AN ASSESSMENT OF THE CHILDREN’S COURT OF WESTERN AUSTRALIA:

PART OF A NATIONAL ASSESSMENT OF AUSTRALIA’S CHILDREN’S COURTS

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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

- Children's Court of Western Australia – CCWA
- Department of the Attorney General – DotAG
- Department for Child Protection – DCP
- Juvenile Justice – JJ
- Juvenile Justice Team – JJT
- Protection and Care – P&C
1 ACKNOWLEDGEMENTS

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The Administering Organisation for this national project was La Trobe University, Victoria and the first-named Chief Investigators were Professor Alan Borowski and Associate Professor Rosemary Sheehan. The collaborating organisations included Monash University, Australian Catholic University, The University of New South Wales, Charles Darwin University, Griffith University, The University of Adelaide, University of South Australia, University of Tasmania and The University of Western Australia.

In producing this document based on the Western Australian research, initial and informal interviews were conducted with both previous and current personnel involved with the Children’s Court of Western Australia and we wish to thank these people for their generosity of time. In addition, we were extremely grateful for the support and feedback received on this project from the current President of the Children’s Court of Western Australian, his Honour Dennis Reynolds. We would also like to thank the Perth Children’s Court and the technical staff in particular for supporting us to use the Video Link facilities to interview country magistrates. Last but not least, we cannot express enough gratitude to the Judicial Officers and the key stakeholders from the major agencies in Western Australia who were incredibly generous with their time and support of this project.

A special acknowledgment goes to Ms Alana Thompson for her substantial contribution towards the overview summary of the Care and Protection jurisdiction of the CCWA. Alana is a PhD candidate at the University of Western Australia who is currently completing her thesis entitled ‘Barriers to achieving a holistic outcome for parents involved in protection and care proceedings in the Children’s Court context’.
2 EXECUTIVE SUMMARY

1. This component of the Australian Research Council funded national assessment of Australia's Children's Courts examines the contemporary status and current challenges faced by the Children's Courts of Western Australian (CCWA) in both the child welfare and criminal jurisdictions and the viability of possible reforms based on the perspective of Judicial Officers and key stakeholders.

2. Three prominent contextual issues specific to Western Australia should be noted:
   i. Relative to population size, Western Australia is processing a higher proportion of children through the Children's Court than any other State or Territory in Australia.
   ii. Aboriginal over-representation for care and protection and youth justice is an issue of particular concern in Western Australia.
   iii. The sheer geographical size of Western Australia relative to other States and Territories presents unique challenges in terms of addressing the needs of Aboriginal children, their families and their communities.

3. There are two types of judicial officers that hear CCWA matters:
   i. Specialist judicial officers. The CCWA is staffed by a President, Judge, four full-time Magistrates, and one part-time Magistrate who are specialist judicial officers and are based in Perth. These judicial officers have exclusive jurisdiction for offences committed by children in cases of indictable matters where the defendant has not elected a Judge and jury. These judicial officers also hear all protection and care matters pertaining to children. Although they are based the Perth metropolitan region, these judicial officers travel throughout the State. The President is also a Judge of the WA District Court and has the same powers in sentencing as a Supreme Court Judge. As the maximum sentence a magistrate can impose for a community order or detention is 12 months, the President deals with all matters that either require a greater sentence or the imprimatur of the President and hears reviews against the decisions of CC Magistrates (Department of the Attorney General).
   ii. Non-specialist judicial officers. Outside of the Perth metropolitan region, 13 country court magistrates reside over Children's Court matters. These magistrates are non-specialists in the sense that they are charged with a broader jurisdiction which includes CC matters as well as criminal and civil matters involving adults in the Magistrates Court.

5. In preparation for the assessment of the CCWA, 12 unstructured interviews were conducted with key professionals working within the sector to pinpoint the main issues of relevance to the CCWA and to identify key agencies and individuals to approach in the formal phase. There were a total of 74 participants in the formal phase of the project; 12 Judicial Officers and 62 key stakeholders. With regards to the 12 Judicial Officers, all six of the Judicial Officers from the Perth Children’s Court took part and six country magistrates of Western Australia participated. Key stakeholder agencies were represented by 62 individuals; Legal Aid (15 participants), Western Australia Police (3 participants), Family Inclusion Network of Western Australia (2 participants), Youth Justice, Department of Corrective Services (11 participants), Aboriginal Legal Service (18 participants), Department for Child Protection (10 participants), and Cross Roads West Transitional Support Services, Salvation Army (1 participant). In addition, two academic researchers with expertise in Indigenous issues and care and protection matters took part. Of these 62 individuals, 53 resided in the Perth metropolitan area, eight resided in regional/country areas of Western Australia and one resided in Melbourne, Victoria but had previously resided in the Perth metropolitan region.

6. The five key findings from this process are summarised as follows:
   i. Aboriginal children, young people, families and communities are over-represented in the protective and the criminal jurisdictions of the CCWA.
   ii. There is an absence of appropriate services and programs for children and families across both criminal and protective jurisdictions of the CCWA.
   iii. The lack of integrated approaches to practices within the Department of Child Protection, Youth Justice and the WA Police has an unhelpful impact on case outcomes.
   iv. The challenges faced by all stakeholder agencies and the current proceduralised practice and decision-making processes are eroding the impact of service outcomes.
   v. Agency-specific professional development opportunities and opportunities for inter-agency training and professional development should be developed.

7. An additional issue identified as being of specific relevance to Western Australia was the resource deficiencies that prevent the needs of Aboriginal children and their families from being properly addressed. This issue was discussed with an awareness that solving these deeply embedded social problems for Aboriginal people in Western Australia is beyond the scope of the Children’s Court, and innovative strategies are required to engage Aboriginal communities more fully in the reform process, through identifying, mandating, educating and resourcing Aboriginal leaders to spearhead this reform process. Youth Justice Programs are necessary but not sufficient to break the negative cycle within which many Aboriginal children are caught. A need was expressed for the
development, resourcing and introduction of drug and alcohol, mental health and family violence services, throughout the State, but particularly in regional and remote areas.
3 INTRODUCTION

In 2008, the Australian Research Council, through the Discovery Grants scheme, funded a research project titled ‘Challenges, Possibilities and Future Directions: A National Assessment of Australia’s Children’s Courts’. This national assessment of Australia’s Children’s Courts examines the contemporary status and current challenges faced by the Children’s Courts in both the child welfare and criminal jurisdictions and the viability of possible reforms based on the perspective of Judicial Officers and key stakeholders. In its entirety, this research provides a national assessment of the institution of the Children’s Court and allows comparisons to be drawn among Australia’s States and Territories.

This document provides an assessment of the CCWA, beginning with a brief overview of the history of the CCWA and discussion of the geographic and demographic context of Western Australia. This is followed by a summary of the current status of the CCWA, which highlights the particular challenges for the CCWA presented by Aboriginal children, their families, and their communities. Following the review of the current status of the CCWA, the study methodology is outlined and the key findings discussed. This report then concludes with a discussion of a number of inter-related issues that emerged as a consequence of this research.

3.1 Historical Overview

A separate system for dealing with children was put in place in Western Australia in the early 1900s. The State Children’s Act of 1907 made specific provisions for children to be dealt with by the State Children’s Department and the Children’s Courts (Lee & Crake, 2004). From the outset, there was a strong welfare-driven approach to managing children in Western Australia. Youth Justice Matters were managed by welfare department staff under the provisions of the Child Welfare Act 1947. Treatment and intervention were the main methods for addressing problematic behaviours in children. The basis for this welfare approach to youth offending was driven by the recognition that a large portion of young offenders presented with various social welfare and mental health issues (e.g., neglect, abuse, social disadvantage) that played a causal role in their offending (Wells 1999).

However, this welfare approach to Youth Justice started to be challenged in the 1980s in Western Australia. The first challenge came from the 1982 Edwards Report (Wells 1999), which raised concerns regarding indeterminate sentencing and a lack of due process.

1 A contemporary history of the Western Australian Department for Child Protection is provided in a document titled ‘History of the Department’, which was compiled by Noelene Proud and Brett Klucznik in 2003 and amended by Audrey Lee and Mark Crake in 2004.
The Edwards Report called for a clear distinction to be drawn between children in need of care and protection and those requiring management due to engaging in criminal behaviours (Wells 1999). This report as well as the subsequent 1984 Carter Report titled “Wellbeing of the People” and an internal 1986 report titled ‘Review of the Juvenile Justice System” (Wells 1999) paved the way for a restructuring of the system to deal separately with juvenile offending and care and protection matters. With this restructuring, responsibility for all Youth Justice Matters was shifted to the Ministry for Justice. The Children’s Court Act of Western Australia 1988 and the Young Offenders Act 1994 were introduced to augment the shift from what some viewed as a welfare and rehabilitation-focused approach to a more justice-oriented approach in Western Australia (Wells 1999).

Clearly then, Western Australia has witnessed considerable administrative as well as legislative changes in the treatment and management of young offenders and children in need of protection and care. Change is ongoing in Western Australia and the modern day youth justice and child protection systems in WA are currently undergoing further restructuring as outlined, below.

3.2 Geography and Demography

3.2.1 Geographic Issues Specific to Western Australia

Given the size of Western Australian it is important to place the CCWA within a meaningful geographic context. As can be seen from Figure 1 (p.3), there are rurally-based Children’s Court Magistrates who are required to preside over geographical regions that are larger in size than the whole of the State of Victoria. The logistical implications of this distance for the functioning of the Children’s Court is discussed in detail further on in this report.

3.2.2 Demographic Information Relevant to the CCWA

This section briefly discusses some of the available data for Western Australia relative to Australia as a whole and other States and Territories on (a) care and protection, (b) appearances in the Children’s Court, and (c) juveniles who are serving some type of criminal sentence. First, with respect to the rate at which Aboriginal people in Western Australia come into contact with the care and protection services, Table 1 (p.3) displays data taken from the findings of the 2008 National Aboriginal and Torres Strait Islander Social Survey and focuses on responses from Indigenous persons aged 15 year and over who are from Western Australia. As can be seen, relative to the national percentage of Aboriginal people aged 15 years and over, Aboriginal people from the major cities in Western Australia were more likely to have been removed from their natural family and they were also more likely to have a relative who had been removed from their family at some stage.
Figure 1. Location of magistrate-operated Children’s Courts in Western Australia (circled in red) and comparative size to the State of Victoria.

Table 1. Percentages of Aboriginal people who have been removed from their family, Western Australia and Australia

<table>
<thead>
<tr>
<th>Removal from family</th>
<th>Western Australia</th>
<th></th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Major cities</td>
<td>Inner/outer regional areas</td>
<td>Remote/very remote area</td>
</tr>
<tr>
<td>Ever removed from natural family</td>
<td>14.1%</td>
<td>9.1%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Relatives ever removed from natural family</td>
<td>61.3%</td>
<td>53.2%</td>
<td>49.6%</td>
</tr>
</tbody>
</table>


To place these findings within a national context, the Australian Institute of Health and Welfare Child Protection Australia 2008-09 report explains that Aboriginal and Torres Strait
Islander children are over-represented in terms of the increasing numbers of children who are:

1. Subject to a notification of child abuse or neglect;
2. Under care and Protection Orders; and

It is important to note that although there appears to have been a real rise in children needing protection, other factors may have played a part. These include greater community awareness of child abuse and neglect issues, a broadening in what some jurisdictions define as child abuse or neglect, and changes in child protection policies and practices. The reasons for the over-representation of Aboriginal and Torres Strait Islander children in the child protection system are complex and include the legacy of past policies of the forced removal of some Aboriginal children from their families.

Moving on to examine the number of children appearing under the youth justice jurisdiction of the Children’s Court of Western Australia, Table 2, below, displays the relative percentage of children who appeared as defendants in the Children’s Court during 2009-10 across the States and Territories. As can be seen, Western Australia is the second largest contributor to the volume of children appearing as defendants (behind New South Wales). This is a much larger percentage of defendants than Western Australia should be providing, based on the percentage of the eligible population that reside in this State (10.6% of the national population aged under 18 years). The ratio of the total number of defendants to percentage of the population clearly demonstrates that Western Australia is processing far more children through the Children’s Court than any other State or Territory (in relation to its eligible population). Unfortunately, the Western Australian data that contributed to this national collection did not have any indicator about the Aboriginal status of the defendants.

Table 2. Percentage of total defendants appearing in the Children’s Court, percentage of the national population under 18 years, and the ratio between the percentage of defendants and the percentage of the population, by State/Territory, for 2009-10

<table>
<thead>
<tr>
<th>Children’s Court defendants</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>SA</th>
<th>WA</th>
<th>Tas</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Total Children’s Court defendants</td>
<td>22.1%</td>
<td>20.8%</td>
<td>19.8%</td>
<td>9.9%</td>
<td>21.3%</td>
<td>3.0%</td>
<td>1.9%</td>
<td>1.1%</td>
</tr>
<tr>
<td>% Population under 18</td>
<td>32.0%</td>
<td>24.1%</td>
<td>21.3%</td>
<td>6.9%</td>
<td>10.6%</td>
<td>2.3%</td>
<td>1.2%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Ratio of % total defendants to % pop under 18</td>
<td>0.69</td>
<td>0.87</td>
<td>0.93</td>
<td>1.42</td>
<td>2.01</td>
<td>1.31</td>
<td>1.57</td>
<td>0.73</td>
</tr>
</tbody>
</table>

Finally, examination of the demographic information of children serving some type of criminal sentence reveals some other useful contextual information about Western Australia. Table 3 (p.5) displays the relative numbers and percentages of Aboriginal and non-Aboriginal children who were serving a community-based order or who were detained, based on information released by the Western Australian Department of Corrective Services on 27 January, 2011. It is clear that the relative contribution of Aboriginal children to both of these sentencing options is dramatically higher than the corresponding percentage Aboriginal children contribute to the overall population in Western Australia.

Table 3. Relative number (and percentage) of Aboriginal and non-Aboriginal children serving community-based orders or in detention as of 27 January, 2011

<table>
<thead>
<tr>
<th>Corrective services data</th>
<th>Aboriginal</th>
<th>Non-Aboriginal</th>
<th>Not recorded</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile distinct persons on orders</td>
<td>N 501</td>
<td>357</td>
<td>9</td>
<td>867</td>
</tr>
<tr>
<td>%N</td>
<td>57.8%</td>
<td>41.2%</td>
<td>1.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Juvenile offenders in detention</td>
<td>Sentenced N 63</td>
<td>20</td>
<td></td>
<td>83</td>
</tr>
<tr>
<td>%N</td>
<td>75.9%</td>
<td>24.1%</td>
<td></td>
<td>100.0%</td>
</tr>
<tr>
<td>Unsented</td>
<td>N 53</td>
<td>31</td>
<td></td>
<td>84</td>
</tr>
<tr>
<td>%N</td>
<td>63.1%</td>
<td>36.9%</td>
<td></td>
<td>100.0%</td>
</tr>
<tr>
<td>Total</td>
<td>N 116</td>
<td>51</td>
<td></td>
<td>167</td>
</tr>
<tr>
<td>%N</td>
<td>69.5%</td>
<td>30.5%</td>
<td></td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source. Weekly offender statistics reports released by Western Australian Department of Corrective Services, released 27 January, 2011.

Three prominent issues emerge from this comparative geographic and demographic analysis of the CCWA;

1. Relative to population size, Western Australia is processing a higher proportion of children through the Children’s Court than any other State or Territory.
2. Aboriginal over-representation is an issue of particular concern in Western Australia in both the care and protection jurisdiction as well as the youth justice jurisdiction of the CCWA.
3. The sheer geographical size of Western Australia relative to other States and Territories presents unique challenges in terms of addressing the needs of Aboriginal children, their families and their communities.

These issues are further highlighted and discussed in the sections 3.3 and 3.4 of this document.
3.3 Current Legislation, Policies, Major Stakeholders, and Previous Research Data

The CCWA is staffed by a President, Judge, as well as four full-time Magistrates and one part-time Magistrate who are specialist judicial officers based in Perth. These judicial officers have exclusive jurisdiction for offences committed by children in cases of indictable matters where the defendant has not elected a Judge and jury. These judicial officers also hear all protection and care matters pertaining to children. Although they are based in the Perth metropolitan region, these magistrates travel throughout the State and are frequently sent to hear protection hearings in country areas. The President is also a Judge of the WA District Court and has the same powers in sentencing as a Supreme Court Judge. As the maximum sentence a magistrate can impose for a community order or detention is 12 months, the President deals with all matters that either require a greater sentence or the imprimatur of the President and hears reviews against the decisions of CC Magistrates (DotAG, 2009).

