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**HOUSE OF  
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND TORRES  
STRAIT ISLANDER AFFAIRS

**Reference: Involvement of Indigenous juveniles and young adults in the criminal  
justice system**

TUESDAY, 30 MARCH 2010

PERTH

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES



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**HOUSE OF REPRESENTATIVES STANDING  
COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS**

**Tuesday, 30 March 2010**

**Members:** Mr Debus (*Chair*), Mr Laming (*Deputy Chair*), Mr Andrews, Ms Campbell, Ms Rea, Mr Kelvin Thomson, Mr Trevor, Mr Turnour and Mrs Vale

**Members in attendance:** Mr Debus and Mrs Vale

**Terms of reference for the inquiry:**

To inquire into and report on:

High levels of involvement of Indigenous juveniles and young adults in the criminal justice system. With a particular focus on prevention and early intervention, the Committee will identify:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;
- The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;
- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

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**Committee met at 8.59 am**

**MARTIN, The Hon. Wayne Stewart, Chief Justice, Department of the Attorney General, Supreme Court of Western Australia**

**REYNOLDS, Judge Denis John, President, Department of the Attorney General, Children's Court of Western Australia**

**CHAIR (Mr Debus)**—I declare open this public hearing of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiring into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. I acknowledge the traditional custodians of this land and pay respect to the elders past, present and future. I note that these meetings are formal proceedings of the parliament, even though they do not look like it. Everything said should be factual and honest. It can be considered a serious matter to attempt to mislead the committee. I invite witnesses to make comments that will assist us in our inquiry into the involvement of Indigenous youth in the criminal justice system, with a focus on prevention and early intervention. The hearings are open to the public, and a transcript of evidence will be placed on the committee's website. Ms Vale, who is the member for Hughes in New South Wales, and I are formally a subcommittee of the standing committee and are therefore able to conduct these hearings, despite our modest numbers.

It is a very great pleasure to have with us Chief Justice Wayne Martin and Judge Denis Reynolds. I cannot recall an occasion when jurists of such eminence have appeared before this committee. We are very grateful, indeed, for your presence here today. We are aware from what you have already written to us and from what we know from the newspapers of your passionate concern for the matters that the inquiry is addressing. I think it is appropriate that we follow an already agreed process and each of you make a prepared statement before we move to questions and discussion.

**Chief Justice Martin**—I am very grateful to the committee for this opportunity to address these important issues. As I have said many times publicly, the issues into which this committee is inquiring include the biggest single issue that confronts the criminal justice system of Western Australia. Members of the committee will be well aware of the general nature of the gross over-representation of Aboriginal juveniles in the criminal justice system around the nation. Tragically, the situation in our state of Western Australia is significantly worse than in any other part of the country. In terms of rates of juvenile detention and remand in custody, we have the highest rates in the nation and the figures are—and these are on the notes that I have hand out—8.11 per 1,000 on an average day. That compares to 6.1 in New South Wales, 2.86 in the Northern Territory and, curiously, seven in the Australian capital territory, which is the next highest behind us.

In Western Australia, Aboriginal juveniles are 43 times more at risk of being detained in custody than non-Aboriginal juveniles. That reflects the disproportion in the adult system as well. I note that your terms of reference include young adults and many of the incarcerated adults will be in the age group of between 18 and 25. The most recent figures I have for Indigenous incarceration in Western Australia show that in December of last year the rate was approximately 4,400 per 100,000. Comparative to the other states, the next highest were New

South Wales and South Australia, with each on about 2,500 and then the Northern Territory with 2,200.

In the adult system, the rate of imprisonment per head of Aboriginal population in Western Australia is double that of the Northern Territory. Figures for Queensland are 1,750 and for Victoria, 1,350. So, on any scale, Western Australia is locking up Aboriginal people at a frightening rate. If one takes women out of those figures and goes to the rate for men only, in December the rate for adult Aboriginal men was 8,000 per 100,000. For those of you who are good at maths, it means that one out of every 12½ adult Aboriginal men in Western Australia will spend tonight in prison. That is an absolutely scary figure. To put it in a temporal perspective, let us go back 20 years to the overall Indigenous rate. As I said, last December it was 4,400; 20 years ago it was 1,300. So it has more than trebled over the last 20 years, and that is over a period in time when we have been talking about it, we have been spending money on it and we have been trying to address the problem, and it has got a lot, lot worse.

To put it in an international perspective, America is by far the most punitive country in the world. It locks up a higher percentage of the population than any other country. Its overall rate is 1,000 per 100,000. So our rate of 4,400 per 100,000 is four times that of the most punitive country in the world. We are locking up adult Aboriginal men at a significantly higher rate than the Americans are locking up African-Americans, who are of course the most overrepresented group in their prison system. So, on any scale, by any comparison, the problem is tragic.

Of course, the reason there are more Aboriginal people in the criminal justice system is that they commit more crime. But, tragically, those crimes are also usually committed against other Aboriginal people. So it is important to recognise that, although Aboriginals are overrepresented in the offender population, they are also significantly overrepresented in the victim population, and that includes juveniles as much as any other age group. It is important to keep in perspective that Aboriginal juveniles are very often victims of offences as well.

The causes of this increased offending are well known; they have been being talked about for years. They include all the issues of Aboriginal disadvantage about which we know, including dispossession from land, cultural alienation, social dysfunction, family dysfunction, poor standards of health, higher than average levels of mental illness, high levels of substance abuse, foetal alcohol spectrum disorder, domestic violence, poor school attendance rates, poor employment participation rates, poor standards of housing and overcrowding, racism and various other factors. Of course, these factors interrelate and combine to produce the problem.

The conclusion I draw from that is that, because the causes are multifaceted and interrelated, so must be the solutions, so an holistic approach across all of government is required. The problems of a fragmented, silo approach have been known and have been being talked about for many years, but nothing much has been done to overcome the issues and break down the silos. In Western Australia, the agencies that need to work together include child protection, Health, Education, Housing, employment, juvenile justice and Police. It is important for all those agencies to get together and work collaboratively. Where we are talking about a juvenile offender, it is also important to realise that the offender has to be addressed in the family environment, in a family context. Unless and until you can resolve the adverse environment in which the juvenile is living, not much is going to change in terms of that juvenile's behaviour. So you need an holistic approach to a family problem.



The other conclusion I would draw is that, because the causes of the problem are not found in the criminal justice system, the solutions are not likely to be found in the criminal justice system either. Once people enter the criminal justice system, there is a very real limit on what we can do to address the problems that have caused them to be there. The solutions must be proactive, multifaceted and targeted at all the causes of which I have spoken—all the aspects of Aboriginal disadvantage and social disadvantage. I think of the old saying that a pound of prevention is worth an ounce of cure. I think strategies like justice reinvestment strategies and proactive programs designed to improve the living and social conditions of Aboriginal people are much more likely to be effective than a punitive response.

We know that punitive responses in this area have not worked. We can say that confidently based on our experience. The figures tell us that. As I have set out in the notes, the high recidivism rates for Aboriginal juveniles tell us that a punitive response is simply not working. For those released between 1 July 1998 and May 2009, the recidivism rate for male Aboriginal juveniles was 80 per cent and, for females, 65 per cent. For male Aboriginal adults, it was 70 per cent and for female Aboriginal adults it was 55 per cent. So, as a measure of protecting the community by discouraging re-offending, custody is not effective.

The next point I would like to make—and I will leave my colleague the President of the Children's Court to develop this a little further—is that the white imposed solutions that we have used in past decades have spectacularly failed to address this problem. I think that a much better way to go is to encourage and facilitate Aboriginal people taking responsibility for and ownership of the solutions that are needed to address these problems. That way, I think we will also encourage them to take some ownership of the problems and to address offending within their communities.

In Western Australia, as in other parts of the country, alcohol is a huge part of the problem. Foetal alcohol spectrum disorder is an increasing problem in our courts. It is one of those conditions that are almost certainly chronically under-diagnosed because of lack of diagnostic facilities in many parts of our state. One of the symptoms of that disorder is an inability to appreciate the consequences of actions. People who suffer that disorder, as they get older, are much more likely to undertake acts of short-term gratification without regard for the consequences. It is a condition that is inherently likely to put them in conflict with the justice system. The problem is that, because it is a brain disorder, there is a limit to what can be done to change the behaviours. So you need protective environments for people who suffer this disorder. Of course, the solution has to lie in reducing the number of kids born with this terrible disorder. As I say, because of problems with diagnosis, it is very hard to get a handle on just what those rates are, but the anecdotal evidence that I have been given from paediatricians in areas like the Kimberley and the Pilbara is that they believe the rate is still very high.

Alcohol restrictions supported by Aboriginal people have been introduced in this state. They have worked at Fitzroy Crossing and Halls Creek. I believe you are going to Fitzroy tomorrow to gather evidence and I am sure you will hear more about this there. Those restrictions become problematic in areas where there are larger white populations. In towns like Broome, Kununurra, Karratha and Port Hedland, it is much harder to impose those solutions, but it is not impossible. I think we ought to think proactively about things we could do to reduce alcohol intake by Aboriginal people in those areas.

