMMENDATIONS
The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994.

WA Police has conducted a full review of its juvenile justice policy and procedures resulting in a number of agency wide recommendations which have been endorsed by the Commissioner's Executive Team.

An outcome from the review is that responsibility for the administration of Juvenile Justice in WA Police will be managed by the Community Engagement Office within the Strategy and Performance Directorate. This will enable strategic alignment on juvenile justice issues and provide high level collaboration with other government and non-government agencies. The link to operational policing will be strengthened by providing District accountability for court diversions, Juvenile Justice Team referrals and juvenile cautions with reporting mechanisms within the District Operational Performance Report Card process.

The following information is provided in relation to the WA Police input to the coordinated Youth Justice Strategy Steering Committee response as requested, and in particular to recommendations 4, 5, 7, 10 and 12 (as highlighted).

RESPONSE TO RECOMMENDATIONS

- 1) The Department of Corrective Services and Western Australia Police work together to establish strategies for young people who continually breach bail so that they do not return to environments in which they are not supervised effectively.

WA Police endorse the response provided.

- 2) Government agencies that have contact with young people in the justice system (that is, Department for Child Protection, Department of Corrective Services, Department of Health and Western Australia Police) work together to ensure that young people who offend repeatedly are identified and case managed until the mental health, substance abuse and other problems that are associated with their offending are successfully managed.

WA Police endorse the response provided.

- 3) **Western Australia Police, Department of Corrective Services and Department of the Attorney General progressively improve the extent to which they record data on ethnicity and indigenous status to enable better monitoring and evaluation of the impact of initiatives on young people from diverse backgrounds.**

WA Police endorse the response provided.

- 4) **Western Australia Police ensure that officers consider redirection options in line with the YO Act, particularly by ensuring that officers:**
 - **Use notices to attend (court) to direct young people towards court only when they have considered all redirection options**
 - **Refer young people to juvenile justice teams where this is appropriate for the young person's offence and circumstance.**

WA Police has conducted a review of its juvenile justice policy and procedures which address a number of issues such as:

- providing clear direction to frontline officers on the cautioning policy
- ensuring that training for frontline officers will place greater emphasis on diverting young offenders from the justice system, and
- ensuring that supervisors have improved knowledge and involvement in decision making and the application of a Juvenile Justice Team referral or juvenile caution.

- 5) **Western Australian Police ensure that officers fully apply the YO Act provisions which require them to usually refer young people who have not previously offended to juvenile justice teams.**

Refer to recommendation 4 above.

- 6) **Department of Corrective Services improve the juvenile justice team program, by improving timeliness and ensuring that action plans support the young person's rehabilitation and address the nature and causes of their offending.**

WA Police endorse the response provided.

- 7) Department of Corrective Services and Western Australia Police work together to establish clear responsibilities for ensuring that:
- a) all victims of juvenile crime have the opportunity to become involved in juvenile justice teams, including participation which does not involve them appearing in person
 - b) these participants receive the support they need to meaningfully participate
 - c) the reasons why victims do not wish to become involved are evaluated and used for continuous improvement purposes

WA Police endorse the response provided.

- 8) Department of the Attorney General's Victim Support Service records assistance provided to victims of crime involved in juvenile justice teams, so that it can monitor and improve the support it provides to victims.

WA Police endorse the response provided.

- 9) Department of Corrective Services and Department for Child Protection work together to provide state-wide alternatives to detention for young people who need supervision and accommodation while on bail.

WA Police endorse the response provided.

- 10) Department of Corrective Services and Western Australia Police explore further ways of locating responsible adults, including the use of non-sworn staff for this purpose.

WA Police endorse the response provided.

- 11) Department for Child Protection review their practices to ensure that no children under the protection of the Director General are refused bail on 'no responsible adult' grounds

WA Police endorse the response provided.

- 12) Western Australian Police develop and apply protocols for young people's long distance transport arrangements, including choice of transport, journey preparation and contingency planning, prisoner risk assessment, notification of responsible adult, overnight stay accommodation and supervision of the young person.

WA Police are currently developing a "Transport of Persons in Custody" Manual with a number of stakeholders including the Office of the Inspector of Custodial Services. The manual is nearing completion and will include adult and juvenile remand prisoners, mental patients and unlawful citizens by various methods of transportation and includes a risk analysis matrix, prisoner escort check list and commercial aircraft security advice.

-oOo-