Outside of the Perth metropolitan region, country court Magistrates and Perth Children’s Court Magistrates preside over Children’s Court matters. The President presides over all of the most serious criminal matters across the State. Country court magistrates are non-specialists in the sense that they are charged with a broader jurisdiction which includes CC matters as well as criminal and civil matters involving adults in the Magistrates Court. There are currently 13 of these country magistrates and they are required to conduct court in various regional and remote areas of Western Australia as highlighted in Figure 1 (p.3).


3.3.1 Youth Justice

Before discussing the sentencing options available to the CCWA, and trends in the use of these options, it is important to understand the relative frequency of the various types of criminal cases that are lodged with the CCWA. As demonstrated by Table 4, below, in 2009 a total of 11,508 criminal cases were lodged with the CCWA (DoTAG, 2010a). When grouped by Australian Standard Offence Classification (ASOC) category, the most frequently lodged cases involved traffic and vehicle regulatory offences (18.2%), unlawful entry with intent (15.9%), and theft and related offences (15.7%). Offences involving dangerous or negligent driving are scheduled offences in Western Australia which means that cannot be dealt with via referral to a JJT (Loh, Maller et al. March 2007). In combination, this pattern of results would suggest the CCWA is largely dealing with offences of a more serious nature.
although it is noteworthy that offences that may be considered trivial, such as traffic/vehicle
offences, are still processed by the CCWA due to the fact that many of these offences are
classified as scheduled offences which means they cannot be dealt with via diversionary
methods.

Table 4. CCWA cases lodged by offence type, 2005-2009 (taken from the DoTAG, “Report on
Criminal Cases in the Children’s Court of Western Australia, 2005-09” report, p.1)*

<table>
<thead>
<tr>
<th>Offence type (ASOC Division)</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>% change 1 yr</th>
<th>% change 5 yr</th>
</tr>
</thead>
<tbody>
<tr>
<td>01: Homicide and Related Offences</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>6</td>
<td>2</td>
<td>-66.7%</td>
<td>-66.7%</td>
</tr>
<tr>
<td>02: Acts Intended to Cause Injury</td>
<td>914</td>
<td>982</td>
<td>1,001</td>
<td>1,146</td>
<td>1,232</td>
<td>7.5%</td>
<td>34.8%</td>
</tr>
<tr>
<td>03: Sexual Assault and Related Offences</td>
<td>86</td>
<td>118</td>
<td>148</td>
<td>119</td>
<td>135</td>
<td>13.4%</td>
<td>57.0%</td>
</tr>
<tr>
<td>04: Dangerous or Negligent Acts Endangering Persons</td>
<td>454</td>
<td>515</td>
<td>595</td>
<td>646</td>
<td>637</td>
<td>-1.4%</td>
<td>40.3%</td>
</tr>
<tr>
<td>05: Abduction, Harassment and Other Offences Against the Person</td>
<td>88</td>
<td>61</td>
<td>57</td>
<td>56</td>
<td>83</td>
<td>48.2%</td>
<td>-5.7%</td>
</tr>
<tr>
<td>06: Robbery, Extortion and Related Offences</td>
<td>151</td>
<td>229</td>
<td>250</td>
<td>238</td>
<td>304</td>
<td>27.7%</td>
<td>101.3%</td>
</tr>
<tr>
<td>07: Unlawful Entry With Intent/Burglary, Break and Enter</td>
<td>1,538</td>
<td>1,504</td>
<td>1,721</td>
<td>1,826</td>
<td>1,825</td>
<td>-0.1%</td>
<td>18.7%</td>
</tr>
<tr>
<td>08: Theft and Related Offences</td>
<td>1,165</td>
<td>1,226</td>
<td>1,223</td>
<td>1,715</td>
<td>1,802</td>
<td>5.1%</td>
<td>54.7%</td>
</tr>
<tr>
<td>09: Fraud, Deception and Related Offences</td>
<td>29</td>
<td>42</td>
<td>48</td>
<td>48</td>
<td>54</td>
<td>12.5%</td>
<td>86.2%</td>
</tr>
<tr>
<td>10: Illicit Drug Offences</td>
<td>291</td>
<td>256</td>
<td>256</td>
<td>311</td>
<td>417</td>
<td>34.1%</td>
<td>43.3%</td>
</tr>
<tr>
<td>11: Prohibited and Regulated Weapons And Explosives Offences</td>
<td>98</td>
<td>96</td>
<td>110</td>
<td>102</td>
<td>84</td>
<td>-17.6%</td>
<td>-14.3%</td>
</tr>
<tr>
<td>12: Property Damage and Environmental Pollution</td>
<td>433</td>
<td>537</td>
<td>671</td>
<td>808</td>
<td>881</td>
<td>9.0%</td>
<td>103.5%</td>
</tr>
<tr>
<td>13: Public Order Offences</td>
<td>529</td>
<td>563</td>
<td>713</td>
<td>767</td>
<td>918</td>
<td>19.7%</td>
<td>73.5%</td>
</tr>
<tr>
<td>14: Traffic and Vehicle Regulatory Offences</td>
<td>1,284</td>
<td>1,445</td>
<td>2,021</td>
<td>2,236</td>
<td>2,092</td>
<td>-6.4%</td>
<td>62.9%</td>
</tr>
<tr>
<td>15: Offences Against Justice Procedures, Government Security and Government Operations</td>
<td>957</td>
<td>984</td>
<td>842</td>
<td>1,062</td>
<td>1,022</td>
<td>-3.8%</td>
<td>6.8%</td>
</tr>
<tr>
<td>16: Miscellaneous Offences</td>
<td>18</td>
<td>20</td>
<td>13</td>
<td>28</td>
<td>20</td>
<td>-28.6%</td>
<td>11.1%</td>
</tr>
</tbody>
</table>

| Total                                                                 | 8,041| 8,585| 9,677| 11,114| 11,508| 3.5%          | 43.1%         |

* See original report for caveats on counting rules associated with this data.

Figure 2 illustrates the relative proportion of these lodged cases that involved
Indigenous persons in 2009. Overall, lodged cases involving Indigenous persons accounted
for 41.4% of the lodged cases. The offence types which involved the greatest percentages of
Indigenous persons were unlawful entry with intent (63.5%), public order offences (57.2%),
and theft and related offences (47.0%).

The Young Offenders Act 1994, proclaimed in March 1995, is the most significant
piece of legislation guiding the administration of Youth Justice in WA. It is evident, upon
inspection of the *Young Offenders Act 1994*. that many principles of the United Nations Convention on the Rights of the Child (United Nations), such as Participation, Best Interests, Community Safety, Rehabilitation, Not Cruel, Inhuman or Degrading, Proportionality, and Detention as a Last Resort, have been written into the Act.

The *Young Offenders Act 1994* emphasises the use of pre-court diversionary methods in managing the majority of young offenders who had committed less serious non-scheduled offences. Two primary methods for pre-court diversion are utilised in Western Australia. The first of these involving formal and informal police cautioning has been practiced since 1991 and gives police the discretion to issue verbal or written cautions to juveniles committing minor offences. The second form of diversion introduced through the *Young Offenders Act 1994* provides for the formal diversion of young people who have committed minor non-scheduled offences to pre-court bodies referred to as Juvenile Justice Teams (JJT). Both the police and the courts are able to refer young offenders to JJTs. These JJTs are comprised of a juvenile justice officer, a police officer, and/or possibly a member of
the Department of Education or the Aboriginal community. The JJTs engage in pre-court conferencing with the offender and the offender’s family as well as the victim(s) if they are willing and are underpinned by restorative justice principles. A young offender may avoid a conviction if a satisfactory outcome is achieved through the JPT diversionary process (Wells 1997; Wells 1999).

For matters that must be dealt with in court, the Young Offenders Act 1994 mandates that Judges and Magistrates take into consideration the age, maturity, culture, and need for protection of a young offender when imposing a sentence. Table 5 displays the sentencing options available to the Court via the Young Offenders Act 1994.

The Youth Justice system in WA is currently facing a number of challenges that were recently flagged in the 2008 report by the WA Office of the Auditor General (OAG: Auditor General of Western Australia, 2008) and a substantial policy and practice restructure is underway to address these issues. The three major challenges that have been flagged are; (1) a decrease in use of diversions, (2) increasing rates of detention, and (3) over-representation of Aboriginal children. With respect to diversions, the OAG report indicated that police cautions and referrals to juvenile justice teams had declined by 13% over the 5-year study period; from 64 per cent in 2002/2003 to 51 per cent in 2006/2007, which equates to 1,937 fewer instances of young people being diverted.

With respect to the increasing use of detention, the primary problem is that increasing numbers of young people are being detained on remand in Western Australia largely as a result of changes in police practice and enforcement of bail conditions as well as repeat breaches of bail conditions. Over and above the difficulties noted with diversions and use of detention, a key issue that was emphasised in the 2008 OAG report is Indigenous over-representation as young Aboriginal people are over-represented at all levels of the criminal justice system and this over-representation is amplified at each progressive level of involvement with the criminal justice system.

In response to the concerns raised regarding the operation of Youth Justice in Western Australia, the Department of Corrective Services commissioned a review of the Youth Justice Division by the Price Consulting Group. The Price Report 2009 made a number of key recommendations and the Department of Corrective Services has agreed to implement the recommendations outlined in this report. The key recommendation of the Price Report 2009 was the re-structure of the Youth Justice Division to provide separate systems of delivery for juvenile offenders on community or detention orders and adult offenders on community orders. In addition to this separation, the Price Report 2009 recommended a restructure of the Youth Justice Division itself to adopt what was termed a “Youth Justice Hub Model”. The proposed model will represent a more co-ordinated and seamless model for young offenders.
Table 5. Sentencing options available to the Children’s Court of Western Australia through the Young Offenders Act 1994

<table>
<thead>
<tr>
<th>Sentencing option</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>No punishment and no conditions</td>
<td></td>
</tr>
<tr>
<td>No formal punishment with conditions</td>
<td>Informal punishment and undertakings</td>
</tr>
<tr>
<td>No punishment but security or recognisance to keep the peace and be of good behaviour for a period of up to 12 months</td>
<td></td>
</tr>
<tr>
<td>A fine</td>
<td>May include course attendance and unpaid community work (minimum 10 hours and maximum of 100 hours) as well as supervision within the limits specified by the regulations on supervision orders. Children under 12 years cannot be ordered to do community work.</td>
</tr>
<tr>
<td>A youth community based order</td>
<td></td>
</tr>
<tr>
<td>An intensive youth supervision order</td>
<td>Exempt from the limits specified in the regulations on supervision orders. The same conditions for Youth Community Orders can be imposed.</td>
</tr>
<tr>
<td>A conditional release order</td>
<td>If an intensive youth supervision order is made in conjunction with a custodial sentence, the order is referred to as a conditional release order and the offender is only liable for the specified period of detention, or a portion of it, if the conditional release order is cancelled.</td>
</tr>
<tr>
<td>A custodial sentence</td>
<td>Subject to the Sentencing Act 1995, a custodial sentence may be imposed as a last resort for offences punishable by imprisonment and the Court must record in writing the reasons why it considers that there is no other appropriate way for it to dispose of the matter. A custodial sentence would typically be served in a detention centre although a young person aged between 16 and 18 years of age may be ordered to serve the custodial sentence in a prison in accordance with the Prisons Act 1981);</td>
</tr>
<tr>
<td>A special order</td>
<td>A Special Order is the imposition of 18 months detention with a minimum of 12 months to serve added to any sentence of detention imposed. A Special Order may be made only by a Judge and in conjunction with a custodial sentence to deal with a young offender who has repeatedly committed serious offences and has a high probability of re-offending and, hence, the protection of the community is paramount.</td>
</tr>
</tbody>
</table>

The focus of these reviews of the justice system have largely been on pre-court diversionary methods based on the premise that pre-court diversions are more effective in preventing further offending than latter forms of diversion. As a result of this, there has been very little research or focus on the actual practices and decisions made by the CCWA.

As demonstrated in Table 6, almost one-quarter (23.9%) of the sentences imposed by the CCWA in 2009 were fines, with the next most frequent outcomes being youth community based orders (21.5%) and no punishment (20.0%). In 2009 detention/
imprisonment was the sentencing outcome for 5.2% of the cases, with the five-year trends up to 2009 indicating detention had increased in absolute numbers by 39.5%. During the four year period to 2005, however, the number of sentences administered by the CCWA increased by 42.3%, so this increase in frequency for detention as a sentencing outcome is not disproportionate relative to the increase in absolute number of cases.

Table 6. Sentences imposed by the CCWA, 2005-09 (taken from the DoTAG, “Report on Criminal Cases in the Children’s Court of Western Australia, 2005-09” report, p.6)*

<table>
<thead>
<tr>
<th>Sentence</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>% change 1 yr</th>
<th>% change 5 yr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imprisonment</td>
<td>38</td>
<td>46</td>
<td>59</td>
<td>60</td>
<td>35</td>
<td>-41.7%</td>
<td>-7.9%</td>
</tr>
<tr>
<td>Detention</td>
<td>276</td>
<td>316</td>
<td>371</td>
<td>421</td>
<td>385</td>
<td>-8.6%</td>
<td>39.5%</td>
</tr>
<tr>
<td>Suspended imprisonment order s76</td>
<td>18</td>
<td>14</td>
<td>9</td>
<td>5</td>
<td>12</td>
<td>140.0%</td>
<td>-33.3%</td>
</tr>
<tr>
<td>Default imprisonment of compensation payment</td>
<td>2</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>50.0%</td>
<td>39.5%</td>
</tr>
<tr>
<td>Conditional suspended imprisonment order</td>
<td>6</td>
<td>16</td>
<td>23</td>
<td>26</td>
<td></td>
<td>13.0%</td>
<td>-50.0%</td>
</tr>
<tr>
<td>Conditional release order</td>
<td>425</td>
<td>535</td>
<td>515</td>
<td>539</td>
<td>469</td>
<td>-13.0%</td>
<td>10.4%</td>
</tr>
<tr>
<td>Intensive supervision order s69 Sent Act</td>
<td>49</td>
<td>43</td>
<td>33</td>
<td>55</td>
<td>51</td>
<td>-7.3%</td>
<td>4.1%</td>
</tr>
<tr>
<td>Intensive youth supervision order</td>
<td>502</td>
<td>500</td>
<td>525</td>
<td>589</td>
<td>630</td>
<td>7.0%</td>
<td>25.5%</td>
</tr>
<tr>
<td>Community based order under s62 Sent Act</td>
<td>138</td>
<td>126</td>
<td>124</td>
<td>144</td>
<td>143</td>
<td>-0.7%</td>
<td>3.6%</td>
</tr>
<tr>
<td>Youth community based order</td>
<td>1,350</td>
<td>1,387</td>
<td>1,300</td>
<td>1,415</td>
<td>1,729</td>
<td>22.2%</td>
<td>28.1%</td>
</tr>
<tr>
<td>Work and development order</td>
<td>8</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>-80.0%</td>
<td>-87.5%</td>
</tr>
<tr>
<td>Community work in Lieu of unpaid fine s65B YOA</td>
<td>5</td>
<td>4</td>
<td>2</td>
<td>8</td>
<td></td>
<td>-100.0%</td>
<td></td>
</tr>
<tr>
<td>Fine</td>
<td>1,411</td>
<td>1,494</td>
<td>1,927</td>
<td>2,245</td>
<td>1,916</td>
<td>-14.7%</td>
<td>35.8%</td>
</tr>
<tr>
<td>Conditional release/Good behaviour bond</td>
<td>549</td>
<td>659</td>
<td>700</td>
<td>785</td>
<td>1,023</td>
<td>30.3%</td>
<td>86.3%</td>
</tr>
<tr>
<td>No punishment</td>
<td>870</td>
<td>961</td>
<td>1,142</td>
<td>1,556</td>
<td>1,604</td>
<td>3.1%</td>
<td>84.4%</td>
</tr>
<tr>
<td>Total</td>
<td>5,641</td>
<td>6,099</td>
<td>6,724</td>
<td>7,850</td>
<td>8,025</td>
<td>2.2%</td>
<td>42.3%</td>
</tr>
</tbody>
</table>

* See original report for caveats on counting rules associated with this data.