Within the justice system there are some issues that require addressing. The recent Auditor-General's report shows that diversion from the court system is decreasing in Western Australia, particularly so amongst Aboriginal juveniles. They are not being diverted from the court system at the rate at which they were, and they are much less likely than non-Aboriginal juveniles to be diverted from the court system. There is also a chronic lack of safe places for juveniles at risk in Western Australia. Programs have recently been introduced in Geraldton and Kalgoorlie which have worked very effectively. Those programs need to be run around the state—not just in the regional areas but also in the metropolitan area. In many cases Aboriginal children are put in custody because there is simply no other safe place for them to be kept. We have seen that many, many times. Because of the vastness of this state, there is also a real issue in relation to the lack of regional programs and opportunities for non-punitive responses to juvenile offending in the remote parts of the state. My colleague the President of the Children's Court is much better equipped to speak about that than I. That is all I wish to say. I will hand over now to Judge Reynolds.

**CHAIR**—If we could just publish what you said, I think we would save a lot of trouble.

**Chief Justice Martin**—Thank you.

**Judge Reynolds**—Thank you to the members of the committee for this opportunity to be here this morning to speak on this very important subject. I have been a judicial officer for 26 years and, for the last six years, President of the Children's Court. Over that time I have had to sentence numerous Aboriginal children, which has given me an insight into the causes of offending and the serious neglects and abuses that these children have suffered, which in turn has made them victims.

I think that when the Children's Court comes to sentence children, in a sense, we are visiting the train wreck; the children are seriously damaged by the time they come before the court to be sentenced. His Honour the chief justice has made reference to statistics which clearly show the magnitude of the problem that needs to be addressed. Those statistics clearly show that the point when this became urgent is long gone. We need some change in the way that government agencies go about their business.

To follow on from His Honour's statistics, the number of damaged Aboriginal children appearing before the Children's Court who are themselves expecting a child or have children is increasing. If these damaged children each have six children and they in turn each have six children, in two generations, each of short duration, the number of damaged Aboriginal children could increase exponentially, from a multiple of one to 36. That is arrived at by multiplying one by six and then six by six, which equals 36—in two relatively short generations. I think that gives people an idea of the potential magnitude of the problem we will confront in the future unless something is done now.

It must not be forgotten that we are talking about children. An unacceptable number of Aboriginal children, less than 10 years of age—that is, the age of criminal responsibility—are at risk and are committing offences. It is often spoken of in the context of the Children's Court that children are between the ages of 10 and less than 18. But it needs to be appreciated that many children aged 10 enter the Children's Court with some years of being at risk and of having committed offences but not having been before the court because they have not reached the age

of criminal responsibility. I think it is clear from the statistics that His Honour the Chief Justice has referred to that, despite great expense, the approach to dealing with offending over the last two decades or so has failed miserably. As I said, we are now beyond the point of urgency to change the way that governments do business and to introduce real and meaningful prevention and diversion programs delivered to young Aboriginal offenders.

As His Honour has said, the high rates of detention for young Aboriginal offenders reflect the seriousness of the types and factual circumstances of the offences committed by them. Many victims of the offending are indeed Aboriginal people, particularly women and young people. As I have said, young Aboriginal offenders are themselves very much victims. For solutions to be effective they must address the multiple causes of the criminal behaviour. His Honour has indicated what those particular underlying criminal causes are, and I will not repeat them. Some of those causes are not just causes; they are a combination of causes and symptoms—for example, substance abuse. Substance abuse can arise out of a multiplicity of causes—for example, grief or the need to escape a seriously dysfunctional home environment—and substance abuse itself then leads to vulnerability to committing offences, such as burglary, robbery and the like, to get money or property in order to buy the substances themselves.

Youth Justice, a division of the Department of Corrective Services in this state, has the statutory responsibility in this area of delivering services to young Aboriginal people. But the reality is, given the multiplicity of the causes behind criminal offending, there is no one government agency by itself which can address all of those causes. Therefore, there needs to be a holistic response by government. There needs to be an overarching coordination of agencies. There also needs to be an inventory kept of programs delivered, who delivers them and what programs are or are not working. There needs to be this holistic approach to address the multiplicity of causes.

The Children's Court does have a legitimate interest in the substance of and also the delivery of programs to young Aboriginal children. I say that because the Young Offenders Act, the legislation that the Children's Court is bound to follow, requires the court, when dealing with children, to give weight to rehabilitation and also to enhance the role of family and community. It is important for the court's credibility and for the community to have confidence in the court that orders of the court have the necessary substance to properly comply with the requirements of the Young Offenders Act to take into account rehabilitation and enhancement of family and community. So it is important that these orders have the necessary substance to prevent reoffending. That is where we are currently at. What do I think needs to change?

As His Honour has mentioned and I have repeated there is a need for a holistic approach. From where I sit I see government agencies working in silos. Although the word 'collaboration' is often used the fact of the matter is that, whilst there is some collaborative effort, the extent of it is nowhere near what it needs to be. If government agencies get together and the problem becomes too difficult then, more often than not, they go back into their bunkers and become very siloed, with the net result that nothing is actually delivered.

Too often I think the police are the only agency out on the streets and, particularly after hours, are unsupported by other government agencies to deal with children at risk and also at, say, one or two o'clock in the morning they are left with having to find support or safe places for children and, regrettably, they are nowhere to be found.

The solutions for Aboriginal children, in my view, rest with Aboriginal people. Programs like the Yiriman Project, or the Albany Project, that has been referred to in the papers that have been provided to you go to empower Aboriginal people and thereby give Aboriginal people ownership of the solution which, I think, in turn helps Aboriginal people to accept some responsibility for the very underlying causative factors behind criminal offending by their young people. Young Aboriginal people live in two worlds—an Aboriginal world and a non-Aboriginal world. In my view, they are entitled to the best of both of those worlds. Aboriginal children offenders are disconnected from their own culture, their own community and their own community leaders. Before they can respect other people and also other people's property they must discover their own identity. Also, I think it is fair to say that it is unreasonable and not good logic to think that if someone does not respect themselves then they will respect somebody else. The only people who can help Aboriginal children discover themselves and their own identity are Aboriginal people who are respected in their own community and who share the same language and cultural ceremony.

As has been mentioned by His Honour the Chief Justice, WA is a vast state. There are many Aboriginal communities. They enjoy diversity and so, with programs, it is not a case of one size fits all. Local communities should be empowered and they should be supported. Government agencies should not seek to control or impose on them programs that they think are appropriate for them. It should be left to local communities to develop, design and deliver programs that they think are best suited for their children. It is the role of government agencies to then provide and deliver those programs to those local communities.

Two key issues arise out of all of this. One is cost and the other is risk assessment. It is often said that the cost of enabling Aboriginal people to provide programs would be too expensive over and above the initial expenditure that is already incurred and, in the current economic environment, just not economically viable. In relation to cost, can I say the current way of doing business is very expensive and statistics show that it has failed. A lot of money has gone down the gurgler, so to speak. While there may well be cost considerations it is, essentially, about changing the way of service delivery, to be more efficient rather than entering into new areas of service delivery. Treasuries, which usually have the final say on whether resources are made available for policy initiatives, may not always fully appreciate the policies themselves and their economic and social benefits. Further, in any event, there may be good reason for government to insist on some good policy initiatives being implemented.

In relation to risk assessment, the fact of the matter is that there are many Aboriginal people who are ready, willing and able to be involved in delivering this service. To date, they have not been listened to and taken notice of. It has already been mentioned that, regrettably, currently there is a real paucity of programs for Aboriginal people, not just in Perth. I say 'not just in Perth' because Western Australia, regrettably, is very Perth centric. It is also the case throughout the whole of Western Australia. Indeed, the court has had a number of cases where agencies are just not present and where there is no supervision, no psychological counselling or sex offender treatment available. Supervision would consist of requesting the young offender to ring someone at an office many kilometres away. So the reality is that, if a community order were imposed, there would be no substance to it. That is not in the best interests of the court, it is not in the best interests of the child and it is not in the best interests of the community. So these problems need to be addressed.

Over the years I think it is fair to say that there has been a decrease in the number of people in government agencies who work at the interface of actual service delivery relative to the total number of people employed. While there are many committed offices in many agencies doing good work, generally agencies lack meaningful numbers of Aboriginal staff. Generally, agencies do not forge relationships with local Aboriginal people and organisations and they lack spiritual connection and empathy for the Aboriginal people who live in the areas where they are sent to work and deliver the services. There is a lack of continuity of personnel. Often it is the case that some person in an agency goes to work somewhere, they are a champion and then very soon they are shifted to some other location and all of their good work is lost.

Government agencies need to connect with the Aboriginal people they are supposed to be providing services to. Government agencies need to be prepared to work more as program managers. They need to (1) outsource to Aboriginal people the job of designing and delivering programs for Aboriginal people; (2) support Aboriginal local communities in capacity building; and (3) get local Aboriginal communities to identify mentors for children and also guardians and safe places for Aboriginal children generally, and particularly when on bail.

There is a need for crisis care accommodation, safe places and hostels. Again, Aboriginal people need to be integrally involved in the setting up and ongoing service delivery of these types of facilities. There is a need for government service agencies to work closely alongside the police after hours to provide support for vulnerable Aboriginal children and safe places for them to be taken to.

Recently in this state there was a report by the Auditor-General into juvenile justice teams. Regrettably, juvenile justice teams had broken down. There was a reduction in the number of children sent to juvenile justice teams by the police. The key reason for that, I think, is that there was too much delay and the programs delivered by juvenile justice teams were not culturally appropriate, and there was good reason for the police to lose confidence in the teams. It is often said that justice delayed is justice denied. And with these sorts of on-the-ground approaches in various agencies, unless they are timely the communities do not perceive that justice is working.

Finally, can I just make some comments in relation to legislative and administrative reforms that I think are also needed. There needs to be greater discretion given to courts to impose fines that are within the means of Aboriginal people to pay. There needs to be greater discretion given to courts to impose drivers licence disqualifications—or maybe not—and, if so, the length of the drivers license disqualification. Too many people in communities for offences which are not related to the driving of a motor vehicle have their motor vehicle drivers licenses disqualified under fines enforcement legislation. You have this situation in Aboriginal communities where Aboriginal people cannot get work, for example driving the local rubbish truck around to collect the rubbish, because they cannot get a license. That sort of problem needs to be addressed.

The fines enforcements system needs to be more flexible and accessible to Aboriginal people. It needs to be made easier for Aboriginal people to obtain drivers licences. The introduction of local drivers licences for remote communities is something that deserves attention. In these remote areas, as you will see when you travel to the north tomorrow, there is a vast distance from one place to another. The roads are often just dirt roads. You will not see a traffic light for hundreds of kilometres. People need to get from one place to another for cultural reasons, or just to move about, and the idea of not having a licence really inhibits all of those things. For

someone to go to prison just because they did not have a licence, and there is no aggravating circumstances, is a problem that needs to be addressed. Legal forms need to be made more simple. There needs to be tailoring of legal requirements and conditions for Aboriginal people to suit local people and local circumstances.

Finally—and this is an area in which the court is intending to do more work—there needs to be a decrease in the transportation of accused persons and an increase in the use of video links. I hope those comments have been of some assistance.

**CHAIR**—Thank you both for that. I had an impression that each of you thought that you should speak for a shorter time, but we did not think that was the case at all as we thought that these were remarkably concise summaries of the issues that we have been hearing about over the course of a number of days during this year. I was reminded, as you were both speaking, that the first thing that it is necessary to do, when one contemplates the problem, is to remember that there is a complexity which comes from the differences between the various Aboriginal communities and that there is a complexity that is rooted in the obviously long-term nature of some of this dysfunction that you have been describing. Yet, there is a number of immediate matters which concern government administration, on the one hand, and the administration of the law, on the other. It may be most useful if each of you could talk about some of those latter concerns. There is no doubt that if the bedrock issues are not dealt with then nothing else will matter. You see, for instance, that the federal government's Closing the Gap program is beginning to address hesitantly the underlying problems. I wonder if in that context you could talk a little bit more about these issues that seem almost inexplicably never to be resolved. I think you said, Chief Justice, that the number of young Aboriginal people being diverted from the justice system is decreasing, not increasing. That is hard at first to believe. You spoke of problems with the fines system and of the lack of driving licences. This is not only a problem in Western Australia. It exists in most remote places. Instead of going to jail for assault of police or offensive behaviour, as they used to, young Aboriginal people are frequently going to jail because they have committed a series of actually trivial driving offences. Could you elaborate on your ideas about how we might change the justice system immediately to ameliorate some of these issues.

**Chief Justice Martin**—I will take up the cudgels first and give Denis a bit of a break. In relation to driving, this is an issue that has been around for along time. There was a report done by a committee of the state parliament, chaired by Ben Wyatt, that produced recommendations. It was a multiparty committee. It had representatives of agencies and produced recommendations in 2007, I think it was, to address the many structural problems that exist. It is very difficult for young Aboriginal people to get drivers licences in remote communities. It is very difficult for them to take the test. As an example, if you do take the test you have to take a written test before you can get your L plates. The test asks you questions about freeway on- and off-ramps and how you drive on a freeway. They have not seen a freeway. They have never even seen a set of traffic lights. So they are being asked questions in a language that might not be their first language about driving conditions that they have never experienced. So they have a structural disadvantage at that point. There is also a requirement for so many supervised hours of driving, to be supervised by an adult who has so many years of an unblemished driving record. In some of these communities there are almost no people who meet that description. When I was in Warburton, a community of about 500 to 600 people, the police told me that there were fewer

than 20 people in Warburton who were able to provide the supervision required to enable young people to get licences. So there are huge structural impediments to actually getting licences.

Because there are no alternative means of transport, they have to drive to get around. They get arrested for driving without a licence and, under the Road Traffic Act, it is mandatory for the court to then disqualify them from holding a licence for a fixed period. For the same reasons they have to drive during that period because there is no other way of getting around. They get caught again and there is another period of disqualification and so on and so on. The cycle builds to the point where they have no realistic prospect of ever getting a licence. They keep on driving and it comes to the point where, on their 13th or 14th conviction for driving whilst under disqualification, the court is left with no alternative other than to send them to prison. That is a reflection of the structural problems that exist in relation to getting drivers licences. There are ways in which we could address that. We could encourage training. What we ought to be doing is spending money on sending driver training teams to these remote areas and increasing the rate of licensing. Instead we are spending money on the criminal justice system. It is silly. It is an example of how we need to spend proactively.

**CHAIR**—You could have a sort of remote area drivers licence.

**Chief Justice Martin**—You could, quite easily. With a lot of these areas of the state you could have a licence that is valid for the Kimberley or for any remote area in the state but not valid for the metropolitan area. These kids are actually very good at handling a motor vehicle. Often they have been driving a very ordinary motor vehicle under very ordinary road conditions for a very long time, so, frankly, they are probably better at handling a motor vehicle than are a lot of kids in the metropolitan area. So it is not as if they are lacking skills.

Moving away from drivers and as the president has pointed out, the problem with all of that is that it impacts on employment because most of the mining companies require a drivers licence as a prerequisite for employment. Until the drivers licence issue is addressed they cannot get jobs. Happily, a lot of the mining companies have actually been very proactive in this area because they want to increase the levels of Aboriginal employment. Companies like Rio and BHP have been doing a very good job in improving drivers licence rates within these remote communities. I think they provide a lead to government. They show an example to government of how government could do better in these areas.

Moving on to your other issue about how we could address more specific problems in the criminal justice area, let me take Roebourne as an example and by doing so I do mean to single out the people of Roebourne for special mistreatment. There are some very fine people in Roebourne who are doing as good a job as they can. In Roebourne one is repeatedly told that Roebourne children elevate the scale and seriousness of their offending so as to be sent to Perth and put in detention. That is because a lot of these kids are not being properly fed because their parents are binge drinking or gambling and are not preoccupied with looking after their children. So they break into houses in order to get food and while they are in them they will do other things to elevate the scale of their offending so that it is so serious that they will be sent down to Perth, because the only detention facilities are in Perth. That is because they do not feel that their homes are safe to go to. They are out on the streets until one or two o'clock in the morning because there is binge drinking going on in their home and they would not feel safe if they were to return there. So what is happening is that kids are finding their way into the criminal justice

system as a result of the failure of other agencies to provide those kids with safe living conditions. What we need to do, and this is getting back to my central theme, is provide safe living conditions.

But there are more fundamental things that could be done. The only agency represented on the streets of Roebourne after 4.30 in the afternoon is the police. There is no other agency that is able to intervene and provide those kids with a safe place to go to. If we had on the ground agencies who could see a dangerous situation unfolding in the evening at Roebourne and if there were a safe place to take the kids to, I think that would then prevent a lot of those kids entering the criminal justice system. Of course once they enter the criminal justice system they become labelled, they become conditioned to the notion that they are an offender and the likelihood of their reoffending increases significantly. So there are things that we could and should be doing to prevent those kids from entering the criminal justice system in the first place. Denis mentioned the Auditor-General's report of two years ago. Its figures are quite interesting, because the Auditor-General calculated that the 250 worst kids in the Western Australian juvenile justice system—that is, the kids who offend most regularly and repeatedly—will cost the state of Western Australia \$100 million as they pass between the ages of 10 and 17.

**CHAIR**—Quite an achievement!

**Mrs VALE**—Your Honour, is this per each child?

**Chief Justice Martin**—It is \$100 million for 250 kids. If you do the maths, it is \$400,000 per child.

**Mrs VALE**—Thank you.

**Chief Justice Martin**—Seventy-five per cent of those 250 children will be Aboriginal children, so we are spending \$400,000 per child between the ages of 10 and 17 for that cohort of 250 and what we know is that the most likely outcome is that they will graduate into the adult criminal justice system. For \$400,000 we could send them to Geelong Grammar, put them up at a Perth hotel during the summer, send them to a Swiss finishing school and still have change. The money we are spending simply is not working. It is not effective, so we have to think much more proactively, much more effectively, about solutions that actually work.

**CHAIR**—We have heard evidence, too, of the beginnings of some programs in some other jurisdictions that involve intensive family counselling and therapy. In a place like Roebourne this would involve teams of people with some expertise from various government agencies working over an extended period with individual families. Again, that is much cheaper than the alternative.