An area of great concern that was highlighted by the 2008 OAG report is the over-representation of Indigenous young people at levels of the criminal justice system. This problem of over-representation is particularly evident upon inspecting the figures pertaining to Indigenous status of persons sentenced by the CCWA in 2009 (DoTAG, 2010a; 2010b; Loh, Maller et al. March 2007). As illustrated in Figure 3, in 2009 Indigenous persons received 56.1% of the detention sentences administered by the CCWA, 58.3% of the suspended imprisonment orders, 60.1% of the conditional release orders, and 60.2% of the intensive youth supervision orders. In contrast, Indigenous persons only received 25.0% of
the fines, 37.0% of the conditional release/Good behaviour bonds, and 40.9% of the no punishment outcomes.

![Sentences imposed by indigenous status of persons dealt with by CCWA, 2009.](image)

**Figure 3. Sentences imposed by indigenous status of persons dealt with by CCWA, 2009.**

Notes: * Figure adapted from DoTAG, “Report on Criminal Cases in the Children’s Court of Western Australia, 2005-09” report, p.6 and DoTAG, “Report on Indigenous Defendants in the Children’s Court of Western Australia, 2005-09” report, p.6.

It is important to note that without knowing the circumstances of each case, it is not possible to establish the basis for these different patterns in court outcomes. It is not clear to what extent these discrepancies in severity of penalty reflect difference in the severity of the offence or the offence history of the offender concerned. Whatever the reason, however, the issue of Indigenous over-representation is of particular concern and will be a pertinent area of investigation as part of the assessment of the CCWA.

3.3.2 Child Protection

Arguably the most significant development for Child Protection in Western Australia in recent times was the *Children and Community Services Act 2004* which came into effect in March 2006. Under Part 2, Division 2, the Act emphasises the following key principles:

- The best interests of the child are paramount;
- The preferred way of safeguarding the child’s wellbeing is to support the child’s family and community to care for the child;
- Every child should have safe, secure and stable care arrangements;
Western Australian Children’s Court

• Where a child is removed from their family, they should be supported to maintain contact with their family provided this does not conflict with the best interests of the child; and

• The child should be supported to actively participate in the decision-making process.

In addition, the Act outlines three principles of specific relevance to Aboriginal and Torres Strait Islander children under Part 2, Division 3; the Aboriginal and Torres Strait Islander Child Placement Principle; the principle of self-determination, and the principle of community participation.

When it is established that a child cannot be made safe in their family, the Children and Community Services Act 2004 enables the DCP to provide immediate safety by taking the child into provisional protection and care, with or without a warrant. If the child is assessed to be in need of protection, DCP makes an application to the CC for a Protection Order. The Protection and Care (P&C) jurisdiction of the CC is a civil jurisdiction and, as such, the initiating process in this jurisdiction is called an application and not a charge or complaint as in the criminal jurisdiction (DotAG, 2009). When the court determines an application for a particular type of Protection Order it may make one of four Protection Orders as outlined in Table 7, below no matter what kind of Protection Order has been sought.

Table 7. Protection Orders available to the Children’s Courts as outlined in the Children and Community Services Act 2004.

<table>
<thead>
<tr>
<th>Order</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision</td>
<td>The child may remain with the family under supervision of the CEO of the DCP.</td>
</tr>
<tr>
<td>Time-limited</td>
<td>The child is removed and placed under the care of the CEO of the DCP for up to 2 years.</td>
</tr>
<tr>
<td>Until 18</td>
<td>The child is removed and placed under care of the CEO of the DCP until they reach age 18 years.</td>
</tr>
<tr>
<td>Special Guardianship</td>
<td>The child is removed and one individual or two individuals jointly, other than a parent of the child or the CEO of DCP, are given exclusive parental responsibility for the child until they reach 18 years.</td>
</tr>
</tbody>
</table>

The DCP Annual Report 2007-08 (Department for Child Protection 2010) outlines the number and type of P&C applications processed by the CCWA for the 2007-08 financial year. As demonstrated in Table 8 (p.14), 774 new applications were lodged with the CCWA during 2007-08 and approximately 41% of these were granted. Almost 75% of new applications granted resulted in a Time Limited (2 years) order being made.

Despite a five per cent decrease in the number of applications made to the courts in 2007-08 compared with 2006-07, the annual statistics presented in Table 9, below, indicate that the number of orders granted by the CCWA has steadily increased in recent years.
Table 8. Protection applications lodged in the CCWA in 2007-08 (Department for Child Protection 2010).

<table>
<thead>
<tr>
<th>Application type &amp; status</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>New</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Until 18</td>
<td>51</td>
<td>3.8%</td>
</tr>
<tr>
<td>Time Limited (2 years)</td>
<td>234</td>
<td>17.5%</td>
</tr>
<tr>
<td>Supervision</td>
<td>28</td>
<td>2.1%</td>
</tr>
<tr>
<td>Enduring parental responsibility</td>
<td>3</td>
<td>0.2%</td>
</tr>
<tr>
<td>In Process</td>
<td>417</td>
<td>31.3%</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>38</td>
<td>2.8%</td>
</tr>
<tr>
<td>Dismissed</td>
<td>3</td>
<td>0.2%</td>
</tr>
<tr>
<td>Sub-total (New)</td>
<td>774</td>
<td>58.0%</td>
</tr>
<tr>
<td>Extension</td>
<td>253</td>
<td>19.0%</td>
</tr>
<tr>
<td>Replacement &amp; revocation</td>
<td>307</td>
<td>23.0%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>1,334</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 9. New protection applications lodged in the CCWA and new orders granted between 2005-06 to 2007-08 (Department for Child Protection 2010).

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications</th>
<th>Orders Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>774</td>
<td>717</td>
</tr>
<tr>
<td>2006-07</td>
<td>814</td>
<td>577</td>
</tr>
<tr>
<td>2005-06</td>
<td>464</td>
<td>348</td>
</tr>
</tbody>
</table>

The P&C system in Western Australia is currently facing three major challenges. The first challenge relates to the increasing numbers of children placed under the care of the CEO. In Western Australia, as at 30 June 2009 there were 3,195 children in the CEO’s care, which represents an increase of 6% since 30 June 2008 and a 20% increase since 30 June 2007. The second major challenge is the over-representation of Aboriginal children in the numbers of children being placed under the care of the CEO. As at 30 June 2009, 1,393 or just under half of the 3,195 children in the CEO’s care were of Aboriginal or Torres Strait Islander descent (Department for Child Protection 2010). These two major challenges were

2 Reliable data for 30 June 2010 was not available in the 2009-10 annual report due to roll-over to a new client management system that was undergoing further developments at the time of this report (Department for Child Protection, 2010)
highlighted in a recent and influential review of the former Department for Community Development referred to as the Ford Report (Ford January 2007) as demonstrated in Table 10, below. The third major challenge is that the proportion of Aboriginal children in care is increasing. The Department for Child Protection’s Annual Report 2009/10 indicates (p.12) that the numbers of Aboriginal and Torres Strait Islander children in care have grown from 851 in June 2006 to 1,393 in 2009. However, the percentage of Aboriginal and Torres Strait Islander children who are under the care of friends or family other than their parents is higher than the percentage for non-Indigenous children (53% compared with 30% respectively).

Table 10. Number of Children in Care in Western Australia, by Aboriginal Status, for the period of 1999 to 2006 (numbers taken as at June of each year).

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal</td>
<td>396</td>
<td>454</td>
<td>512</td>
<td>588</td>
<td>625</td>
<td>650</td>
<td>745</td>
<td>851</td>
</tr>
<tr>
<td>Non-Aboriginal</td>
<td>919</td>
<td>1,018</td>
<td>1,121</td>
<td>1,157</td>
<td>1,222</td>
<td>1,249</td>
<td>1,301</td>
<td>1,369</td>
</tr>
<tr>
<td>Total</td>
<td>1,315</td>
<td>1,472</td>
<td>1,633</td>
<td>1,745</td>
<td>1,847</td>
<td>1,899</td>
<td>2,046</td>
<td>2,220</td>
</tr>
</tbody>
</table>

Source: Department for Community Development, Business Services Directorate
Note: *Table 2.6 taken from p.32 of the Ford Report (Department for Child Protection 2010).

The Ford Report made 70 recommendations about ways in which the Government’s and the community’s child protection capacity could be refocused and strengthened: of particular significance was the decision to separate the child protection responsibilities from the broader policies and services for families and communities – now the Department of Communities. The Government subsequently endorsed the recommendations of the Ford Report and the formation of DCP with its stronger focus on P&C matters has been associated with an increase in P&C applications heard in, and orders granted by, the CCWA (Department for Child Protection 2010).

3.3.3 Summary of Current Status

It appears that the biggest single issue currently facing the CCWA is that of Aboriginal over-representation, in both the P&C and justice side of the Court functioning. It is crucial that this investigation in Western Australia explores ways that the current system can be re-thought and re-worked to better accommodate the needs of Aboriginal people. A second key issue is the apparent loss of the Youth Justice philosophy as outlined in the Young Offenders Act 1994 and the associated decrease in police diversions and increasing rates of detention in Western Australia. A third key issue that needs to be considered is the geography and size of Western Australia which has significant implications for the availability of infrastructure, service provision, client management, and the scope to provide appropriate, timely assistance to clients’ families in rural and remote regions, as well as sufficient and timely
court services as illustrated in Figure 1, previously. This issue of a resource divide in metropolitan and rural/remote regions in Western Australia is critically related to the issues concerning Aboriginal over-representation given that the populations in rural and remote regions are predominantly comprised of Aboriginal people. A summary of relevant evidence of the extent and implications of over-representation of Aboriginal young people in the Children’s Court of Western Australia, reviewed and presented in publications and presentations by key professionals working in the State is presented in the following section of the report.

3.4 Overview of the Reasons Why Aboriginal Young People in Western Australia are Overrepresented in the CCWA

The challenges to Aboriginal children, their families and communities, the CCWA and the Western Australian community are summarised in the following quote from Magistrate Potter:

*Indigenous youth in Western Australia are more likely to come into contact with police, they are more likely to be subject to care and protection proceedings, they are more likely to be remanded in custody, they are more likely to become enmeshed in formal court proceedings and outcomes and at an earlier age, they are over-represented in the juvenile justice system by ten times and the numbers remain static and have done so for the past twenty years at approximately 70% of all juveniles in detention/remand (Potter, 2010, p 7)*

Before discussing the evidence provided by major CCWA stakeholders (detailed, below), it is important to emphasise that any effective set of intervention policies must be strategically multi-level, multi-method and integrated (Sanderson, 2008: Commissioner for Children Western Australia, 2010) and as such are going to require a significant paradigm shift from past and current practices, particularly the need to involve Aboriginal people in the planning and delivery of culturally-appropriate services in both child protection and youth justice jurisdictions. Active and visible Aboriginal participation in the development and implementation of programmes, the staffing of community-based services and the provision of emergency responses including recruitment and training for Responsible Adult duties would be important developments. This section provides a brief overview of the reasons why Aboriginal young people in Western Australia are experiencing this reality. These issues are expanded in more detail in Appendix C of this report.

3.4.1 Historical Context

The impact of colonialisation and the policies of forcibly removing Aboriginal children from their families between 1910 and 1970 has profoundly impacted on most, if not all, Aboriginal families. There has been growing recognition of the impact of the profound multi-
generational trauma experienced by many Aboriginal families and communities since the European ‘invasion’ over two hundred years ago (Sedoti 2009; Swain 2001; 2002).

3.4.2 Trans-Generational Traumatic Stress Disorder and Justice

Exacerbating the challenges to diversion programmes, to Restorative Justice models and to the sense of judicial fairness is the knowledge about multi-generational trauma in Aboriginal communities “It is arguable that Aboriginal women and children are the most repeatedly and multiply victimised section of the Australian community” (Potter 2009. p 13) – with higher rates of exposure to deaths and serious illness in the family, to experience and observation of violence and assault, parental drug and alcohol use, admission to Care and institutionalised abuse through multiple placements while in Care. Responding to sexualised / sexual offending behaviours presents a significant challenge to Child Protection, Education, Health and Juvenile Justice agencies and practitioners; there is a likely context of confusion, denial and non-disclosure of such behaviours with a hidden population of victims and victim/offenders (O’Brien 2008; 2010). There are inevitable ‘ripple effects’ of sexual assault on the victim, their families and communities – and on the practitioners who work with them; analysis of needs and service responses highlights the relevance of concepts such as trauma, post-traumatic stress disorder and secondary trauma (Department of Families (Ipswich and Logan), Queensland, 2003; Morrison et al 2007).

3.4.3 Budgeting and Expenditure

Table 11. Public order and public safety expenditure in Western Australia, 2008/09, for Indigenous people as a percentage of total expenditure, dollars per head, and as a ratio for dollars per head to non-Indigenous people

<table>
<thead>
<tr>
<th>Public order and public safety expenditure category</th>
<th>Total expenditure ($’000)</th>
<th>Indigenous share</th>
<th>Indigenous expenditure per head of population</th>
<th>Ratio to non-Indigenous expenditure per head</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Services</td>
<td>$744,951</td>
<td>20.5%</td>
<td>$2,059</td>
<td>7.43</td>
</tr>
<tr>
<td>Justice Services</td>
<td>$622,216</td>
<td>18.0%</td>
<td>$1,506</td>
<td>6.31</td>
</tr>
<tr>
<td>Juvenile Corrective Services</td>
<td>$75,921</td>
<td>72.2%</td>
<td>$739</td>
<td>74.78</td>
</tr>
<tr>
<td>Fire protection</td>
<td>$241,937</td>
<td>3.5%</td>
<td>$115</td>
<td>1.05</td>
</tr>
<tr>
<td>Total</td>
<td>$2,186,675</td>
<td>24.9%</td>
<td>$7,346</td>
<td>9.56</td>
</tr>
</tbody>
</table>

The Western Australian government spends $1.7 billion annually on Aboriginal Affairs – with 50% going to the Justice and Corrective Services system (Murray 2010; Sanderson 2008). Relative to other areas discussed in Appendix C, there appears to be a disproportionately large emphasis on expenditure on Corrective Services relative to other types of community programs. This is clearly highlighted by Table 11, which displays that,
overall, expenditure on Indigenous people accounted for 24.9% of expenditure on public order and public safety in Western Australia in 2008/09 (Indigenous Expenditure Report Steering Committee, 2010). This percentage was dramatically increased for juvenile corrective services (72.9% of total expenditure was for indigenous young people), which was at a rate almost 75 times greater than for non-Indigenous people. Fire protection expenditure has been included in this table to demonstrate that the dramatically increased rate of spending on Aboriginal people does not extend to all levels of public order and public safety categories.

3.4.4 Incarceration of Aboriginal People

As Snowball (2008) discusses, this overrepresentation of Aboriginal people within the prison system was a factor identified by the Royal Commission into Aboriginal Deaths in Custody as contributing to the rate of Aboriginal deaths while incarcerated. Despite this inquiry's findings, however, which were released in 1991, the problem has not improved. A quote from the Australian Institute of Criminology (2009) explains the extent of this situation succinctly:

Between 2000 and 2008, the imprisonment rate for Indigenous Australians increased by 34.5 percent (Australian Bureau of Statistics 2008). In 2000, the imprisonment rate was 1,653 prisoners per 100,000 Indigenous adult population, which increased to 2,223 prisoners per 100,000 Indigenous adult population in 2008. The increase in imprisonment rates for Indigenous people was almost seven times that of non-Indigenous people in the same period. This represents a five percent rise in incarceration rates for non-Indigenous people when comparing the two groups and an increase from 123 per 100,000 adult population in 2000 to 129 per 100,000 adult population in 2008. In 2000, Indigenous people were 13.5 times more likely to be incarcerated than non-Indigenous people and this rose to 17.2 times more likely in 2008.

In 2007-08, Aboriginal males and females accounted for 40.4 percent and 51.5 percent, respectively, of the prison population in Western Australia (Bartels 2010). As indicated previously in this report, the problem is even larger when focused on juveniles in detention in 2011, where January figures from the Western Australian Department of Corrective Services indicate the population is 69.5 percent Aboriginal.

3.4.5 Risks to Aboriginal Children, Child Protection, and Out-of-Home Care

The decision by the Howard Government in 2007 to intervene in Aboriginal communities in the Northern Territory was confirmation that Aboriginal children and young people were at risk from extreme poverty, exposure to family and domestic violence, access to pornography and to sexual assault. The latest Australian Institute for Health and Welfare Report (2009) asserts that the rate of Aboriginal and Torres Strait Islander children in out-of-home care across Australia at 30 June, 2008 was 41.3 per 1,000 Indigenous children aged 0-17 years – compared with Bath’s (1997) findings of 20.0 per 1,000 Indigenous children aged 0-17 years.
3.4.6 Absence of Effective Case Management Frameworks

According to the West Australian newspaper of 30 October, 2010, (Murray 2010), the Aboriginal community of Balgo is the location for 36 federal, State and non-government agencies’ services – without an integrated Case Management decision-making and practice framework (Clare 1996; Moxley 1989: Cambridge 1992).

3.4.7 Inadequate Access to Education and Health Services

Previous research undertaken by M.Clare (e.g., Budgell, Clare, Noonan and Robertson, 2005; Clare and Noonan 2002) provides a summary of evidence of the low level of health and well-being of Indigenous children in Australian States and Territories. Access to education by Aboriginal children, and the quality of the educational outcomes, is also influenced by factors including community infrastructure, poverty, housing and health. A failure to develop cross-governmental strategies for intervention has magnified negative, long-term consequences. Collective analysis of the current situation facing Aboriginal children, their parents and communities, and the Western Australian political, judicial and welfare systems (e.g., Sanderson, 2008, the Auditor General, 2008, Blagg, 2009, the Commissioner for Children and Young People, 2010, Magistrate Potter, 2010, and Judge Reynolds, the President of the CCWA, 2010) suggests that a significant coordinated and multi-systemic political, financial, legislative and professional service-delivery approach is required. Three levels of such a multi-systemic response are: (a) At the level of universal access by Aboriginal people to citizenship rights and responsibilities with access to such opportunities as employment, education, health and housing; (b) At the level of programmes and services, an integrated policy development and budgeting macro-level paradigm change; and (c) At the level of authentic participation by Aboriginal people in the design and delivery of services aimed to promote transformative change and to ameliorate the impact of post-traumatic stress disorder and secondary trauma; this will require the education of all citizens and professionals working with Indigenous children, families and communities to develop a multi-level systematic approach leading to self-determination and self-management by Indigenous families and communities. Overall, there is a huge challenge to all levels of government services to work systemically and a case study about Youth Justice Teams from the London Borough of Slough, England, which may provide a suitable model upon which local initiatives could be shaped is included in Appendix D.
4 METHODOLOGY

4.1 Participants

There were a total of 74 participants in the formal phase of the project; 12 Judicial Officers and 62 key stakeholders. With regards to the 12 Judicial Officers; all six of the Judicial Officers from the Perth Children’s Court took part and six country magistrates of Western Australia participated.

With regards to key stakeholders, the following agencies were represented by a total of 62 individuals; Legal Aid (15 participants), Western Australia Police (3 participants), Family Inclusion Network of Western Australia (2 participants), Youth Justice, Department of Corrective Services (11 participants), Aboriginal Legal Service (18 participants), Department for Child Protection (10 participants), and Cross Roads West Transitional Support Services, Salvation Army (1 participant). In addition, two academic with expertise in Indigenous issues and care and protection matters took part. Of these 62 individuals, 53 resided in the Perth metropolitan area, eight resided in regional/country areas of Western Australia and one resided in Melbourne, Victoria but had previously resided in the Perth metropolitan region.

4.2 Data Collection and Analysis Procedure

In preparation for the Western Australian assessment of the Children’s Courts, twelve unstructured interviews were conducted with key professionals working within the sector (DotAG, Department of Corrective Services, Department of Child Protection, Office of the Inspectorate of Custodial Services, and locally-based academic practitioners and researchers) to pinpoint the main issues of relevance to the CCWA and to identify key agencies and individuals to approach in the formal phase. Ethical approval for the project was obtained from the University of Western Australia’s Human Research Ethics Committee. In addition, formal institutional approval via an application process was obtained from the Department of the Attorney General, the Department of Corrective Services, the Department for Child Protection and the Western Australian Police. Approvals were also obtained from the organisational heads of other stakeholder agencies before approaching individual staff members.

In the formal phase of the project, all individual participants were provided with a study information sheet and were required to sign a consent form prior to participating. The interviews and focus groups utilised the same interview questions and focus group questions as per the national methodology with the addition of some State-specific questions in the interviews; see Appendix A and B respectively. Digital audio recordings were taken of all interviews and focus group sessions and the researchers took additional hand-written notes during these sessions.
Interviews with the Judicial Officers of the Perth Children’s Court were conducted face-to-face whereas interviews with the country magistrates were conducted via the video link facilities for the Children’s Court of Western Australia. Focus groups with participants from the Perth metropolitan region were conducted face-to-face whereas focus groups involving participants from country/regional areas were conducted using either video link where available or teleconference.

Digital audio files from interviews and focus groups were transcribed by paid professionals. Two members of the research team independently reviewed and analysed these transcribes to derive key themes. Where there was disagreement in derivation of key themes between these two researchers, additional members of the research team were called upon to finalise the matter.

5 Key Findings

This section provides an overview of the key findings from this process. As per the decision from the national project directors, the analysis is structured to discuss: (a) the purpose of the Children’s Court, (b) the Children’s Court today, (c) resource/input issues, focused on personnel, structure, and clients/cases, (d) process/throughput issues, with a specific focus on case processing, and (e) directions for reform, with an emphasis on legislation, other reforms, and directions for the future.

5.1 Purpose of the Children’s Court

The Judicial Officers who participated in this project were clear that the formal role of the court is that of impartial decision-maker, charged with the responsibility of administering the law and upholding the guiding principles outlined in the relevant legislation: the Young Offenders’ Act 1994. Speaking of the Young Offenders’ Act, one Judicial Officer noted:

*The Act sets out the objectives and policies, philosophies and principles that need to be applied ... It can’t ever be my personal philosophy or anyone’s philosophy that occupies the position.*

Most participating Judicial Officers were more experienced in the Youth Justice system, and commented much more fully on the criminal than the protective process. All were aware of the importance of treating young offenders as children, many of whom are in need of protective intervention; some noted the tensions associated with applying principles also applied to working with adult offenders: rehabilitation, deterrence and community rehabilitation, to this population, many of whom, as noted below come from highly impoverished and stigmatized communities, into which notions of rehabilitation could be viewed as a misnomer.
In relation to the *Children and Community Services Act* (2004), the foundational principle of ‘Best Interest of the Child’ was frequently noted, with universal concern that this principle could not be properly upheld in the absence of an adequately resourced service system. Some Judicial Officers also noted the need for support to families in line with the principles of the Act that families should be assisted to meet their children’s needs, commenting similarly on the absence of services for families to meet this end.

As noted above, Judicial Officers were clear that the mandate of the Court is that of independent decision-maker rather than service delivery, a view clearly expressed by one Magistrate thus:

> The court does not provide a service. That’s a misnomer. At the end of the day, unlike some jurisdictions, it’s still an adversarial system so the Children’s Court basically decides whether the ball has gone between the posts or not and doesn’t decide where the posts are.

Within the constraints of the legislation, however, some Judicial Officers noted the scope for creative interpretation of the law, both pre- and post-sentencing. Recognising the inevitably adversarial nature of the court process, they welcomed more inquisitorial pre-sentencing interventions embedded within the principle of therapeutic jurisprudence, such as the Drug Court (discussed in greater detail below). There was a broad recognition that Judicial Officers have less capacity to play an active role in the protection and care jurisdiction; however, some Judicial Officers noted the capacity to strategically delay decisions and to ‘establish intervention goals’ for services, a case management strategy noted by some Officers as overstepping the mandate of their role, and by others as a requirement given the lack of experience and direction amongst professionals charged with working with children and families subject to statutory interventions.

### 5.2 Children’s Court Today

There was a generalized concern that the absence of appropriate services for children and families across both criminal and protective jurisdictions has serious implications for the operation and status of the Children’s Court in Western Australia. Some participants argued that the resource impoverishment and absence of service options compromises the intent of the legislation. As one Judicial Officer notes:

> I am really against having powers where you end up with the appearance of things happening but the real work on the ground is not capable of being done … The real issue is about resources and facilities not being available.

The absence of service options is particularly marked in rural Western Australia, impacting most severely on Aboriginal children, who constitute the vast majority of clients. Across both protective and criminal jurisdictions children are denied access to experienced, professionally qualified staff and crucial facilities such as bail hostels, mental health,
specialised therapeutic, health and educational facilities, and places of safety when remaining at home is unacceptable.

In addition to these challenges, Country Magistrates reported the particular difficulties associated with the generic responsibilities of their role, covering both adult and child matters, and the enormous geographical areas they are required to service. Once again, Aboriginal communities are predominantly affected by the limitations of time, Court facilities and legal representation, pre- or post- Court services and, in many cases, the communication difficulties associated with the absence of suitably qualified professional interpreters. Given the severity of problems of which juvenile offending and child protection concerns are symptomatic in rural and remote Aboriginal communities in Western Australia, the pressures placed on Country Magistrates to intervene effectively in the interests of children and/or the community are immense. One Magistrate notes:

*I find the orders a little frustrating and useless to be honest, especially up here... there is no community work service available; no counselling available; no violence or substance abuse programs. All you are left with in youth community-based order is reporting and reporting is perhaps once every two months by telephone. That is the extent of the order – it is just absolutely useless...*

Another reports:

*These kids have significant problems. I have talked to you about the poverty and the dysfunction in the family. A lot of these kids have suffered significant trauma in their young lives ... many of them don’t have a parent or caregiver who is still around – there may be a parent in jail. All of these life circumstances that are deeply traumatic, including almost to a person they’ve witnessed domestic violence of a serious kind. There is nothing here, and there is so much trauma in this community.*

Reflecting on the thresholds for protective intervention in rural and remote regions, some concern was expressed by Judicial Officers that much lower standards were deemed acceptable particularly for Aboriginal children in remote communities. Three key reasons were cited for this acceptance: (a) the ‘tyranny of distance’, and relative invisibility of Aboriginal children, an invisibility compounded by the general impoverishment that made it hard to distinguish between circumstantial outcomes and deliberate abuse or neglect; (b) the transience and inexperience of child protection workers, ill-equipped to assess children’s circumstances or intervene effectively; and (c) the over-rigid interpretation of Aboriginal Child Placement Principles in the face of long-standing political imperatives in Western Australia to avoid repeating the mistakes associated with the ‘stolen generations’ of Aboriginal children removed inappropriately from family and community. Noting the complexity and fraughtness of decision-making ‘in the child’s best interest’ under such circumstances, a Judicial Officer reflects:

*If you go to some communities and observe the conditions that young children are in, both the physical conditions and the emotional conditions, there is good argument that there actually should be more young children in care. There is good argument that the bar is really too low. Whether the child is an Aboriginal child or a non-Aboriginal child – if that child is in a situation where his or her well-being is at risk, then they should receive care.*
Two recent innovations in the service system were welcomed by Judicial Officers. The first of these, the Perth Drug Court, is informed by a philosophy of therapeutic jurisprudence, which enables eligible young people to avoid detention and rebuild their lives. However, the scope of this programme is strictly limited, and available only to young people in Metropolitan Perth. The second innovation is the Signs of Safety practice framework introduced in 2008 on a pilot basis by the Department for Child Protection as an interdisciplinary and inter-agency Court diversionary strategy. The principles underpinning the Signs of Safety project were universally welcomed, and some participants noted very good outcomes for children and their families. However, some concerns were expressed at the variable quality of Signs of Safety Meetings, which rely significantly on the skill level of facilitators, to engage parents and to manage complex negotiations in emotionally-heated environments. A particular concern was expressed about the potential barriers to participation for Aboriginal parents, especially those outside of Perth, for whom distance and associated barriers to timely access to information might impede equitable participation. Commenting on the high proportion of Protective Orders by consent outside of Perth, one Magistrate noted his concern that parents’ rights to a Court hearing might be denied by token participation in such a process.

5.3 Resources (Inputs)

5.3.1 Personnel

The Judicial Officers who participated in the study were highly experienced, and many expressed the view that their role had changed little over time, although the complexity of issues to be addressed had increased significantly without an associated increase in resources; as a consequence, the challenges associated with properly fulfilling their mandate had increased. Some Judicial Officers noted that these challenges included the recent expansion in their jurisdiction of magistrates to deal with cases likely to involve up to 12 months detention, whereas previously this was 6 months, which meant that they were now dealing with more serious cases. A small number reported that the concept of therapeutic jurisprudence and problem-solving courts had had a major impact on their interpretation of their role.

Asked to reflect on the selection of Magistrates, most argued that the process is transparent and fair. Magistrates are required to apply for an advertised position and go through a selection process with an interview panel. However, a concern expressed by Country Magistrates was the lack of sufficient emphasis in their selection process on the need for a good understanding of Children’s Court matters, as reflected in the following quote:
I don’t think that much or any consideration is given in the selection process of a general magistrate to whether they are suited to dealing with juveniles … I don’t think there is any particular consideration for attitude, skill or capacity vis-à-vis the Children’s Court work. As general magistrates we are appointed on the basis that we could be sent to the country at any point and the decision about that is made by the Chief Magistrate who doesn’t have responsibility for the Children’s Court … To my knowledge it is not an issue that is considered as to how suitable is X for Children’s Court work or what kind of skill does it require.

5.3.1.1 Training Needs of Judicial Officers and other Court Personnel

The majority of Judicial Officers and other stakeholders* were of the view that all court personnel could benefit from additional training, with an emphasis on the specialist knowledge required to understand the particular needs of children and communicate effectively with them, thus avoiding the imposition of adult-centric perceptions and interventions. As one Judicial Officer noted:

Everyone is an expert in kids you see. We are revolved around adult punishment and adult needs, because we are all adults and adults get to make the rules. I am not suggesting that we give free rein to kids … I just think people come to work with their adult minds.

Focusing specifically on the training needs of Judicial Officers, there was a broad acknowledgement of the need for collective learning amongst this profession. One Judicial Officer expressed a commonly held view:

On-going or continuing education is always important. We don’t get a lot of that to be quite honest, particularly out here in the regions. We get together about once a year but that is more about magistrates’ conditions and more of a chance to de-brief rather than development of the law. I think that continuing education in terms of discussion with the legal principal is really important and I would like to see more opportunity for that.

Speaking metaphorically, another commented:

I wouldn’t like to think that a brain surgeon is going to operate on your brain and has been in practice for, say, 20-odd years and hasn’t been kept up-to-date with what’s happened over the last 25 years. So there needs to be ongoing legal education – it is very important.

Thinking more broadly, participants universally argued for a greater understanding amongst Court personnel of children’s development, and in particular for working with traumatized children, with some participants commenting on the need for recognition that coming before the Court was both the result and cause of trauma for children. Many participants also noted that most court personnel would benefit from education in working across cultures - not only with Aboriginal people and communities but with the growing population of refugee and Culturally and Linguistically Diverse communities.

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* Stakeholders were diverse in role, experience and professional background; they included police officers, court officers, legal professionals, child protection and juvenile justice practitioners in direct practice, policy and management roles.
5.3.1.2 Training Needs of Service Providers

The general lack of professional knowledge and expertise of Youth Justice workers was reported by Judicial Officers, particularly those working outside of metropolitan Perth. A number of Magistrates consistently criticised the capacity of many Youth Justice workers to understand the requirements either of the Court process or their client population. It should be noted, however, that these criticisms were predominantly historical in nature, and there was some acknowledgement that the newly formed Youth Justice teams were beginning to address problems identified in this area of service delivery.

There was also a broad recognition of the need for police officers to be better educated about the discretion available to them under the law. For instance, it was noted that the use of cautions were under-applied, there was a tendency amongst rural police officers in particular to arrest rather than summons youth offenders. The common practice of imposing a curfew as a condition of bail was also criticised, and the need expressed for police officers to be better informed about the implications for children’s wellbeing of the inappropriate use of these interventions, particularly with Aboriginal children in rural communities. Country magistrates also noted the lack of necessary training for police officers acting as prosecutors in country areas, where the absence of legal practitioners made this a requirement of their role. In the Perth metropolitan region, the Department of Public Prosecutions took over responsibility for all prosecutions involving the CCWA and the majority of stakeholders working in Perth commented on the positive benefits of this move.