**Chief Justice Martin**—Than custody, indeed. It is cheaper than flying them down to Perth and incarcerating them in the most expensive custodial institutions in the state. I will hand over to Denis in a minute because he knows much more about this, but another option that is tried in some of our remote areas that seems to work well is, if you have a kid at risk in the community, taking the kid out of that community—not so far away as we do, not into detention. A lot of these communities actually own land and own stations, so if you set up a safe place for the children, say an hour or an hour and a half out of Roebourne, take the kids out of the risky



environment and put them on the station with adult supervisors—responsible, inspiring adult Aboriginal people teaching them, getting them back to more traditional ways of living, teaching them some skills that might make them job ready like mustering cattle, building stockyards or those sorts of things—that, to me, is much more beneficial than bringing them down to Perth and putting them in detention.

**Mrs VALE**—For that kind of facility it would not be at a loss, either, to have an educational facility attached to it in some way.

**Chief Justice Martin**—Absolutely. That could do the same. You could get them to school, because school participation rates in a lot of these communities are appallingly low.

**CHAIR**—I have heard that exact proposal made by people in Fitzroy Crossing and people at Roebourne. I think there is something called Mount Welcome Station.

**Chief Justice Martin**—Yes.

**CHAIR**—So it is hard to understand why there has not been more progress on this. I think we will have evidence from Western Australian government representatives soon, but it is hard to understand why there has been so little progress in that particular field.

**Chief Justice Martin**—There is another example called Pleasant Valley, out of Warmun, or Turkey Creek. Again, it is exactly that sort of model. There is a station out there and adult Aboriginal people supervising kids who seem to be in trouble in Warmun. They take them out to the station for a month or more and cool them down. Those are some innovative solutions. They are much better than the more traditional, punitive solutions that we have been adopting.

**Mrs VALE**—And those programs are funded by government agencies?

**Chief Justice Martin**—They have different funding models. A lot of it is funded innovatively through programs, but it is not funded directly by the Department of Corrective Services usually. It is usually outside that. Actually, I think it is more often Commonwealth money than state money, in fact. But I will hand over to the president because he has had some direct experience in intensive family supervision of the kind that you mentioned, Chair.

**Judge Reynolds**—Just to answer to that last question, often it is non-government organisations that would provide that sort of service. They would make an application to government, often the Commonwealth government, for funds in order to provide that service to the remote community rather than the government agencies providing that service directly.

Can I just pick up a point that was made by the chair, a good point about support to family. What became readily apparent to me when I went to the Children's Court was that, with the children who were committing offences that came before the court, you look at their circumstances and you could have picked 10 years earlier that these children were vulnerable and at risk of having to go and appear before the Children's Court in the future.

There was a program called the Intensive Supervision Program, which was delivered by the juvenile justice section of Corrective Services. One of the interesting points that were made to

me by a person who worked in that program was that the program should not have been in juvenile justice or corrective services; the program should actually have been in the child protection department, because all of the issues that were there years before the criminal offending related to welfare issues. Indeed, you could argue that the issues that go to criminal offending start soon after a child is conceived, with foetal alcohol problems, for example. All the issues that have given rise to criminal offending are welfare based.

Clearly family is very important; family is key to it. My view is that you cannot just take a child away from a family and put them into programs without at the same time working with the family. Indeed, I go beyond that. I have said in my submission that you need to be working with community. There are three levels here: the child, the family and the community. There are various agencies that exist to address all those levels, so they need to be working collectively. For example, it is a good idea to have camps that children can go to not far from their communities, rather than sending them down to Perth—they might as well be sent to Mars, quite frankly, given all the differences that exist. When the child returns to family, to community, you need to have done work there to ensure that the child returns to a more functional family and a more functional community so that the work out on the camp, or wherever in the program delivered by Aboriginal people, is not undone by putting them straight back into a dysfunctional environment

I will go back to the earlier point made by the chair on the decreasing numbers in the prevention and diversion programs. There are a number of reasons for that. One is that very few of those programs exist. Under the Young Offenders Act, when police come across a young child offending it is required of them to decide whether or not to caution and, if they do not caution, whether or not to send the child to a juvenile justice team. The police can send children to juvenile justice teams direct. It is not something that can happen only after the police have made a charge, the matter has gone to the court and the court has sent the child to a juvenile justice team. Initially, back around 1994 or thereabouts, the rights of referral to juvenile justice teams were relatively high because it was something new that was introduced to the legislation, so it was done. But, over time, the juvenile justice teams broke down. There were delays in the teams being convened and dealing with young offenders. Also, the programs that were provided by the teams were very lacking and not culturally appropriate in the case of young Aboriginal children. So the police lost confidence in the teams and the reason why there was a reduction in referrals was that there was a lack of confidence, properly based, by the police that if a case were referred to the team anything would happen. With regard to some of these remote communities, you need to bear in mind that if a place like Kalumburu, for example, way up in the Kimberleys, were serviced from Broome, a juvenile justice officer would rarely go there to convene a juvenile Justice team. So, if on one night at one o'clock, the police found a young person and all the circumstances justified that person being sent to the team, the police officer might think, 'Well, it might be two or more months before a team is convened, but the problem is here and now. What is going to happen tomorrow and the day after that and the day after that and the night after that? Something needs to happen and it needs to happen here and now, and it has not been happening.' So it is that lack of timeliness in the response that is the cause of decreased confidence by the police and a decrease in the numbers being referred to juvenile justice teams. That is a matter that has been highlighted by the Auditor-General, and it is a matter that the department is well aware of and that it is working towards. It is certainly something that needs more and more resources.

On the other thing on that, my view is that, if juvenile justice people cannot get to the remote communities—and, logistically, because of the various resources, or lack of resources, available, that is going to be the case—why not capacity build and empower the local community to be an integral part of the team to come up with a solution, to be able to convene within a day, certainly within a week, and to deal with the issue with their child, in their community? Not only will it benefit the child but the community will feel part of the solution. They will then likely take more ownership of the problem, and there will be healing not just for the child but for the community. This change of approach can have a cumulative effect over time and hopefully benefit the community.

**Mrs VALE**—That kind of local community committee could also support children who happen to be victims.

**Judge Reynolds**—Exactly.

**Mrs VALE**—Something we often forget in Indigenous juvenile justice is that there is a high number of victims amongst Indigenous young people. That kind of committee could do both: support the children who are victims and support the children who may be offending. It is a very important capacity.

**Judge Reynolds**—There is another angle for support that these local community justice groups can provide. They can provide support to the police. For example, rather than the police being out on the streets at one or two o'clock, seeing children at risk and having to directly intervene, the police could contact the people they know in these community justice groups because they have good links with the police and say: 'So and so's just down the street and they do not look too well'—or 'There is a problem'—'Can you go down there and have a chat to them and see if you can get them to move on or take them somewhere so we don't have to intervene.'

**Mrs VALE**—Just like the night bus in Dubbo.

**CHAIR**—In other jurisdictions there are justice groups and things like the night patrols and whatever.

**Judge Reynolds**—We do have some of that. In Perth, for example, there is Nyungar patrol. In some communities they have their own patrolling. But that is not something in recent times that the police have encouraged. They have moved back to more direct policing. I think local communities should be empowered to have more of a role in intervening early. You would not do it in every situation. Some situations might require immediate policing, but there are lots of situations that do not. For those lower level situations that really do not call for immediate police action, you could let the community deal with its own problems with its own children.

**Chief Justice Martin**—Another way of encouraging greater community ownership of the processes, problems and solutions is through community involvement in the court process. What I am talking about is what we call community courts—and what they call Koori courts in Victoria, what they call Circle courts in New South Wales and what they call Murri courts in Queensland, and so forth. We have a very limited number of such courts in Western Australia. There is one in Kalgoorlie, another in Norseman, a domestic violence court in Geraldton and a

court of that kind at a place called Yandeyarra near Port Hedland. But they are not nearly as widespread as I would like to see. The great advantage of them is that they involve senior community members taking a formal role in part of the court process. So for Aboriginal people the court process becomes part of their process. For far too long, Aboriginal people have regarded our courts as something that is foreign and alien to them and a place where they go to be punished, where people speak a language they do not understand and apply concepts that are not familiar to them.

If we involve the Aboriginal people in the sentencing process, the sentencing process becomes a much more collegiate, constructive, cooperative, positive and collaborative process than merely the imposition of punishment—punishments that in the case of Aboriginal people are often irrelevant because they impose a fine that they cannot afford to pay or they go to prison yet again. It is a way of encouraging and facilitating the notion that this is an Aboriginal problem that needs to be addressed by Aboriginal people. They need to take ownership and control of the responsibility for addressing those problems.

**Mrs VALE**—It also raises the status of those Indigenous elders within the communities. It makes them feel that they are a community again. These communities have a hierarchy.

**Chief Justice Martin**—Absolutely. The trouble is that these courts are measured in terms of their impact on recidivism rates, which is a very short-term, blinkered and narrow way of assessing their efficacy. In Kalgoorlie we know qualitatively that the process has formed a bridge between the Aboriginal community and the court process. For a long time, the court process was totally foreign. Aboriginal people now have community champions, if you like, who will introduce them to the court system. They will say, ‘This is the person you need to go to court to fix this problem.’ On fine default issues, for example, they have somebody to whom they can talk and who will act as a communicator between them and the court process. It is on all those sorts of levels that these sorts of initiatives are very important. They are expensive and they are time consuming, but so are the things that we are doing at the moment. The things that we are doing at the moment in our prisons are very, very expensive and they are not working.

**Judge Reynolds**—I think, with respect, that both of you have made some really good points. There is the point that you have made, Mr Chair, about disempowerment over a prolonged period of time. And I think the other point that you mentioned is that leaders need to be empowered. Those two things go hand in hand. What we really need to do here is against a history of trying to break down Aboriginal people by taking their leaders away from their communities—and many Aboriginal leaders died. What we really need to do to assist Aboriginal communities is re-empower their leaders. That is very important.

**CHAIR**—Here is an unfair question to finish with. There is a kind of consensus, almost, amongst people of goodwill, which you have both expressed with extraordinary eloquence, about the general direction that it is necessary for policy to follow, both the broadest strategic approach to restoring communities and down to the details of the judicial process. If I may be this impertinent: Western Australia is a rather wealthy jurisdiction. I know that that is frequently denied by some representatives of Western Australia, but nobody in the east, for instance, believes it. There is not a shortage of the kind of money that might be implied by the kinds of solutions you are suggesting, especially if some of it is being siphoned away from the system of corrections. This is the unfair question, and it depends upon the continuing operation of the

separation of powers: what do you reckon we ought to do now? What would you do if you had a bit of a free rein to do so?

**Judge Reynolds**—Well, you have made reference to the separation of powers. As I have said before, I believe—and I think on good grounds—that the court does have a legitimate interest in the programs that it has designed and developed that are in turn going to be the subject of court orders. I think we have a legitimate interest. In this state, what I would do is set up within the Department of the Premier and Cabinet a high-level policy group charged with dealing with these problems in the Aboriginal area. They would have overarching authority over each of the agencies. They would identify ultimate objectives. They would then, with the various agencies, identify what role each of those agencies needed to play to achieve that ultimate objective. They would then, on an ongoing basis, require the agencies to do what each of them needed to do to fulfil that ultimate objective and, on a regular basis, get together and put each of the agencies to account to show that they had done what they had been required to do in order for that ultimate objective to be achieved.

**Chief Justice Martin**—I would add to that by saying that you have to devolve down to a regional level, indeed to a community level. I have mentioned Roebourne before, and I do not mean to single Roebourne out, but you would then say: ‘All right, all the agencies have to get together and develop a strategic plan for Roebourne looking at all the aspects of disadvantage in Roebourne. What are we going to do about Roebourne? Are we going to use Mount Welcome Station? What are the diversionary programs? Are we going to have a juvenile justice team there to which people can be diverted? Are we going to find a safe place for the children? What are we going to do to improve drivers licence levels? What are we going to do to reduce alcohol consumption?’ And so on and so forth. You would involve the community leaders absolutely in that process and you would encourage them to take responsibility for the achievement of the outcomes through that process. They would be central to the process.

It would take a long time because you have to sit down with these folk and allow them the time to come out with the solutions that they think. It does not happen overnight. You cannot fly in and say, ‘All right, we’ve got a two-hour meeting; we’ll sort it all out in two hours and fly away again.’ That is not going to work. You have to be on the ground and you have to allow things to evolve.

**CHAIR**—We have heard plenty of evidence of that sort too. We were told that there are remote settlements in the Northern Territory that declare government-free days.

**Chief Justice Martin**—Yes. Well, you see, again, there is ridiculous money being spent, with three light aircraft all half-full, from different government agencies, arriving in the same community on the same day. It is just throwing money away. It is not want of money that is the problem.

**Mrs VALE**—No, we could afford to send each and every one to King’s or grammar or something, with change, and that is the most frustrating thing.

**CHAIR**—I would prefer they went to a selective high school!

**Mrs VALE**—And with the best possible teachers! I just wish we had had you for a whole week because there are so many questions I would love to ask you. I keep coming back to a speech that was given by Aleksandr Solzhenitsyn to Harvard University back in 1975 about legalism—about how American society was becoming so legalistic that that was then the criterion for how you lived your life, devoid of any morality. If there was a law against it or a law for it, that was what you had to abide by. When it comes to the problems that we have with drivers licences, it seems to me that it is just not appropriate that what is put on mainstream city folk is the same that goes for Indigenous folk where they have no other alternative for transport. To me, that is just Aleksandr Solzhenitsyn coming in loud and clear.

As judicial leaders in our community, you are at the coalface and you have very few resources where you can send young Indigenous people—your diversionary programs. And this is because of, as you have all identified, the lack of cooperative cohesion amongst silo type government departments. We are here as a federal inquiry and we are going to have some of the jurisdictional barriers of trying to come up with some great recommendations to try and suggest to our state colleagues that this is how it can be done, but it does give us some benefits. We can do it. We can have an oversight of all the different states. When you go back home, if there is anything that you think you would like to have told us or if you have 10 No. 1 priorities, please send them on to us, because I really want this committee to go for broke on this. I think we have an opportunity to really change it, not being critical of state departmental agencies but suggesting and seeing on an oversight how they can do it far better with the money that they have. As judicial officers in your particular capacity, do you have any formal mechanisms whereby you can tell the policymakers of your government about the things that you need to do your job better so that it improves the community outcome for Indigenous people?

**Judge Reynolds**—No. There are no formal reporting mechanisms.

**Mrs VALE**—I think that is important for us to understand, because you have given us some very good solutions today. I think it is a shame that you have no mechanism except a one-off Commonwealth inquiry that comes into Perth and that for half a morning we get the benefit of your vast and committed experience.

**CHAIR**—I think there may be the odd informal method.

**Mrs VALE**—Yes, but it is the formal ones that are so open and that you can actually crank up. It gives you some leverage. I think you were talking about the support for the police out at the coalface too. You do not have any support as judges when you get to the sentencing stage. The police do not have any support, from what I can see, when it comes to what they do with young people who they find on the street. The need for safe houses is just so important—and the need to involve the community in the solutions. I think they are some of the finest suggestions we have heard.

**Chief Justice Martin**—At the risk of telling you things you already know, the jurisdictional problems to which you refer are not insurmountable, because of course the Commonwealth has a head of legislative power in relation to Aboriginal people, and money can overcome a lot of barriers. If money is provided on condition that it be used in certain ways, that is another way of overcoming the jurisdictional issues.

**Judge Reynolds**—Can I add to what I just said when I was asked about what I would do. We need to be very careful that we do not make the mistake that we have been making ever since we arrived in this country—that is, to exclude Aboriginal people from the strategic considerations as well as the practical applications of that strategy. I spoke about the need to have this high-level policy group within Premier and Cabinet. I think it is essential that there be Aboriginal people attached to that group—and not just Aboriginal people from a particular area of Western Australia. Aboriginal people consist of a vast variety of peoples. For example, in the south-west of Western Australia there are 14 Nyungar clans. They are not just one group. They are made up of vast number of groups with rich diversity. What is good for some areas is not necessarily good for another. So when I talk about having a high-level policy think tank, I mean that it must include Aboriginal people and reflect the diversity of Aboriginal people.

**CHAIR**—And have the capacity to consult widely.

**Judge Reynolds**—That is right.

**CHAIR**—You must forgive me, but we are slightly over time and I see that there is a roomful of eminent public servants behind us waiting for the next session. It has been a great pleasure for Dana and I and we think that West Australia should feel grateful to have judicial officers of such commitment in positions of such eminence.

[10.08 am]

**COLLARD, Mrs Jenni, Executive Director, Aboriginal Engagement and Coordination Directorate, Department for Child Protection, Western Australia**

**EMMANUEL, Superintendent Michael, Community Engagement Division, Strategy and Performance Directorate, Western Australia Police**

**McCULLOCH, Mr Lex, Assistant Commissioner Youth Justice, Department of Corrective Services, Western Australia**

**MARSHALL, Mr Andrew John, Manager Research and Analysis, Department of the Attorney General, Western Australia**

**SKESTERIS, Mr Robert, Executive Manager, Indigenous and Community Diversity Unit, Community Engagement Division, Strategy and Performance Directorate, Western Australia Police**

**SOMERVILLE, Associate Professor Robert Stanly, AM, Director of Aboriginal Education, Department of Education, Western Australia**

**CHAIR**—Thank you all for coming. If each of you could make a quick statement, that will leave time for a roundtable.

**Mr McCulloch**—Thank you very much for the opportunity to present here today. For us this is a real issue in the Department of Corrective Services. The reality is that 60 per cent of young people on orders are Aboriginal and 75 per cent of young people in detention centres are Aboriginal. Those are not hidden figures; that is the reality.

The point we would like to make is that people end up in our system after they have been involved in a number of other systems—child health, child welfare, family support and education in particular—before they get to the age of 10. We are driven and governed by the Young Offenders Act 1994; I will not go into the principles that underpin that as they are in the submission. Late 2007 and 2008 were significant years in terms of youth justice in Western Australia. In late 2007 the children's commissioner, the first in Western Australia, was appointed. She was very clear that one of her priorities was the youth justice system and particularly how it impacted on young Aboriginal people, so she started to get a focus on it. You would have heard from our last presenters that there was a report by the Aboriginal Legal Service and that was followed by an Auditor-General's report. In reality the Auditor-General's report provided the hard data to back up the Aboriginal Legal Service's report. The Auditor-General's report is on their website and your research officers have probably tracked that down.