There was a widespread view that child protection workers needed to play a fuller role with young offenders. There was a common view amongst Judicial Officers that the absence of child protection involvement in youth justice matters reflected a need to re-emphasise the status of young offenders as children, and a broader acknowledgement that offending behaviour was frequently symptomatic of children’s neglectful and impoverished circumstances. There was a general recognition of the need for cross-discipline and cross-agency training to facilitate a greater understanding of mandate and practice through which a culture of collaborative working might be developed across both jurisdictions.

A further concern expressed by Judicial Officers was the perceived increasing demand for child protection workers to engage in legal work including forensic investigations of abuse, the preparation of affidavits and court work. Magistrates reported the view that protection workers were not properly equipped, or mandated, to undertake this work and that they should focus their energy instead on direct work with children and families. To address

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4 It should be noted that the researchers did not have the opportunity to speak with police officers from rural regions during this research, and as such were unable to gain insight into their perspectives on these issues. Furthermore, the researchers wish to express that they are aware that the lack of resources in these regions and additional pressures on police officers working in these regions could well be exacerbating these issues.
this issue, some Judicial Officers noted that either lawyers and/or police should bring cases to court. As one Judicial Officer commented:

One of the problems with the protection area is that Child Protection workers are expected to do too much legal work ... my own view is that Child Protection workers are expected to make too many decisions that are actually of a legal kind. They should be allowed to just work with the parents and other people they need to work with to do those social work things and really provide information to lawyers and let the lawyers bring the cases to the court.

There was a widely held view amongst Magistrates and stakeholders that legal practitioners presenting in court were frequently undereducated in the complexity of their role, and in the needs of their clients. Concerns were raised that lawyers were often not specialised in working with youth and had relatively little experience. It was noted that young and inexperienced lawyers were typically sent to the Children’s Court as this was considered a place to learn and that the Children’s Court lacks status and respect in the field. As one stakeholder noted;

One of the big things we have is people treating Children’s Court jurisdiction with general contempt within our profession generally...The State DPP use it as a training ground for their junior lawyers, which means they are training them and regard it as a ‘safe’ jurisdiction if you like. It also means they send practitioners who have little life experience, certainly very little experience with children if any at all.

A particular problem noted by the Judicial Officers in particular was the common practice of defence lawyers meeting with children and families immediately prior to entering court and not allowing time to see them in their home situations or to include parents/broader kin. With regards to legal representation in child protection matters, some Magistrates expressed a concern that many child representatives appeared to be confused about the difference between acting in the best interests of the child and taking instructions from the child. This was reported as evidence of what might be described as routinised and proceduralised practices amongst lawyers, in turn an indication of inadequate education about role, children’s rights and the skill sets required to communicate effectively with and advocate for children, across both criminal and protective jurisdictions.

5.3.2 Structure

Three main issues were raised by participants in relation to structural issues impacting on the quality of services provided by the Children’s Court: i) the overlap in jurisdictions between the Children’s Court and the Family Court; ii) the structure for dealing with appeals; and iii) the physical environment of the Court.

5.3.2.1 Jurisdictional Responsibilities of the Children’s and Family Courts

In Western Australia, the jurisdictions of the Children’s and Family courts are separate, and the debate as to whether the Family Court should take over responsibility for care and protection matters from the Children’s Court was of interest to participants. With
one exception, the Judicial Officers were in favour of the Children’s Court retaining authority over cases involving care and protection matters. Many expressed the view that the private law issues of custodial arrangements – the current focus of the Family Court - should remain clearly separate from the public law issues of whether the State should assume parenting responsibility for a child. One Judicial Officer comments:

Children’s needs in a protection and care environment might be overlapped with the Family Court but there should never be any joining up. I am very philosophically opposed to it because the problem with the Family Court is that the children become part of the chattels. The focus of a child in a protection and care proceedings is on the child; in the Family Court it is on the family across the board but really the parents...

Another states:

When adults are fighting, are they really concerned about the kids? We've all had friends or family go through divorce. We have either seen that intimately or removed and it doesn’t seem that adults really give a shit [sic.] about the kids, it’s all about them.

In contrast to the views of the majority of Judicial Officers, many stakeholders and in particular legal practitioners were in favour of care and protection matters being taken over to the Family Court. They did not share the view that the principle of the child’s best interest would be undermined, some arguing that this philosophy informed Family Court decision-making also. Reasons cited for favouring an amalgamation of the courts were the potential for improved information sharing between agencies and economies of scale resulting in a better resourced Court system. One stakeholder reflected on the practical and symbolic advantages of amalgamation, noting:

Whatever happens, we need to have better processes at the very least, managing the transition of families between the two places. The railway divides more than the physical location of the two [Courts]. They understand very little much about each other; they have very little interaction with each other, which is surprising when they are both dealing with child welfare issues.

5.3.2.2 The Appeal Process

There is a significant difference in the appeals process across criminal and protective jurisdictions in the Children’s Court in Western Australia. Currently, in the criminal jurisdiction an appeal against a decision made by a magistrate may be heard either by the Judge/President of the Children’s Court or by the Supreme Court. In contrast, for care and protection matters, all appeals must be dealt with in the Supreme Court, by judges without specific training in dealing with matters involving children. Many Judicial Officers expressed concerns about this situation arguing that this jurisdiction requires specialised knowledge and experience and, as such, the mandate of the Judge/President of the CCWA should also include addressing appeals in regard to protective matters. A second, related, concern raised by one Judicial Officer about the appeals process was that lack of transparency; this Officer noted that magistrates do not routinely receive any feedback on their decisions when reviewed by the Judge and that they would find it useful to receive such feedback.
5.3.2.3 The Physical Environment.

In the Central Children’s Court in Perth, criminal and protective matters are co-located. A number of Judicial Officers and other stakeholders commented on how unsatisfactory this arrangement is for all parties. They argued for criminal and protective facilities to be separately located, commenting on the inappropriateness of dealing with children in need of protection and care under the same building as children who have been involved in criminal activity. A number of participants argued for complete separation of criminal and protective proceedings; others argued that, even without separate buildings, additional facilities, such as child-friendly interviewing rooms could greatly improve services to children. A particular concern cited by several participants was the inadequacy of waiting rooms, given the co-location of Criminal and Child Protection court processes. A strong argument was made for separate facilities for offenders and witnesses, and for parents who are contesting care applications. One stakeholder noted:

*I would like to see the waiting rooms for each individual court so if mum and dad are sitting down crying, it is not in front of 50 other people.*

Commenting more generally on waiting-room facilities, a number of stakeholders expressed concerns that facilities are not child- or family-friendly, citing the absence of child-care or refreshment facilities, noted by one stakeholder as a significant issue because of extended waiting periods and anxiety about ‘missing court’ if not available when called. This stakeholder reports:

*I think that parents of children who are either going through child protection or in the criminal court, there needs to be some facility for them to get refreshments. It is just ridiculous. They are scared to leave.*

A number of participants strongly criticised the holding cells at the Perth Children’s Court, noting that: there are too few; males and females are held together; and lawyers are required to interview children in this environment. One participant commented that the environment was abusive, likely to “further traumatised already traumatised children”.

5.3.2.4 Facilities Outside of Perth

While there were criticisms of Perth facilities, facilities outside of Perth were perceived to be far worse. Participants described some facilities, particularly in temporary Circuit Courts in rural and remote settings as ‘poor to dreadful’, with some lacking any facilities. The absence of waiting rooms or toilet facilities was a particular concern, given the harsh climates in some remote regions of Western Australia, a difficulty compounded by the frequently very long waiting periods in hearings where adult and child matters are dealt with together. In these settings also, there was a reported lack of any opportunity for lawyers to have confidential conversations with clients, further exacerbating the difficulties associated with
the overlap between adult and children’s hearings. All of these difficulties are further
compounded by the reported confusion in more remote settings as a result of poor
communication facilities, causing additional people to attend hearings on the off-chance that
their participation might be required.

Once again, the issue was raised by many Judicial Officers and other stakeholders
that the population most impacted by these impoverished, overcrowded and confusing
hearings are Aboriginal children and families. The injustice of this situation was highlighted
by one stakeholder, who commented:

There’s issues with Kununurra, there’s issues with Broome and Derby, Roebourne, Carnarvon,
Geraldton; Northam is terrible. Kalgoorlie, the Court facilities are just extraordinarily bad; Hedland
is not much chop. Every which way you turn there are problems. And these are the major Courts
in the State ... what it all conspires to me is that Aboriginal people in this State are given less
support and justice than the rest because Aboriginal people comprise the vast majority of arrests,
especially in these places.

5.3.3 Clients/Cases

When discussing the clients and cases brought before them Judicial Officers focused
predominantly on young offenders, talking only briefly and generally about the increase in the
complexity of family circumstances leading to protective matters coming before the court.
There was, however, an acute awareness of the over-representation of Aboriginal children
across both jurisdictions, with some children moving between the two Courts because of the
inter-linkage between their protective needs and their offending behaviour. A number
reported their awareness that the Court is responding, in a very limited way, to behavioural
symptoms of longstanding issues of disenfranchisement, impoverishment and despair
amongst Aboriginal people. In this context, one significant recent symptom noted by Judicial
Officers is foetal alcohol syndrome, the impact of which is beginning to be felt across both
the criminal and protective jurisdictions

In the criminal jurisdiction, as noted above, (Question 1), Judicial Officers reported an
increase in the complexity of the issues coming before them. In particular, they commented
on the perceived increase in serious and violent offences. In part, they recognized this to be
a result of their broadened mandate, also noted above. However, there was an awareness
also of a change in kind in offences, with a significant increase in instances of aggravated
assault and ‘rage’ violence, perpetrated by multiple offenders, and more instances of female
perpetrated violence. As one magistrate noted,

We are just buried in robberies and armed robberies, and nasty vicious assaults.

Two explanations were offered for the emerging trend: i) the desensitizing impact of
violent films/videos and interactive computer games; and ii) the availability of mobile phones
– making it possible to gather a crowd more quickly, and the associated ‘exaggeration
impact’ of group dynamics leading to an escalation in violence.
A second worrying trend noted by Judicial Officers was what might be described as the 'criminalisation of welfare issues' as demonstrated in instances where young children, particularly Aboriginal children in remote regions, were frequently arrested for breaking and entering houses to obtain food or to seek a safe refuge from the domestic violence occurring within the home. Reflecting on the circumstances of Aboriginal children brought before the Court, one Judicial Officer notes the crucial need to contextualise their behaviour and recognise their needs:

They are not educated; they have no role models; they are really tragic ... They are just really deprived children and I think the community is very quick to judge them ... There is a lot of judgmental discussion about a lot of the offenders we see, where in fact those children are totally screaming with pain. They may have mental health problems. They may have sexual abuse problems. They may have serious drug problems. They might just be in terrible households. They might be wards of the State... it's really terrible. I characterise them as being very disadvantaged.

Alongside these concerns of escalating violence and the criminalisation of welfare issues, many Judicial Officers expressed a more general concern with the increase in the number of trivial offences being heard in Court. They attributed this increase in part to changing police practices, noting the failure to adequately apply the discretion to caution or apply diversionary strategies for minor offences. A Judicial Officer reported his concerns, stating:

Anecdotally, my experience is that there seems to be more cases going to Court now than previously... which is somewhat distressing given a major part of the principles of Juvenile Justice and the Young Offenders Act was to divert children from the judicial process, get them out of the Courts, keep them out of the courts as long as possible.

Another concern highlighted by Judicial Officers was an increased tendency amongst police officers to arrest rather than summons youth offenders and to stipulate stringent conditions for bail, such as curfews or school attendance regardless of the relevance or appropriateness of such conditions. A Magistrate comments:

There needs to be some connection with the conditions as to the offending ... There needs to be more thought about these conditions. What is starting to happen is that there are some kids for offences such as disorderly conduct, which don’t carry detention as a sentencing option, and yet by the time the Court comes to deal with them they are in custody because they have breached bail conditions rather than being in custody because of the substantive offence in the first place...

Once again, participants noted the particular issues faced by Aboriginal children in regional Western Australia placed on bail. Three issues of concern were highlighted: i) the failure to recognise underlying personal and social problems associated with persistent minor offending, and the unrealistic expectations associated with maintaining a curfew and/or meeting requirements such as school attendance; ii) the lack of resources and ‘responsible adults’ to support bail in rural and remote areas; and iii) the severe and potentially traumatic consequences for breaching bail given the absence of secure facilities outside of Perth, resulting in children being transported great distances to be held in adult facilities or placed in the Perth remand centre.
5.4 Processes (Throughputs) – Case Processing

The relative disadvantages of Court services outside of Metropolitan Perth were once again highlighted in participants’ discussions of Court processes and outcomes. As noted above, Judicial Officers practicing in regional settings have a wider sphere of responsibility, legislatively and geographically, than their colleagues in Perth; they work under circumstances of resource impoverishment, with poor facilities, very limited, if any, pre-and post- sentencing services, to address the needs of children whose family and community settings are characterized by extreme deprivation. Inevitably, these circumstances impact significantly on the outcomes achieved through Court interventions. It must be noted however, that these disadvantageous circumstances are mitigated by the commitment of the dedicated Magistrates and Court Officials, whose insight and humanity was consistently evidenced in this study.

To avoid repetition, Judicial Officers and stakeholders were asked to comment on three specific issues relating to case processing that were not addressed in questions: i) the extent to which clients understand the court process; ii) the availability and utility of specialist court assessments; and iii) Children’s Indigenous Courts and other methods of improving the court process for Indigenous people.

5.4.1 Clients’ Understanding of the Court Process

A number of Judicial Officers raised concerns about the capacity of people for whom English is a second language to understand or fully participate in Court processes. Whilst acknowledging the significance of this issue for many stakeholders, there was a more general concern about understanding and participation even of those whose first language is English. They argued that the Court process and legal language is alien to the majority of young people and their families, and the very limited contact time with legal representatives available to most people across both criminal and protective jurisdictions is insufficient to facilitate informed participation. Commenting on assumptions of a child’s capacity to plead, a stakeholder notes:

*Even kids with the full capacity to understand don’t engage with the process. They just stand there because everybody talks about them and over them. They very rarely get to talk or say anything. They come out and it’s not that they haven’t got the capacity to understand most of the time, it is that they just were zoned out at the time, they’re just not part of the process. They come to us and they say oh no I don’t agree with the facts, no I didn’t do that but I pleaded guilty because the lawyer told me to, and I know that the lawyer would have explained things to them, but they weren’t really tuned in.*

Another asserts:

*The language and the process is unfamiliar. The children who we work with only hear the very last thing – the sentence. They don’t hear any of the Magistrate’s discussion: how they reach their decisions.*

And a third reports:
I had a client, we’d been to Court three or four times, and finally he said to me “what just happened?” He’d been to Court three or four times…back and forward, back and forward… He came out saying, “what just happened?” At that moment I realised that his lawyer needed to be telling him in words he could understand, that I needed to be telling him in words he could understand, that the Court didn’t know that he didn’t understand (emphasis added).

A further, related problem specific to the welfare jurisdiction is the question of a child’s capacity to instruct their legal representative. Currently, this decision is made on the basis of chronological age, without consideration of intellectual capacity or understanding. Some participants noted the need for both legislative clarification and education of Judicial Officers on this matter. Other participants noted the limited capacity of any children to participate fully in the Court process across either jurisdiction.

Once again, the question of informed participation was noted as a particular issue for Aboriginal children and families from rural and remote regions; a second significant and growing population about whom concern was expressed is recently arrived African refugees, and people from CALD backgrounds. It was argued that the difficulties with understanding went beyond language for these children and families; instead, it reflected significant cultural issues, with many clients unable to understand the philosophy of the Court. Judicial Officers expressed concern at the disadvantages and potential discrimination faced by these populations in the absence of trained and skilled interpreters and culturally literate legal practitioners able to assist them linguistically and culturally to participate in the Court process.

5.4.2 Specialist Assessments

The question of specialist assessment provoked little discussion among Judicial Officers beyond noting the absence of a specialist assessment unit attached to the Court. A distinction was drawn between Court ordered reports, undertaken by Department for Child Protection (DCP) or Youth Justice practitioners and Independent Assessments, usually requested by Child Representatives, for which parents carry the cost. Some Judicial Officers commented on the variable quality of Independent Assessments and the lengthy delays resulting from the short supply of professionals to complete them. They noted that DCP and Youth Justice reports are typically produced more quickly than Independent Assessments, but posed different challenges for the judiciary because of the potential for a conflict of interest. Judicial Officers working outside of Perth reported that the need for any form of specialist report generally resulted in very significant delays (of up to eight weeks) because of their reliance on Perth-based professionals, further compounding the pressures posed by distance and impoverished Court facilities.
5.4.3 Children’s Indigenous Courts

Judicial Officers were aware of the successful introduction of Indigenous Courts in other jurisdictions, but were cautious about their utility in Western Australia. They noted the diversity of the Aboriginal population, and commented on the culture of feuding between many families and communities that would impede their effectiveness. One Judicial Officer notes:

The usual problem is that not all Aboriginal people are the same. In fact, they often resent and hate various other Aboriginal groups more than they hate the Whites.

A widely held view was that there is much need for capacity-building within and between communities for such a strategy to work. Judicial Officers and other stakeholders were acutely aware of the shortage of Aboriginal adults able to assume responsibility as ‘responsible adults’ for youth offenders in the community, and of the absence of pre- and post-sentencing service options, and they voiced concern that the utilisation of Aboriginal Courts would do nothing to address this situation. Comparing the Western Australian situation with Victoria, where Indigenous Courts are successful, one stakeholder notes:

The one I’ve seen in Melbourne particularly, I think it would be a brilliant thing to do here and I think that's what we should be heading towards; however, I think it would be unrealistic to assume that you could just set one up... I think that that is what we should be aiming for but, really, it has been achieved in Victoria because they have a high rate of diversion from the system and that means they can focus a lot of energy and a lot of resources on fewer cases because they're labour intensive, they take a lot of support, work from the Agencies, they take a lot of time and you can't do it unless, going back to the earlier point that we need a better police diversion.

Focusing more specifically on post-sentencing options, a number of Judicial Officers in fact expressed the concern that Indigenous Courts might be no more than “window dressing” because Aboriginal elders might sit at the bench with the Magistrate, but without formal decision-making powers and the Courts are not able to refer Aboriginal children to culturally sensitive services designed and run by Aboriginal people. This view is summarized by the comments of one judicial officer, who notes:

A lot of the problems with Indigenous Courts is that the Court can’t actually impose orders that include programs that are designed and delivered by Aboriginal people who are culturally sensitive to Aboriginal children and re-build Aboriginal children.

A further issue highlighted by a number of participants refers back to the cultural diversity of the Western Australian Aboriginal population and, in particular, the urban/ rural variation, even in regional WA. Several people noted that the Aboriginal adults chosen to join Magistrates may not have cultural authority over young people presenting at court, and, indeed, may not share their language. They cautioned against potentially discriminatory, reductionist assumptions that Aboriginality per se would facilitate effective participation and positive outcomes for young people. Many Judicial Officers and other stakeholders highlighted the need to empower local Aboriginal communities and not use a one size fits all
approach. It was suggested that an initial priority might be their more effective engagement in the design and implementation of service responses for children and families across both criminal and welfare jurisdictions.

5.5 Directions for Reform

5.5.1 Legislation

Judicial Officers and stakeholders were asked three specific questions about legislative reform: i) the impact on the court and services of legislative changes; ii) issues arising from and limitations of existing legislation; and iii) specific legislative changes that may be needed.

5.5.1.1 The Impact of Legislative Changes

Two key legislative frameworks inform the Children’s Court in Western Australia; the Young Offenders Act 1994 and the Children and Community Services Act 2004. Judicial Officers reported that the key impact on the court resulting from the Young Offenders Act, which formally separated criminal and protective considerations for children over the age of criminal responsibility, was the introduction of JJT and formal diversions. There was a generalised concern that the principles informing Youth Justice were undermined to some extent by a ‘filtering-down’ process and the indiscriminate application of legislation to both adults and children. A magistrate comments:

A lot of legislation was introduced to deal with adults, which is simply a broad brush to deal with everybody, and again it fails to recognise the distinction that their own government has made between dealing with adults and dealing with children.

The Thee Strikes legislation5 for repeat home burglaries and the requirement for a “responsible person” for young offenders under the Bail Act 1982 (WA) were highlighted as particular issues of concern because they conflict with the diversionary principle embedded within the Young Offenders Act 1994.

A third adult-oriented legislative change considered to have impacted negatively on youth offenders was the introduction of mandatory reporting for sexual abuse in 2008, and the introduction of a Sex Offender Register. A number of stakeholders reported that young people are being placed on register for relatively minor offences at a young age, with considerable, unanticipated, long-term implications. They voiced considerable concern that these young people did not understand the associated reporting obligations resulting from being named on this register and that this, in turn, increased their likelihood of long-term, 

5 Twelve months mandatory imprisonment/detention for repeat (third time) home burglary offenders was introduced in Western Australia through amendments in 1996 to s 401 of the Criminal Code (WA) 1913.
repeat contact with the criminal justice system including the prospect of imprisonment. One stakeholder notes:

[Mandatory reporting] has had a big impact because children go onto the Sex Offender Register and that has a massive impact, especially when you are dealing with very young children, as young as 10 onward ... even if they are not convicted in the Children's Court sense – they still end up on the register. Sometimes the offences can be as minor as bottom-pinching or dacking in a school playground – a bad prank gone horribly wrong.

The introduction of the Children and Community Services Act 2004 was welcomed by Magistrates because it replaced very dated legislation. However, a number of Judicial Officers and some other stakeholders voiced concern at the reduction in judicial discretion and flexibility provided under this legislation in terms of the time-frames available under Protection Orders and the resulting pressure on the care system. A stakeholder sums up these concerns thus:

It has had a profound impact on the provision of accommodation with the orders being longer; the lack of flexibility until 18; and the majority of the non-government agencies often not willing to accommodate our older children.

5.5.1.2 The Current Legislation

Having identified some issues with the current legislation, discussed in the previous section, Judicial Officers, with one exception, and other stakeholders were of the view that the current legislation is workable. The majority view was that, although some improvements could be made to existing legislation, there are ways to work around some of the deficits; for instance, many Judicial Officers noted the positive impact of discretion given to the President of the Children’s Court to issue practice directions to address some of the limitations of existing legislation. A widely voiced opinion among Judicial Officers was that the legislation is quite satisfactory. Some Officers noted that problems arise, rather, in its application, as a consequence of the inadequacy of the broader service system and the lack of resources to support Court orders, but also because of the watering down of foundational principles, again, in large part, as a consequence of work overload and systemic impoverishment. A number of participants reported that diversions were being used less often and that there appeared to be a tendency to arrest and refuse bail despite the heavy emphasis in the legislation on diversion. A Judicial Officer comments on this ‘slippage of principles’ in the criminal jurisdiction thus:

The original concept behind the Young Offenders Act and the Children’s Court in its current format was basically diversionary... in 2001–2002 there was something in the nature that 95% of kids who appeared before the Children’s Court appeared once and never again ...6% of [offenders] came back less than six times ... and in the entire State there were only about 60–65 kids who were repeat constant offenders. When the concept behind the Children’s Court was introduced along with the legislation, the idea was to defer that 95% away from the Court and find a mechanism for dealing with the 6% so they didn’t turn into the 60 kids who had major problems, and then focus the resources that we have available on those kids who are constant repetitive offenders so that they got the vast majority of the attention. That seems to have fallen away and disappeared somewhere along the line.
Similar concerns were voiced about the applications of the principle of the Best Interest of the Child in the welfare jurisdiction. A stakeholder notes:

*The legislation is quite clear about the rights of the child, but in practice we often lose the voice of the child. It is now in our legislation that the child must have a voice...It is the operational side that is not necessarily happening. We lose the voice of the child a lot of the time because we are focussing on the parents because they have the problems that need to be fixed – it’s their behaviours we need to change, not the children’s.*

As noted in the previous section, concerns were widely raised about the bail conditions. However, there was no great impetus for change in the legislation amongst participants; once again, the focus of concern was on interpretation and application of the legislation, and a cultural move away from application of discretionary diversion. Noting the need for practical steps to improve the application of legislation, one Judicial Officer argued for the removal of the discretion to refuse bail for a young person for whom a ‘responsible adult’ could not be found, noting that this places a greater burden on children than adults, for whom such conditions do not apply and that it is, in effect, punishing the child. Other stakeholders argued the need for many more bail hostels in regional settings, so that children could stay within their communities and it was suggested that a list of potential custodians should be developed with local Aboriginal communities in advance so that a responsible adult can be identified for young Aboriginal offenders when and where the need arises.

Commenting similarly on the need to manage the tension between children’s needs and their offending behaviour and to properly resource child-focused facilities and services, a Judicial Officer reports:

*One of the areas that is inadequate, not only in legislation terms but in practical terms, is the fact that nowhere in the State do we have a secure facility for children who have mental health issues...The Young Offenders Act has a little tiny, stupid old-fashioned comment in regards to mental health: ‘section 49 remand for observation’. They’re saying that the child should be placed in some suitable place – where’s that?*

### 5.5.2 Other Reforms

Judicial Officers were asked for their views on possible new approaches to dealing with Children’s Court matters. Some of their comments on possible reforms have been presented above, for example their views on the amalgamation of the Children’s and Family Courts and the introduction of Aboriginal Courts. A significant, general reform agenda that was identified by participants was the need to address, in an inclusive and empowering way, the systemic issues underpinning the significant overrepresentation of Aboriginal children across both criminal and welfare jurisdictions. A second, related issue noted by participants was the need to address the urban-rural resource imbalance. These issues will be discussed more fully in the final section of this report.

When asked to give their views on the benefits of a national framework to guide child protection and Youth Justice services, most Judicial Officers could see little benefit for
Western Australia, although they were cautious about commenting in the absence of a specific model to critique. A number were concerned that Western-Australian-specific issues may not be adequately recognised under a national approach. A Judicial officer reflects:

My worry, having seen how government has failed Indigenous people in [regional and remote areas], is a national approach may not help. If it’s the lowest common denominator, most people are in the cities and you are dealing to the metro circumstances, then Indigenous people in remote and regional locations with layers of disadvantage it might not cater to or reflect their needs.

5.5.3 Other Issues and Future Directions

Judicial Officers and stakeholders were asked whether there are any other issues or future directions that need to be discussed. The only issue that was commonly voiced was the concern that the processes surrounding appeals and reviews are highly formalised as well as resource and time intensive which is problematic as both clients and the agencies themselves typically lack the capacity and resources to do this. Appeals against decisions in the P&C jurisdiction can be made to the Supreme Court under the Right of Appeal as specified in Part 2, Section 7 of the Criminal Appeals Act 2004. Under Section 41 of the CCWA Act, appeals against decisions by a magistrate concerning guilt or innocence can be made under and subject to Part 2 of the Criminal Appeals Act 2004. The appeal must be made to the Supreme Court on the grounds specified under Part 2, Section 8 of the Criminal Appeals Act 2004. The grounds for appeal are that the magistrate made an error of law or fact, acted without or beyond jurisdiction, imposed an inadequate or excessive sentence and/or that there was a miscarriage of justice. On the other hand, under Section 40 of the CCWA Act, sentencing decisions by a magistrate can be reviewed by the President (Hearing de novo) and any appeals against review decisions by the President must be made to the Court of Appeal as specified under Part 2, Section 16 of the Criminal Appeals Act 2004. Some stakeholders expressed the view that there should be other means by which to hold the court to account for its decisions besides the formalised processes outlined above for appeals and reviews. One stakeholder notes:

Individual Magistrates are only answerable to themselves. The Judge of the Children’s Court isn’t able to comment on their decisions so basically the only way that we have to review a decision or make comment on a decision that they actually make is through the formal Appeal process.

This stakeholder adds that there are other ways to review decisions such as;

...through meetings with the individual Magistrate, or a meeting with the Judge who might send an email out saying this is the way we perhaps need to go but the Magistrates can then choose to take that on board or not. That’s one of the real cruxes of it.

Related to this issue of reviews and accountability, one stakeholder expressed the view that there should be regular reviews and/or audits of the Children’s Courts with respect to certain performance criteria. This stakeholder suggests;
If you had indicators for the Court of how many people are actually represented, how many parents are actually represented, how many people said that they went through a process that was respectful, how many times compared to the last year were trials aborted because people hadn't been given information, I mean, just fundamental things. This is what it would look like if it was working well, how might we measure that.

With regard to the criminal jurisdiction, another stakeholder suggested that fairer and more efficient outcomes could be achieved through making changes at the front-end of the system. In particular, this stakeholder recommended that committal hearings could be adopted to review evidence early in the process as this would ensure that cases which are unmeritorious do not proceed. Alternatively, this stakeholder noted:

If we accept for a moment that committals will never be reintroduced, what could happen to the current Legislation is some discretion vested in a Magistrate to make punitive orders against the prosecution for non-disclosure.

Finally, in relation to P&C matters, one stakeholder also commented on changes that could made at the front-end of the system concerning the quality of evidence presented given that:

There's no one there like in the Criminal Court to say objection or sustained, all those things, it's said and it's out there and there's no burden of proof.

5.6 Issues Specific to Western Australia

In addition to the questions to be addressed across Australian jurisdictions reported above, Judicial Officers were asked a number of additional questions specifically of relevance to Western Australia. Given the breadth of their earlier comments, there was, inevitably some overlap in the responses.

As noted continually throughout the report, the over-representation of Aboriginal children and the resource deficiencies that prevent their needs from being properly addressed was a major preoccupation for participants. Speaking again of the impoverished and deprived circumstances of Aboriginal children, families and communities coming before the Children's Court, a Judicial Officer comments:

The real question is why do these people come before the courts and why do they offend, which is not really a legal question, it's a sociological question...

Commenting on the legacy of racist colonial policies, the impact of which is still profoundly apparent, particularly in regional and remote Western Australia, a second Judicial Officer commented:

In the court, apart from the odd glaring example that makes you concerned, generally there are more Indigenous kids in custody because they are committing more serious offences -- that's not racism as such; the problem there is the severe disadvantage and effects of 200 years of colonisation, repression and dispossession.

Reflecting on the over-representation of Aboriginal children in the care and protection system, Judicial Officers similarly note the general impoverishment, material, social and
spiritual, of many Aboriginal communities, of which poor mental health, abuse of alcohol and other drugs and family violence and child neglect are symptomatic. A magistrate reflects:

Regrettably there are so many communities or parts of communities and families that include serious alcohol, substance abuse, domestic violence and it is simply a case where the young people's well-being are at risk. It is a sad reality.

There was a common recognition that addressing these deeply embedded social problems in Western Australia is beyond the scope of the Children's Court, and a sharp awareness of the need for innovative strategies to engage Aboriginal communities more fully in the reform process, through identifying, mandating, educating and resourcing Aboriginal leaders to spearhead this reform process. This view is detailed in the following excerpt from an interview with a Judicial Officer, who notes:

The court doesn’t have at its disposal the programs that it wants for Aboriginal children. There aren’t programs that Aboriginal people have had at least some part in designing and also some part in delivering. It is only Aboriginal people who can assist young people to understand their own Aboriginal culture and have their own sense of identity. Programs like ‘walking the trails’, ‘learning for the south-west’ young Noongar kids learning the Noongar language, the Noongar custom/dance and all those sorts of things -- they don’t exist; that’s what the court is calling for. The other thing about young Aboriginal children is that you can’t really reasonably ask them to change too much if they are the subject of a program that has been designed and delivered by non-Aboriginal people and they are within that program in isolation. Because of the disconnect with Aboriginal children and Aboriginal people from community it is very important that these kids actually are brought together so they can support each other and that mutual support across a number of these young people is important. Dealing with them in isolation means that they are being dealt with and they don’t have support by other kids of their same kind. There is a need for a significant shift in the way that the business of juvenile justice is delivered.