**CHAIR**—We have heard of that and that it was quite influential.

**Mr McCulloch**—Yes, it was a watershed report. It said a few things but at its simplest it said: cautions were down, referrals to juvenile justice teams were down and consequently court



appearances were up for young people, bail was down and remands in custody were up—if fewer kids are getting bail, more of them are going to be remanded in custody. But it also said the system was not working consistent with the intent of the Young Offenders Act. That led to a refocusing on young people and young offenders in Western Australia.

I will quickly run through some of the things that we have been putting in place since that report was released in July 2008 and we really started to crank along in about September 2008. The first thing we said was that, because youth justice sits in the Department of Corrective Services, our commissioner would take the lead role in youth justice in Western Australia and we will also take the lead agency role. That had been one of the things that had been lost; no-one was driving it.

We have established an across-agency Youth Justice Steering Committee. That is in the process of finalising an across-agency Youth Justice Strategic Framework. It has taken a little bit longer than we wanted, but we want to be inclusive of agencies and get them to sign on. That will be underpinned by a memorandum of understanding between the agencies to work towards the outcomes and the things that we want to achieve out of the framework.

We have implemented a pilot youth justice initiative. That was triggered by the President of the Children's Court, through his frustration about agencies not working together in relation to some particular young people appearing before his court. So we have a system in place where a group of young people are referred by the president and by the chair of the supervised release board and we have a process for driving cross-agency work around those young people and their families.

We have expanded the juvenile justice teams coordinators. The Auditor-General was pretty critical of them in terms of the responsiveness for hearings or meetings, so we have expanded those right across the state now. I heard the president's comments around the drop-off in referrals by police. We accept that loss of confidence is an issue. I think there might have been another issue there as well about the DNA legislation—that if a young person was not charged they could not take their DNA, so they got charged and taken to court. So there might have been another factor in there.

We have done a corrective services youth justice policy so it will be really clear for our people what we are about in youth justice. We undertook a review of how we had delivered youth justice services in the Department of Corrections and that led to a significant realignment within the department. Previously the youth justice officer sat with the adult community corrections officers. The President of the Children's Court was really critical about that; he thought it led to the correctionalisation of our youth justice officer. So we have been in the process of separating out our own system and now, with our own youth justice centres, we have integrated services there. We had a lot of disparate services sitting around the department that were all separate but were related to youth justice. They are all now in the centres. There are four in the metro and in Kalgoorlie and Geraldton and we are hoping to expand that to the West and East Kimberley and the Pilbara. We have a plan there going forward.

We are in the process of redeveloping Banksia Hill Juvenile Detention Centre. We are really having a look at the model of service that we deliver there. We are looking at how we can build stronger links out into the community, get community agencies to deliver services and programs

to the young people. The links with the Nyungar community that the judge referred to are really important for us. The reality is that the numbers of kids on detention orders have been going down slightly for a number of years, but 60 per cent of those kids in our detention centre who are on detention orders are Nyungar kids, so they are from the south-west of the state. There are bigger numbers on remand that come from all over the state, but they do not tend to end up in detention as much as the Nyungar kids. So we are doing the work out there.

The big thing for us going forward is collocation. We have entered into conversations with a number of colleagues at this table, particularly child protection, education and the drug and alcohol authority. If we want to stop young people falling through the cracks once they are in our system, we would like those agencies in our offices, being involved in the assessment, involved in the planning, and then finding the most appropriate services for the young people and their families in their systems rather than us having to go off and try to find them.

We are on a journey. We are refocusing, realigning and reinvigorating youth justice. They are the terms we use. We are in the early days of it, but we are pretty happy with the way it is going. We cannot do it without strong partnerships with our colleagues here and, more importantly, with the Aboriginal community, and we know that. At the end of the day they are the Aboriginal community's kids and they need to have a say. The way we are structuring it means we will be able to build those strong links with Aboriginal organisations and community groups.

**CHAIR**—You are responding to some of the things the judges were saying.

**Mr McCulloch**—Yes.

**CHAIR**—Mrs Collard, would you like to say something?

**Mrs Collard**—Yes. I am an Aboriginal person from the Northern Territory with the surname Collard, so I have a diverse background with Aboriginal people. My role in the Department for Child Protection is running the Aboriginal Engagement and Coordination Directorate. I have been in the role for two years. There has been a journey in that time because we are the major stakeholder in this issue. We try to get to the children earlier. The department has been through a major reform. I do not know if most people are aware of that. We are in the second year of that reform. Basically, the system was not working for a lot of kids. At the moment the statistics show that 44 per cent of kids in care are Aboriginal. So it is about our system first of all recognising that statistic. We have to get our act together as a system if we are going to provide the best services. We first of all have to recognise our client base. Nearly half of them are Aboriginal. My role is to address Aboriginal issues in the department to make sure that our services for Aboriginal people are the best. We have to recognise from the beginning who our client base is. That was always the barrier, because once we recognise that we can integrate that thinking into the way we develop policy, the way we provide services and the way that we recognise solutions in the department.

The other little bit I need to say is that we also acted on the recommendations of the Gordon inquiry, which was a few years ago. A number of initiatives address some of the stuff that we are talking to today. You need these things to be sustainable, and that is always the issue with some of this stuff. We have a lot of programs that deal with children at risk. But, again, like Lex said, we need a lot of partnership with other agencies, because when one agency is responsible for

solving it that is where we drop the ball with other issues. I think we have really exciting programs, such as Strong Families, and we have been the lead agency for that. That captures some of the children coming into this system. Strong Families means that all the agencies dealing with a family—and usually they are multiple agencies—get the family and the agencies around the table to work out a plan together, based on the desired outcomes. The issues can be some of the juveniles in detention. As with any of those programs, you rely on the other agencies coming on board. Unfortunately, we in government agencies do become a bit siloed in our thinking. We handball it to one particular agency. So that is another key to service delivery.

There are lot of things in this discussion. We need to talk about prevention in the early years and parenting and all of that kind of stuff. The other thing is whether services that we provide now are appropriate. We get down to culturally appropriate, which sometimes gets in the way of good work. We have actually got to use that word with practicality when we are applying it to our service delivery. I will not say anymore because I can go on.

**CHAIR**—Thank you. It might make sense if the police speak on this in whatever order they wish.

**Supt Emmanuel**—I will speak on behalf of WA Police. In addition to our written submission, I have got some comments to make. There has been a tremendous amount of debate concerning the lack of appropriate services aimed at keeping Indigenous young people out of the justice system. Most of the systemic failings that lead to young Aboriginal children ending up in detention centres have been identified and reported on in previous inquiries. It is widely accepted that the concept of joined-up government services is simply not occurring on the ground, especially in the country and in particular in remote areas in Western Australia, at least not effectively. This failing is one of the key reasons why children are being detained in police lockups and held for unacceptable periods whilst waiting to be transported to a detention centre in Perth.

In addition to this, appropriate facilities such as bail hostels are almost nonexistent, the exceptions being Kalgoorlie and Geraldton. Therefore, police have no alternative but to place arrested children into police lockups. There is an urgent need for the provision of bail hostel facilities and safe houses throughout regional WA. In addition, these facilities must be staffed with appropriately qualified professionals to work with the children and to direct them into appropriate remedial programs. The families of these children must also receive specialist treatment because it is the very dysfunction of these families that in most cases is the cause of the child being in the justice system in the first place. There is a growing concern about the number of children under the age of criminal responsibility—that is, under the age of 10—coming to the attention of police. These children, some as young as five, are wandering the streets at night time being exposed to all the obvious risks that present in these circumstances. There is another urgent need for all available government support services to work together in a joined-up capacity to get to these families to provide them the appropriate professional services. We must do that now so that we save these children from the inevitable—that is, a lifetime caught up in the justice system.

On the issue of diversion: police are often criticised for not diverting children away from the justice system. Police officers throughout the state are desperate, particularly in regional areas, for support services. The simple fact is that, if meaningful and effective diversion programs and

options were available to police, there would be little resistance to diversion from our police officers on the ground. Unfortunately, diversion often means sending a child to a juvenile justice team, which as you just heard previously can take weeks of even months to occur. In the meantime these children can re-offend many times over. In any event, juvenile justice teams are often ineffective because they too lack the appropriate professional support services. The children that we are most concerned with, the serious recidivists, in most cases need special intensive and professional interventions. In addition to that, as previously stated, there is a need to work with the families of these children so the real root causes of these lifestyles that lead to drug and substance abuse, crime and other risky behaviours are identified in the first instance and then professionally dealt with.

In closing these opening comments I want emphasise the WA Police call for urgency by providing an example of what happens when the system fails. In the 12 months from June 2008 to June 2009, three young Aboriginal men and one boy died to suicide. The three young men died within three months of each other between March and June 2009. These deaths occurred in one small community—Balgo. Police on the ground in Balgo believe that these deaths were preventable. They believe that there is a serious lack of male role models in the community and limited family structure. However, importantly, there is a belief that with the right approach future deaths can be prevented. But we must act now; we must act urgently.