Participants reported that Youth Justice programs are necessary but not sufficient to break the negative cycle within which many Aboriginal children are caught. They argued also for an increased emphasis on crime prevention measures and diversionary programs addressing the issues of aimlessness and alienation experienced by many Aboriginal young people. A need was also expressed for the development, resourcing and introduction of drug and alcohol, mental health and family violence services, throughout the State, but particularly in regional and remote areas. All were aware of the resource implications of such innovations, but many commented on the long-term costs, financial and human, of failing to address these issues. This view was articulated by a Judicial Officer reflecting on the growing problem of foetal alcohol syndrome, who asserts:

Until we can break that cycle of alcohol abuse amongst the adults you are not going to have an opportunity for kids to have a better life without a better shot at it. If the parents are alcohol abusers the children are going to suffer from foetal alcohol syndrome and you are going to continue to have the same problems with no recognition of what the outcomes are going to be, no concept of repercussions for conduct, everything is impulsive, everything is on the spur of the moment. Until you can break that cycle it is just going to continue that same problem.
6 SUMMARY OF KEY FINDINGS

In summary, Judicial Officers and other stakeholders in the provision of services to children in Western Australia who participated in this study reported that the Court as an institution is not perfect, but it is satisfactory. A similarly universal view expressed by participants was that the broader system within which the Court is located makes it effectively unworkable. One Magistrate in particular summarises a generally held view:

I’m really against having powers where you end up with the appearance of things happening but the real work on the ground is not capable of being done... It comes back to service delivery and starting to get some real things happening early with real, genuine interventions...

There are five important and inter-connected findings arising from reflecting on the published data about services and the interview and focus group responses. These have been summarized, below, and are numbered 6.1 through to 6.5.

6.1 Aboriginal children, young people, families and communities are over-represented in the protective and the criminal jurisdictions of the CCWA.

Reflecting on the over-representation of Aboriginal children in the care and protection system, Judicial Officers noted the general impoverishment (material, social and spiritual) of many Aboriginal communities, in which poor mental health, abuse of alcohol and other drugs and family violence and child neglect are symptomatic. There was a clear awareness that the Court is responding, in a very limited way, to behavioural symptoms of longstanding issues of disenfranchisement, impoverishment and despair amongst Aboriginal people, including the ‘criminalization of welfare issues’ as demonstrated in instances where young children, particularly Aboriginal children in remote regions, were frequently arrested for breaking and entering houses to obtain food or to seek a safe refuge from family violence. In response to this situation, however, there was a common recognition that addressing these deeply embedded social problems in Western Australia is beyond the scope of the Children’s Court. Furthermore, across those interviewed, there was a sharp awareness of the need for innovative strategies to engage Aboriginal communities more fully in the reform process, with suggestion that this could be achieved through identifying, mandating, educating and resourcing Aboriginal leaders to spearhead this reform process.
6.2 There is an absence of appropriate services and programs for children and families across both criminal and protective jurisdictions of the CCWA.

This concern is motivated by the declared principles informing the current Children and Community Services Act (2004) of resource impoverishment (e.g., acting in the child’s best interests) and concern about the growing gap between the espoused and the actuality in both policy and practice. This has serious implications for the operation and status of the Children’s Court in Western Australia. This issue was compounded by concerns about inadequate interviewing and waiting-room facilities in court buildings; particularly outside of metropolitan Perth.

6.3 The lack of integrated approaches to practices within the Department of Child Protection, Youth Justice and the WA Police has an unhelpful impact on case outcomes.

This issue is illustrated by the high rate of denial of bail and eventual use of detention for young Aboriginal people in rural and remote areas. Three issues of concern were highlighted: (a) the failure to recognise underlying personal and social problems associated with persistent minor offending, and the unrealistic expectations associated with maintaining a curfew and/or meeting requirements such as school attendance; (b) the lack of resources and ‘responsible adults’ to support bail in rural and remote areas; and (c) the severe and potentially traumatic consequences for breaching bail given the absence of secure facilities outside of Perth.

6.4 The challenges faced by all stakeholder agencies and current proceduralised practice and decision-making processes erode the impact of service outcomes.

A widely voiced opinion among Judicial Officers was that the legislation is quite satisfactory. However, some Judicial Officers noted that problems arise in the application of existing legislation. There are two components to the cause of this application issue. First, is as a consequence of the inadequacy of the broader service system and the lack of resources to support Court orders. Second, is because of “cultural slippage” and the watering down of foundational principles, in large part, as a consequence of work overload and systemic impoverishment. Concerns were raised about the capacity of people for whom English is a

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6 Some stakeholders suggested that the various agencies involved with this process need to work collaboratively to generate a potential register of ‘responsible adults’ for consistency and logistical purposes.
second language to understand or fully participate in Court processes. They argued that the Court process and legal language is alien to the majority of young people and their families, and that the contact time with legal representatives available to most people across both criminal and protective jurisdictions is insufficient to facilitate informed participation.

6.5 **Develop opportunities for agency-specific professional development and inter-agency training.**

The majority of Judicial Officers and other stakeholders were of the view that all court personnel could benefit from additional training, with an emphasis on the specialist knowledge required to understand the particular needs of children and communicate effectively with them, thus avoiding the imposition of adult-centric perceptions and interventions. Participants universally argued for a greater understanding amongst Court personnel of children’s development, and in particular for working with traumatized children. There was a widely held view amongst Magistrates and stakeholders that legal practitioners presenting in court were frequently under-educated in the complexity of their role, and in the needs of their clients. This was reported as evidence of what might be described as routinised and proceduralised practice – an indication of inadequate education about role, children’s rights, and the necessary skill set to communicate effectively with, and advocate for, children across both the criminal and the protective jurisdictions.
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Children and Community Services Act 2004: 175
Criminal Appeals Act 2004
Criminal Code (WA) 1913
Sentencing Act 1995: 179
Young Offenders Act 1994: 164
8 APPENDICES

8.1 Appendix A: Interview Questions

8.1.1 Purpose of the Children’s Court:

1. What do you understand to be the key purpose, main aims and underlying philosophy of the work of the Children’s Court? (PROMPT: e.g., emphasis on punishment (deeds), deterrence, welfare (needs) of the child, operates with reference to human rights principles, especially UNCROC, etc.)?

8.1.2 Children’s Court Today

2. What aspects of the Children’s Court’s current operation in your jurisdiction work very well, and what are some of the problem aspects that should be addressed? (Including constraints)

3. How does the workload of the Court compare with that of other Courts? (E.g. volume and/or complexity of cases)

4. Do you see the court as part of the broader child welfare process? (I.e. part of the service continuum for children in need of care and protection)

8.1.3 Inputs:

8.1.3.1 Personnel

5. What is your current role in relation to the Children Court? Has this role evolved over time?

6. How are Judicial Officers selected? Is the selection process appropriate?

7. What additional training, if any, do you think should be made available to assist Judicial Officers/ legal representatives/child protection workers/prosecutors in their work?

8.1.3.2 Structure

8. What are the challenges raised by the current structure of the Children’s Court and its links to other aspects of the court and legal system? (E.g. Appeals, Family Court, Administrative Review Tribunals etc.)

9. Are there any issues/problems related to your court’s facilities?

8.1.3.3 Clients/Cases

10. How would you characterise the children and young people/types of cases which appear/that are heard before the Children’s Court? Do they differ from those of a decade or so ago? If yes, how?
8.1.4 Throughputs:

8.1.4.1 Case processing

11. What are some of the issues and challenges facing Judicial Officers and other key court staff who deal regularly with protection and care and/or juvenile justice matters? Do these vary according to the regional context of the Court? (PROMPT: e.g. quality of evidence/ delays in resolving matters-how could this process be expedited?)

12. To what extent do people who appear before the court understand both what is going on and the implications of court decisions? Do these vary according to the regional context of the court?

13. How effective are the child protection and juvenile justice workers and other key professionals (e.g., police prosecutors, expert witnesses) in contributing to the operation of the Children’s Court? How could it be improved? (PROMPT: Are additional personnel who service the court needed? E.g. a Guardian ad Litem in the Family Division, a Safeguarder (as in Scotland’s Children’s Hearings))

14. Who provides specialist child and family assessments and recommendations to the Court and how well do they provide them?

15. Children’s Indigenous Courts now exist in several states. How well do you think these courts work? In what ways could the court process be improved for Indigenous people?

8.1.5 Directions for Reform:

8.1.5.1 Legislation

16. What major changes/reforms have you witnessed during the time of your involvement with the Children’s Court?

17. Is the legislation which governs the operation of the Children’s Court adequate? If yes/no, why/how? Have recent changes to legislation assisted the operation of the Court? If yes/no, how? If no, why?

18. Are there specific legislative changes that you would like to see introduced? (PROMPT: e.g. case management role, age of criminal responsibility, issues re remand in custody, sentencing principles, matters that should be added to/excluded from the court’s purview, penalties/orders/dispositions/intervention options that should be eliminated or added, etc.)

8.1.5.2 Other reforms

19. Should other approaches to dealing with Children’s Court matters be considered? What would be the implications for your work?
20. Should there be a national framework/approach to child protection and juvenile justice matters and legislation?

8.1.5.3 Future directions

21. Are there other key issues and challenges facing the Children’s Court today that should be addressed?

8.1.6 Additional Western Australian questions:

22. What are your views on the disparities in the number of Indigenous and non-Indigenous young offenders who are;
   a. Granted bail; and
   b. Sentenced to detention?
   c. What needs to happen in order to reduce the number of Indigenous young people who are denied bail and who are sentenced to detention?

23. What are your views on the high number of Indigenous young people being placed in care? In your opinion, are the care arrangements for these young Indigenous people satisfactory?

24. In your opinion, will the recently introduced Parental Support and Responsibility Act 2008 have any differential impact on various groups in society?

25. What impact do you believe the current restructuring of the Youth Justice system will have on the Children’s Court of Western Australia? What positive and/or negative outcomes do you anticipate?

26. What are your views on the utility of the material presented by the agencies (i.e. Department for Child Protection and Department of Corrective Services) to the Court?

27. Could you please answer firstly in relation to the Child Welfare Jurisdiction and secondly in relation to the Youth Justice Jurisdiction? [PROMPT: If questionable utility, what could be done to improve quality of material presented?]

28. What additional personnel do you think the relevant agencies could provide to the Court to assist in making the Court operate more effectively with respect to;

29. The Child Welfare Jurisdiction; and

30. The Youth Justice Jurisdiction?

31. [PROMPT: adequacy of interpretive services, participation of Indigenous community members]

32. How do the practices of prosecution and defence impact on the timely disposition of cases before the Court? If these practices are causing delays, what could be done to improve the situation?[PROMPT: late disclosure, late pleas of guilty]
8.2 Appendix B: Focus Group Questions

8.2.1 Focus Groups: Child Protection

1. What aspects of the Children’s Court’s current operation in your jurisdiction work very well, and what are some of the problem aspects that should be addressed? (Including constraints)
2. What is your current role in relation to the Children Court?
3. What additional training, if any, do you think should be made available to assist Judicial Officers/ legal representatives/child protection workers in their work?
4. Are there any issues/problems related to your court’s facilities?
5. To what extent do people who appear before the court understand both what is going on and the implications of court decisions? Do these vary according to the regional context of the court?
6. Are there any matters that should not really come before the Court?
7. Is the legislation which governs the operation of the Children’s Court adequate? If yes/no, why/how? Have recent changes to legislation assisted the operation of the Court? If yes/no, how? If no, why?
   (PROMPT: have legislation changes or other processes had an impact in the types of cases being heard in the court? For example, are they more difficult/resource intensive?)
8. What major changes/reforms have you witnessed during the time of your involvement with the Court?
9. What has been the impact of developments such as mandatory reporting and ADR, on the Court?
10. What are some of the key issues and challenges facing the Children’s Court today that should be addressed?

8.2.2 Focus Groups: Juvenile Justice

1. What aspects of the Children’s Court’s current operation in your jurisdiction work very well, and what are some of the problem aspects that should be addressed? (Including constraints)
2. What is your current role in relation to the Children Court?
3. What additional training, if any, do you think should be made available to assist Judicial Officers/ legal representatives/juvenile justice workers in their work?
4. Are there any issues/problems related to your court’s facilities?
5. To what extent do people who appear before the court understand both what is going on and the implications of court decisions? Do these vary according to the regional context of the court?
6  Are there any matters that should not really come before the Court?
7  Children's Indigenous Courts now exist in several states. How well do you think these courts work? In what ways could the court process be improved for Indigenous people?
8  Is the legislation which governs the operation of the Children's Court adequate? If yes/no, why/how? Have recent changes to legislation assisted the operation of the Court? If yes/no, how? If no, why?
9  What major changes/reforms have you witnessed during the time of your involvement with the Court?
10 What has been the impact of developments such as ADR, diversionary programs and problem-oriented courts on the Court?
11 What are some of the key issues and challenges facing the Children's Court today that should be addressed?
Appendix C: Additional Information on the Aboriginal Overrepresentation Issues in Western Australia

Historical Context of the Children's Court Project

Australia was a prison colony from 1788. The traditional owners of the land lived on the coast, by rivers and in the deserts in separate tribes with complex rules and rituals for managing family relationships and for accessing food in sustainable ways. There were hundreds of tribes with their own language and culture. They were all colonised under the dominant assumption of *terra nullius* (empty land) - the legal position for Indigenous people until recent years when the Mabo Judgement of the High Court of Australia legally recognised their continuous connection with their land. For any review of policies designed to enhance the well-being of Indigenous children, it is necessary to reflect on the historical legacy – particularly for Indigenous children, their families and communities – as well as for the early convicts, soldiers, gold-miners in the 1880’s and for the migrants before and after the cessation of the White Australia policy from the late-1960’s. Specifically, this legacy in relation to child and family policy and practice has recently become more transparent in Australia in a number of ways.

The policy of separation and dislocation was followed over a number of generations and has profoundly impacted on most, if not all, Indigenous families. The *Bringing Them Home Report* by the Human Rights and Equal Opportunities Commission (1997) tells the stories of hundreds of Indigenous people removed as children from their parents. While accurate national statistics are hard to compile, the National Inquiry concluded that between one in three and one in ten Indigenous children were forcibly removed from their families between 1910 and 1970 so that no Indigenous family escaped the effects of forcible removal of children in one or more generation (Dodson 1999).

This history is vividly presented in moving accounts of their personal experiences by Glenyse Ward (1987) and by Donna Meehan (2000). Vera Whittington (1999) tells the story of Sister Kate who dedicated her life to children in need of care in Perth - many of whom would have been from ‘the stolen generations’. Finally, broader historical and sociological accounts of the impact of white settlement are provided by Henry Reynolds (1987; 1998) and by Tom Austen (1998).

A significant change in the political landscape was initiated when Prime Minister Paul Keating delivered his ‘Redfern Address in 1992 in which he welcomed the Mabo Judgement as a significant building-block of change. The apology by Prime Minister Rudd to Aboriginal people in 2007 as a federal government public response some years after the publication of *The Bringing Them Home Report* was an important step along the slow-moving journey
towards ‘reconciliation’ between the Indigenous peoples and the Anglo-Celtic/European majority. There has been growing recognition of the impact of the profound multi-generational trauma experienced by many Aboriginal families and communities since the European ‘invasion’ over two hundred years ago (Sedoti 2009: Swain 2001; 2002).

**Aboriginal People and the Children’s Court in Western Australia**

More specifically in relation to the Children’s Court Project in Western Australia – and the involvement of Aboriginal children, families and communities in child protection and juvenile justice processes – a summary of key demographic and agency practice information from recent publications is presented below:

**Financial Costs – and a UK Comparison**

The Western Australian government spends $1.7 billion annually on Aboriginal Affairs – with 50% going to the Justice and Corrective Services system (Murray 2010; Sanderson 2008). In stark contrast, the Youth Justice Planning Tool 2008/09 completed by Brighton and Hove in the UK shows that the corporate budget comes from Police, Probation, Health, Education, Youth Justice Board and a sixth source of five other funders (Brighton and Hove 2008). The total annual budget of over one and a half million pounds sterling supports a multi-disciplinary staff group of 70 in the Youth Offending Team. One significant feature of the annual budget in Brighton and Hove is that Community programmes takes over 50% of the budget: of the rest, 20% is for Court services and only £74,000 (5%) is allocated for Custody services. While the WA population is 45 times that of Brighton and Hove, the expenditure on Corrective Services appears to be over 280 times more.

**Case Management or case management for Complexity?**

According to the West Australian newspaper of 30 October, 2010, (Murray 2010), the Aboriginal community of Balgo is the location for 36 federal, State and non-government agencies’ services – without an integrated Case Management decision-making and practice framework (Clare 1996; Moxley 1989: Cambridge 1992). Case Management as an integrated practice model was developed in Kent, England in the 1970’s in negotiated community care services for the elderly and people living with disabilities to enable them to maintain their independence from institutional living (Challis and Davies 1980).