**Mr Skesteris**—Superintendent Emmanuel has made a very important statement. But certainly building on from what Lex and Jenni have said—and there have been a lot of things said about police—the agency, in responding to the outcomes from the Auditor-General’s report and also the work that has been done with the new way forward, have also looked internally. We have looked at police structures and policy and procedure. That has been examined at length. There is an important component to what has been said. We have recognised that policing juveniles requires a different approach. It requires building on the joined up responsibilities that come with administering the act. A number of internal changes have been made, such as the appointment of Mr Emmanuel at a very senior level to look at policy, practice and coordination within the agency. It is taking place. Mr Emmanuel has only been there for about five weeks now. We are looking towards developing a more responsive approach. In many circumstances—and this has been stated—police are in a very important position to see some of the significant trends and issues and the types of problems that are occurring in the community. A much more informed and joined up approach will enable us to have a far more practical and targeted way of dealing with these issues.

Importantly, the agency recognises the need. We cannot just work in silos; we have to be supportive. The model that we work to has to be joined up. That is the science that everybody knows, but unfortunately it is very difficult to put in place in practice, because you have people changing and the government changing. When that happens, there is a different focus. It is trying to maintain a long-term and systemic approach. Systemic approaches do not occur overnight within agencies.

**CHAIR**—I should say that we know that, although it is easy to say that government agencies should not work in silos, there is an inevitable inertia that drives a tendency for that to occur. You have to have a permanent cultural revolution to stop it, don’t you? In New South Wales, I am aware of one particular pilot program, as it were, which has attempted to find ways in which priorities can be established across a region that has a lot of different Aboriginal groups, each

with many different relationships with government departments. There was an attempt to find a way in which over quite a large region in the western part of New South Wales you could establish priorities that everybody acknowledged and worked towards. That is, I suspect, another part of the strategy for having joined up government service—actually having regional priorities. They should not be so complex that nobody ever reads them or understands them. They should be a way of ordering the way in which services are delivered. Are you thinking of that kind of thing? Under the old ATSIC, it was called the Murdi Paaki region. It is essentially just western New South Wales.

**Supt Emmanuel**—The structures are in place. In many areas, they are led well. But in some areas, of course, it is wanting. In each of the districts throughout Western Australia there are interagency working groups. Those interagency working groups are chartered to work together to realise results on the ground. With good leadership, they will work in due course. And they need resources, too.

**CHAIR**—Are you asking for some?

**Supt Emmanuel**—Absolutely!

**CHAIR**—We have two speakers, one from education and one from the Attorney General's department; what order would you like to do it in?

**Prof. Somerville**—I am happy to go first. Thanks for the opportunity to speak.

**Mrs VALE**—Are you from the Attorney General's department?

**Prof. Somerville**—No, I am from the education system. My people are Martu people from Jigalong in Western Australia, so that is my background, and I am currently the Director of Aboriginal Education for Western Australia and have been from 2002. I am not going to raise issues that we have already raised in the paper. What I would like to do is to paint a context with regard to education and the overlay with juvenile justice. We recognise as a system that the overrepresentation of Aboriginal children in the justice system is directly correlated to their student outcomes. Poor student outcomes equals a very good chance that those children are going to be in the justice system. Western Australia has been leading a national effort to write a new Indigenous education action plan on behalf of the Australian government and the nation to look at the Closing the Gap priorities.

What we have found from looking at the data nationally is quite clear: there is about a two-year lag between the outcomes of Aboriginal children and the outcomes of the rest of the population, particularly when we look at the National Assessment Program—Literacy and Numeracy, NAPLAN. In fact, in Western Australia, if we look at the NAPLAN results for year 5 for Aboriginal children, they overlay with year 3; year 7 overlays with year 5 for the rest of the population; and year 9 overlays with year 7. So we have a significant issue with regard to student outcomes.

To be able to turn that around, we believe that we have to put significant effort into the early childhood area—in other words, into getting Aboriginal children more ready for school. If you looked at the *Weekend Australian* just recently you would have seen that Noel Pearson has said

exactly the same thing. So here in Western Australia there is a particular emphasis on and a particular investment in getting Aboriginal children more ready for year 1. It is about the system getting Aboriginal children for year 1, and about the system being appropriately reactive to that rather than seeing a set of young people who do not fit the system.

We also have a particular emphasis, both in Western Australia and nationally, on ensuring that Aboriginal kids attend school. In Western Australia alone, when we look at—and I will use these figures because they are the best ones to use—the number of Aboriginal children who are attending school regularly, only 35 per cent of Aboriginal students attend school regularly. I will use that as a statistic rather than saying ‘average attendance’ because when we look at average attendance for Aboriginal children it is around 78 per cent and people go, ‘That’s fine.’ But it is not fine, because for a child to be successful at school they have to be at school more than 90 per cent of the time.

I highlight that figure because that has been brought out in a significant survey in Queensland of more than 40,000 Aboriginal children over five years. That showed a direct correlation between attendance and Aboriginal children achieving at exactly the same levels as the rest of the population. So you can see that in Western Australia we have to get our kids to school, and we are now placing a significant effort—nearly \$5 million per annum—into locally initiated attendance programs, to improve literacy and numeracy and also to improve our outcomes to year 12. We are seeing the improvement; it is beginning to happen. But it is beginning to happen far too slowly, and that is why we believe the intervention in early childhood and the intervention around attendance are two areas that are going to be key to seeing the outcome. We are placing very strong emphasis upon attendance of over 90 per cent here in Western Australia for Aboriginal children.

While we cannot take the blame for everything, certainly changing the education outcomes for Aboriginal children to allow them life choices will certainly see a significant difference with regard to those children accessing the juvenile justice system—there is no doubt about that. I will not speak for much longer. Thank you very much for the opportunity.

**Mrs VALE**—But you do also need the support of other government agencies that focus on support for the family.

**Prof. Somerville**—There is absolutely no doubt that, if we look at attendance, it cannot be the school doing it; it must be the school, the parents and the community.

**Mrs VALE**—Absolutely.

**Prof. Somerville**—But the bottom line is that at the moment everybody has stepped backwards. The community blames the school and the parents; the parents blame the school and the community. The reality is that everybody has to take the step forward and take responsibility rather than blame each other—and we do it as government departments. The police blame child protection; we blame the police for not doing their job. It has to be a collaborative effort if we are going to turn this around.

**CHAIR**—Do you feel optimistic?

**Prof. Somerville**—I always feel optimistic. What I do not feel optimistic about, though, is the lack of Aboriginal input that we see, particularly around Closing the Gap and the National Partnerships, which we have seen roll out at an amazing pace. There has been a huge lack of input from Aboriginal people and there is a lack of input across our government by Aboriginal people in the directions this needs to take. Although I am talking on behalf of my department, I am sure my director-general would agree with me that we, Aboriginal people, must lead this change, not non-Aboriginal people.

**Mrs VALE**—One of the suggestions from, I think, both of the judges was that there should be somebody, some very pivotal person, within the Department of the Premier and Cabinet who coordinates and is a linchpin for different government agencies. Do you see that that is an important role?

**Prof. Somerville**—One would say that our department of indigenous affairs would actually play that role. They are provided with that role. Speaking personally, I find it difficult that the director-general of that area is not Aboriginal, so again we see non-Aboriginal leadership making choices about us. I would see that department as certainly having a pivotal role and the advisory structures around that department as being pivotal. There is a director-general's advisory coordinating committee, and a senior officers group that reports to that committee, that a number of Aboriginal people are on as well. So the advisory structures are in place there and I think they are beginning to work. As I said, though, it needs to be led by Aboriginal people.

**Mrs VALE**—And it needs a refocus.

**Prof. Somerville**—Absolutely.

**Mrs VALE**—There is something I want to ask the superintendent now, if I may, because thoughts disappear. Superintendent Emmanuel, you have been given a new role in coordinating the police force, have you?

**Supt Emmanuel**—In respect of juvenile justice matters, yes, and Indigenous and multicultural affairs.

**Mrs VALE**—Has this role ever been created before?

**Supt Emmanuel**—This is a new role.

**Mrs VALE**—Is it a brand-new role?

**Supt Emmanuel**—As we reported in our submission, yes, it is a new role for WA Police. We see it as a very important role, and I am very privileged to be the superintendent in charge of that new division.

**Mrs VALE**—Do you have the ability or the mechanism to actually speak to people at the coalface, especially like the two judges who gave evidence this morning?

**Supt Emmanuel**—Yes, we do, absolutely. It is the key function of the Community Engagement Division. That is what it is all about.

**Mrs VALE**—So that is what the division is called, is it?

**Supt Emmanuel**—It is the Community Engagement Division.

**Mrs VALE**—Taking up Robert's point, do you have any Indigenous people that you speak to on this committee yet or are you still formulating the committee?

**Supt Emmanuel**—I can see Rob would like the opportunity to answer that. But from my perspective, being new in the role, Rob's area of Indigenous and multicultural affairs plays an extremely important role in that, and we do have Indigenous people on board in a team to work with Rob.

**Mrs VALE**—Do you have a time limit to report on your findings or to come up with suggestions?

**Supt Emmanuel**—Our findings in respect of what?

**Mrs VALE**—Your findings in respect of some of the programs that you would perhaps like to recommend that could be put in place.

**Supt Emmanuel**—I am going to let Rob speak to that because he has been in that position for a considerable amount of time.