Around the same time, Case Management was developed by the North American Association of Social Workers as an integrated practice response for people living with chronic needs and disadvantage – including the long-term unemployed, people living with mental illness and young people exiting government care services. These services were often fragmented and uncoordinated; the systemic practice model involves negotiating with
the ‘consumer’ about needs assessment, planning, service delivery and review and evaluation.

This must not be confused with Case Manager – a synonym for key worker (“Whose case is this?”) because the Case Manager is the lead professional whose role is the coordination of information, resources, intervention and evaluation. The model addressing the multiple agencies in Balgo above would involve one identified accountable lead Case Manager responsible for the coordination of resources and needs assessment and the delivery of services from numerous agency case managers.

**The Incarceration of Aboriginal People in Western Australia**

As Snowball (2008) discusses, this overrepresentation of Aboriginal people within the prison system was a factor identified by the Royal Commission into Aboriginal Deaths in Custody as contributing to the rate of Aboriginal deaths while incarcerated. Despite this inquiry’s findings, however, which were released in 1991, the problem has not improved. A quote from the Australian Institute of Criminology (2009) explains the extent of this situation succinctly:

*Between 2000 and 2008, the imprisonment rate for Indigenous Australians increased by 34.5 percent (Australian Bureau of Statistics 2008). In 2000, the imprisonment rate was 1,653 prisoners per 100,000 Indigenous adult population, which increased to 2,223 prisoners per 100,000 Indigenous adult population in 2008. The increase in imprisonment rates for Indigenous people was almost seven times that of non-Indigenous people in the same period. This represents a five percent rise in incarceration rates for non-Indigenous people when comparing the two groups and an increase from 123 per 100,000 adult population in 2000 to 129 per 100,000 adult population in 2008. In 2000, Indigenous people were 13.5 times more likely to be incarcerated than non-Indigenous people and this rose to 17.2 times more likely in 2008.*

In 2007-08, Aboriginal males and females accounted for 40.4 percent and 51.5 percent, respectively, of the prison population in Western Australia (Bartels 2010). As indicated previously in this report, the problem is even larger when focused on juveniles in detention in 2011, where January figures from the Western Australian Department of Corrective Services indicate the population is 69.5 percent Aboriginal.

In addition to this, further research findings indicate:

- The Youth Justice system in Western Australia has become less effective in achieving the objectives of the Young Offenders Act, 1994 – with rehabilitation as the primary goal and detention as the last resort (Auditor General 2008)
- 1,085 young people had 10 plus formal contacts with the WA Police between 2003/2008: 0.5% of young people accounted for almost 20% of Police contacts (over 80% male; 75% Indigenous; 55% in regional Western Australia) **BUT** an even smaller group of 120 children and young people averaged more than 25 Police contacts in the same period (male; Indigenous / regional WA) (Auditor General 2010)
• More than 80% of young people refused Bail and in Detention in Perth will not receive a custodial sentence when they appear in court; Bail is subsequently granted in 66% of cases where the Police refused – with 15% of admissions of children in the Care of the Government (85% having been refused Bail) (Judge Reynolds 2010)

• The daily average number of children between 10 and 17 years in Juvenile Detention in 2007/2008 was Western Australia 154: Victoria 63; South Australia 55. Western Australia has the second highest number of children and young people in Detention in Australia – with the highest rate of over-representation of Aboriginal children and young people in detention (75% of those in Detention while 5% of the age group in the State) (Australian Children’s Commissioners and Guardians 2010)

The Chief Justice Wayne Martin was interviewed on television Sky News (1 April, 2010) about the incarceration of young Aboriginal people in Western Australia; Chief Justice Martin went on to report that Aboriginal juveniles were 43 times more at risk of being detained than non-Aboriginal juveniles – the highest disproportion in Australia. At an individual cost of $500 a day, “You could put them up at Hyatt cheaper. It’s just not working”.

**An Alternative Practice Model**

A very different picture emerges from Regional Youth Justice Services of the Department of Corrective Services in Geraldton and Kalgoorlie which provide a range of prevention, intervention, diversion and statutory services; the number of court appearances in Kalgoorlie was reduced by 50% in 2009/2010 and no young person eligible for bail was sent to Rangeview Detention in Perth from either location (Commissioner for Children and Young People Western Australia, 2010).

**Implications for the Development of Services for Aboriginal People (Diamond and Villaflor, 2001)**

A very helpful review of seventy journal articles in the practice literature on working with Aboriginal families and communities was prepared by Diamond and Villaflor (2001); in line with the assumptions of cross-cultural practice from a ‘family of origin’ perspective (Clare 2000), Diamond and Villaflor assert that ‘Aboriginal people’ are not a homogeneous group – with significant initial dimensions of diversities in culture, language and geographical location. Added to these differences are another layer resulting from an individual Aboriginal person lives primarily in an urban, rural or remote community – and whether their traditional ties have been retained or re-established or have been lost. Finally, a further source of difference of critical importance to any service development is the extent to which both particular individuals, and the community, have assumed a more mainstream focus.
Diamond and Villaflor highlight that the reviewed literature is full of recommendations about what needs to be done, but very little on how to do it. However, they highlighted the contribution by Butler (1993) in which he is clear that services to Aboriginal children must reflect uniquely Aboriginal ways of caring for children, and that these should include culturally relevant behaviour, toys, tools and materials. In meeting these criteria, the services become ‘vehicles for cultural transmission’ (p12). The generalisations which can be made are those which promote respectful ways of working, which value diversity and difference and which assist in the development of shared understandings.

**Access to Education and Health Services**

Access to education by Aboriginal children, and the quality of the educational outcomes, is also influenced by factors including community infrastructure, poverty, housing and health. A failure to develop cross-governmental strategies for intervention has magnified negative, long-term consequences. Health issues which impact directly on educational outcomes of Aboriginal children include:

- low birth weight and malnutrition
- chronic ear and respiratory infections and diarrhoeal illnesses
- perinatal mental health (the mental health of the parents and the child)
- childhood trauma (including the consequences of poverty, enforced separation from primary attachment figures, child abuse and consequences of family violence)
- adolescent pregnancy
- flow on effects from the chronic ill-health of parents
- chronic grief and bereavement issues flowing from the lower life expectancy of Aboriginal adults

**The Needs of Aboriginal Children in the Care System**

Vicary et al (2009) have conducted a study of the needs of Aboriginal children and young people in the care system with 45 members of the Western Australian Aboriginal community, including parents, carers and Elders. The recommendations from this yet to be published study are:

- Aboriginal children have an opportunity to remain connected to their family, extended family, Elders and community through regular visits to ensure these relationships are nurtured and maintained.
• Aboriginal children have knowledge of their family history and belonging to their country of origin through story-telling and other avenues (e.g., cultural events).

• The care environment facilitates opportunities for Aboriginal children to fulfil their cultural expectations.

• Carers develop an open, honest and trusting relationship with Aboriginal children and encourage open communication at all times.

• Ensure Aboriginal children feel good about themselves and their family, and encourage others to communicate good stories and legends to children.

• Aboriginal children are engaged with positive role models and mentors.

• Aboriginal children are in a care environment with a maternal and paternal influence, with Aboriginal carers or carers who have an understanding of their needs and with other children of a similar age.

• Encourage an Aboriginal child’s family to be actively involved in decision-making and supporting families in this process.

*Developing a Multi-Systemic Strategy*

There has been recent and mounting concern about the growing numbers of Aboriginal children at risk of abuse and neglect—and of the incarceration rates of Aboriginal men, women and young people in Western Australia. The challenging way forward for the Western Australian government has been identified by Sanderson (2008), by the Auditor General (2008), by Blagg (2009), by the Commissioner for Children and Young People (2010), by Magistrate Potter (2010) and by Judge Reynolds, the President of the Children’s Court of Western Australia (2010).

Their collective analysis of the current situation facing Aboriginal children, their parents and communities, and the Western Australian political, judicial and welfare systems is that the multi-generational evidence of abuse, neglect and trauma experienced by Aboriginal people in Western Australia requires a significant coordinated and multi-systemic political, financial, legislative and professional service-delivery approach.

Three levels of such a multi-systemic response are:

1. At the level of universal access by Aboriginal people to citizenship rights and responsibilities with access to such opportunities as employment, education, health and housing.

2. At the level of programmes and services, an integrated policy development and budgeting macro-level paradigm change—and the London Borough of Slough framework for a cross-government Juvenile Justice Service is a useful mapping model—see Appendix D.
3. At the level of authentic participation by Aboriginal people in the design and delivery of services aimed to promote transformative change and to ameliorate the impact of post-traumatic stress disorder and secondary trauma; this will require the education of all citizens and professionals working with Indigenous children, families and communities to develop a multi-level systematic approach leading to self-determination and self-management by Indigenous families and communities.

How to move beyond plausible systemic analysis to design and implement a political and policy framework necessary to deliver a whole of government response to this multi-generational and multi-dimensional ongoing threat to the health and well-being of Indigenous children? A key organising principle informing policy and legislative change should be that Magistrates, the WA Police, Child Protection and Juvenile Justice Department managers and practitioners are accountable for what is doable rather than left to manage the sense of failing to deliver what is necessary and desirable but unachievable in the current political context. Two publications highlight some of the processes, outcomes and gaps in child welfare services - and the implications for the care and protection of Indigenous children.


- In a comprehensive summary of the review, Kovacs (2002) writes (p. 3), “The Clearinghouse notes that there have been many reports into aspects of family violence in Indigenous communities, often covering the same ground…..the Clearinghouse suggests that action to address the issues , rather than further reports is needed”

At the macro political and policy level, there are huge challenges for integrated inter-Departmental government and industry initiatives to address the need for regional development and job creation to establish the capacity of Aboriginal communities for independent income-generation. There is scope for funded initiatives, for community development projects, for job creation as a strategy for enhanced self-esteem and a much improved quality of material, spiritual and emotional life; this must be beyond ‘work for the dole’ schemes to develop local small businesses and to enhance the education, training and work skills of Indigenous people.

At the micro-level of service delivery, Menzies (2001: p.142) provides a summary of the recommendations of recent national enquiries into the legal, prison and child welfare services for Aboriginal people and argues for:
• All legal and social work staff to receive regular training on the law and social science practice in relation to children, child development and cognition, interviewing and communicating with children and cross-cultural awareness
• Teacher Education, Social Work, Health Education and other appropriate courses incorporate core units in cross-cultural studies and anti-racist teaching strategies
• Appropriate screening procedures should be implemented to ensure that potential officers who will have contact with Aboriginal people in their duties are not recruited or retained by police and prison departments whilst holding racist views which cannot be eliminated by training or re-training programmes
• All professionals who work with Indigenous children, families and communities receive in-service training about the history and effects of forcible removal.
• All undergraduates and trainees in relevant professions receive as part of their core curriculum education about the history and effects of forcible removal.
8.4 Appendix D. Youth Offending Teams: A Case Study of Systemic Intervention through Inter-Departmental Collaboration: London Borough of Slough

This material provides a recent example of multi-department government change in England – as a vision for further work in Western Australian policy development in complex services for multiply disadvantaged Aboriginal children and young people and their families. Figure 4 shows the separate government departments and their programs forming the multi-disciplinary and multi-agency Youth Offending Teams.

The British policy tradition has its potent mix of humanitarian concern, public fear – for example ensuring clean water and immunisations following outbreaks of cholera and tuberculosis – and fear of litigation. Despite its colonial heritage, Australian social policy development reveals a more reactive ‘reluctant collectivism’ (George and Wilding 1976) than in Britain. Also, the Australian State-led child welfare system contrasts markedly with the highly centralised UK system as shown in Table 12 below:

Table 12: A Comparison of Child Welfare Systems in Australian States and the United Kingdom (Clare 1997)

<table>
<thead>
<tr>
<th>Australian States</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fragmented policies</td>
<td>Integrated policies</td>
</tr>
<tr>
<td>Single issue services</td>
<td>Multiple issue services</td>
</tr>
<tr>
<td>Parallel competitive services</td>
<td>Collaborative partnership services</td>
</tr>
<tr>
<td>Reactive to enquiry and crisis</td>
<td>Proactive research/development</td>
</tr>
<tr>
<td>Diversity and difference in policy</td>
<td>Directed and uniform in policy</td>
</tr>
<tr>
<td>Advisory/consultative central direction</td>
<td>Inspectorial central direction</td>
</tr>
<tr>
<td>Focus on inputs and numbers</td>
<td>Focus on outcomes and impact</td>
</tr>
</tbody>
</table>


This is a very good example of an integrated, multi-disciplinary and multi-agency ('whole of government') approach to address the evidence of disadvantaged life chances of
young people, many of whom were in the care of the government/care leavers. While the overall nature of the findings of the audit may not be surprising, it is very important to have accurate data on which to plan an integrated preventive response. The findings included:

- Slough’s 15-19 year olds are responsible for 35.8 of recorded crime, though they represent only 6% of the local population.
- Slough’s school exclusion rates are relatively high. Between April 1997 and April 1998, 43 young people were excluded from school (occasions of exclusion) - from a population of 10,300 between 10 and 17 years in Slough. The chief reasons for exclusion were disruptive and anti-social behaviour.
- Slough’s most deprived electoral wards have the highest rate of unemployed young people. Young people between the ages of 16 and 24 form 12.3% of the total population of Slough but 24% of the unemployed population.
- Drug and/or alcohol problems among young people is a significant concern.
- There are a number of local projects dealing with homeless young people. Numbers of homeless young people are on the increase.
- Slough young people with mental health difficulties are a significant concern. Local services are fragmented... The paucity of provision is recognised by local agencies.

There are numerous short-term and longer-term risks when children are out of school – including petty crime, experimenting with drugs and alcohol and severely diminished life chances; this project illustrates the complexity of inter-agency partnerships put in place to develop a systematic intervention addressing the numerous offences being committed by young people excluded from school.

The Youth Justice system in the UK has three main components – namely:

- Establishment of multi-departmental Youth Offending Teams – with 157 Youth Offending Teams working across over 400 local authorities in England and Wales.
- Development of Youth Justice Plans by each local authority each year to outline how the local aligns with national targets.
- Reporting to the national Youth Justice Board based in the Home Office which provides a pivotal link between national legislation and local authorities.

The implementation of the national Crime and Disorder Act (1998) requires local authorities in England to act as integrated corporate bodies rather than a cluster of individual departments. The integrated Youth Offending Team (Figure 4) is made up of professional staff from the government departments of Careers, Education, Health, Police, Probation (Community Corrections), Social Services (Child Protection) and Victim Support – a significant challenge to collaborative policy and practice.
The key aims of the government’s Youth Crime Action Plan (2008) are:

- To reduce the number of young people entering the criminal justice system for the first time by preventing youth offending
- To reduce re-offending by young people
- To build public confidence, supporting victims and making children and young people safer
- To ensure that young people in the youth justice system achieve the five Every Child Matters outcomes to give them the best chance to turn their lives around

The corporate budget for the Youth Offending Team (2008/09) in Brighton and Hove comes from Police, Probation, Health, Education, the Youth Justice Board and a sixth source of five other funders. The total annual budget of over one and a half million pounds sterling supports a multi-disciplinary staff group of 70 in the Youth Offending Team; there are, on average, 50 volunteers in each Youth Offending Team. In line with the Slough case study, there are specialist workers (social workers, police, probation officers, drug workers, careers officers, an educational psychologist, nurses and a consultant psychiatrist) as well as management and administrative staff. The Team work in a large open-plan office designed to enhance collaborative working with individual offenders and in programs.

One significant feature of the annual budget in Brighton and Hove is that Community programs takes over 50% of the budget: of the rest, 20% is for Court services and only 74,000 pounds (5%) is allocated for Custody services.

The Youth Offending Teams in England and Wales (West and Heath, 2010) provide a range of services – including:

- Appropriate adults to support youth in contact with police
- Providing evidence-based assessments for rehabilitation and/ or support programs
- Supporting youth on remand
- Securing placements in local authority accommodation
- Providing court reports for criminal proceedings
- Allocation of responsible officers for various parenting orders, reparation orders and action plan orders
- Supervision of young people sentenced to supervision, community rehabilitation, community punishment and rehabilitation orders, detention and training orders and supervision orders
- Post-release supervision
- Work with multi-agency panels designed to provide support for 8-13 years olds at risk of offending.
Figure 4. Unitary Youth Offending Context Map, p.33, Safer Slough Partnership - Community Safety Strategy 1999-2002