**Mr Skesteris**—Certainly from a community engagement point of view in terms of our involvement within the community we work through our police districts as well as through our own people and we actually consult quite extensively, particularly in issues that affect the front-line police. I would say that at times we have a lot of contact with people who have particular issues and I think we understand some of the problems that families and individuals are confronted with. Where there are social tensions that develop within the community we look very actively at trying to ameliorate those sorts of problems. There are within the metropolitan area high levels of violence and conflict, and we work very closely with the police to put in strategies and minimise the outcomes of those. Through that we are aware of issues that impact the community and we are able to feed that back into our own decision-making processes.

**Mrs VALE**—Just to clarify, Robert, what was your department?

**Mr Skesteris**—The Indigenous and Community Diversity Unit.

**CHAIR**—Within the police.

**Mr Skesteris**—Correct.

**Mrs VALE**—Are you an Indigenous person yourself?

**Mr Skesteris**—No, I am not.



**CHAIR**—Bearing in mind the historical and structural rivalries between the police and the Attorney General’s Department, I felt that I have left the Attorney General’s Department out of the department long enough! Mr Marshall, would you like to make a quick contribution?

**Mr Marshall**—Thank you, yes. Those structural rivalries are starting to take place here. I will give you a good example of the opposite working in effect. The Attorney General’ department has a relatively limited role. Its core function is the administrative support of the courts or the adjudicatory function. But the department is also strongly committed to diversion where it can, through the courts. It also plays a role in some of the policy and strategic initiatives. I thought I would talk a little bit about the issue of the Aboriginal Justice Council, because otherwise I will be covering ground that some other people will be talking about this afternoon. One of the initiatives that we work on is data across the justice system. We are very lucky in this state, through our colleagues in the police. This is why we say we are quite the opposite. About five years ago, in 2004, we developed a very good lodgement system called Briefcase—the police using an ABS certified identification process for Indigenous offenders. We now have what we believe is probably some of the best data on Indigenous young people in Australia, and I thought I might give you some insights into some of the data we have.

For example, since 2004, which is when our really good data collections began, the number of lodgements—here I am talking about charges lodged in the courts against Aboriginal juveniles—has remained incredibly static. They are about 39 to 41 per cent year on year—that is, of all the people going into courts, about 39 to 40 per cent Aboriginals.

I thought you might be interested in the top three offences of Aboriginal juveniles versus non-Aboriginal juveniles. Again, the Aboriginal juveniles are very consistent; year-on-year the top three offences have been a category of offences that are called by the ABS ‘unlawful entry with intent’. They are essentially offences around breaking and entering properties, and there are a whole range of offences I will not go into. The second most popular offence by Aboriginal juveniles is public order offences, which is disorderly conduct and so on; and the third one is what we call justice offences, which are essentially breaches—breaches of orders, breaches of bail and whatever.

By contrast, I thought I would give you the top three offences of non-Indigenous kids. They tend to move around a bit, but generally over the last five years the most frequently occurring offences they have been charged with are dangerous and negligent acts, fraud, and more recently non-Indigenous kids are heavily involved in traffic related offences. Indigenous kids are not highly represented, despite what a lot of people think, in traffic offences—only around 16 per cent.

What types of sentences do Indigenous kids get and how have they changed over the years? For example, imprisonment—which is an option under our act: kids over the age of 16 can actually be sent to prison—has come down in the last five years from 44 per cent to 30 per cent. Juvenile detention, as I think we have already heard, has come down from 66 to 56 per cent. But for the last three years it has been relatively constant. I am not sure about the number of kids in detention, which is what Lex was talking about, but these are the number of kids sentenced to detention.

As you will see as I work down these figures—we are working down the hierarchy from the most serious sentences to the least serious—you will see a trend in relation to Indigenous kids. Suspended imprisonment is down, from 50 per cent to 37 per cent. Conditional release orders are up from 50 per cent to 61 per cent. Intensive supervision orders are up from 48 to 58 per cent. Referrals to juvenile justice teams are steady at 36 per cent. Fines for Indigenous juveniles increased from 16 to 37 per cent and there are also good behaviour bonds. I think the trend there is that over the last five years we appear to have been using more community based sanctions and less reliance on detention and imprisonment.

**CHAIR**—I think you were saying that the system is responding to the kind of jurisprudential argument that the Chief Justice has been making, even if he does not think so.

**Mr Marshall**—The system is responding. I am sure Judge Reynolds spoke about diversion from the courts in relation to juvenile justice teams and I would like to quickly talk about that. We have a safety valve so that where kids should go to juvenile justice teams but do not and end up in court, the courts can refer them back to juvenile justice teams. Where that happens, it is almost an equal balance: Indigenous kids and non-Indigenous kids get referred at about the same rates. We run a Drug Court in the Children's Court—and I assume Judge Reynolds spoke briefly about that—but, unfortunately, like the adult Drug Court, the representation of Aboriginal juveniles is probably not as high as we would like it to be. Some work is being done in that area.

The other thing we do in terms of diversion is the Kalgoorlie Aboriginal sentencing court, which is very much modelled along similar lines which exist in Victoria and New South Wales called circle sentencing—the Aboriginal courts. We have run a pilot in Kalgoorlie since 2006. Its key feature is having elders or other significant persons on the panel with the magistrate in dealing with the sentencing. That court has seen about 470 people, although the emphasis has been on children generally.

Lastly, some policy issues. I understand that before I arrived there was discussion about driving licences. The Attorney General's Department is spearheading a task force, or a senior officers' group, on regional and remote driving licences, particularly for Aboriginals. We are bringing together all the relevant agencies—the department of transport, the police, regional government and local government—in an effort to look at the issues that come from that area. I will leave it at that.

**CHAIR**—That is very helpful. Thank you. Could I ask the panel to talk briefly about the issues that the Chief Justice raised. In our discussion with him we acknowledged that in looking at the kinds of issues that our committee is looking at, you find yourself talking about broad strategies that will have to be implemented over many years—the development of whole communities, the empowerment of the leadership of those communities and things such as a long-term program to get kids to school and so on. But we are also talking about these more precise, almost tactical, issues that go to the question of how the justice system is actually working.

The Chief Justice said that he believed that there was less diversion of juvenile and young adult Aboriginal offenders away from the prison system than was previously the case. He spoke of a lack of safe places for juveniles at risk—and Superintendent Emmanuel said the same thing. He mentioned that there was a community court, or a Koori court, in Kalgoorlie but wished there

were more and generally wished that there were more programs and diversionary opportunities in the regions. It sounds as if what he is saying is not inconsistent with anything being said by the panel. Could you respond to those matters.

Also, we had evidence from the Director of the New South Wales Bureau of Crime Statistics and Research, Dr Don Weatherburn, that the fastest way to reduce the rate of Aboriginal imprisonment is to reduce the rate of reoffending; that the statistical consequence of stopping people who have been once in jail from going back again is more efficacious than programs to stop people going to jail in the first place. That seems like a paradox but that is the reality. It leads one to wonder about rehabilitative programs within the system of corrections. Could the panel talk about that issue and the other issue about the kinds of services you would all like to see in the regions. Obviously all these things go to questions of Commonwealth funding as well as state funding.

**Supt Emmanuel**—I learned recently that to build a 12-bed hostel would cost \$12 million. I am not a builder so I do not have the solution to that, but it seems ridiculous to me. It is a profound issue, because it would simply not be affordable to try to provide enough beds for all around regional Western Australia. There must be solutions to providing beds that are less expensive than \$1 million apiece. That is an issue that goes to the heart of what I said in my opening comments and what is a burning issue for WA police—that is, we have children walking around the streets and, as I said before, some of them are as young as five. In many cases some of these children are walking the streets at night-time simply because they are waiting for the adults in their households to go to sleep so that they can go home and be safe. That is a profound issue for us, in my view—not as police but as a community of Western Australia, as leaders.

**CHAIR**—As a society, yes.

**Supt Emmanuel**—In my view, we must, in the first instance, provide them with facilities, with safe houses. Whilst we have the children in our midst in these safe houses, we need then to determine what we need to do to mitigate the risks they are presented with and to work with their respective families who have put them at risk in the first instance.

**Mr McCulloch**—I will make a diversion away from the system and the Chief Justice's comments, which I did not hear. I will just reflect on the data that Andrew gave. There has been an increase in community based orders. It is one of the drivers for us for co-location because more kids are on orders. If we can do the cross-agency work and have other agencies sitting with us, I think we can get a better result and—leading on from what Dr Weatherburn was saying—reduce reoffending by services and supports that we have in our system and by tapping into other systems as well.

In terms of the programs, I look after the youth justice areas; I am the Assistant Commissioner Youth Justice. The two big things for us there are our youth justice centres. I will talk very quickly about our regional Youth Justice Services in Kalgoorlie and Geraldton, which have a prevention and diversion focus. They have our statutory workers, and they have a bail hostel and a bail type service attached to them. Since those services have been in those two communities, any young person who has been eligible for bail has not had to go to Perth for remand because bail could not be found. Our workers try to find bail in responsible adults. If they cannot do that then there is somewhere for the young person to go until we can get onto it the next day or in the

next few days to find the most appropriate bail option. We also have an intensive supervision program to do some work intensively with the families.

The other thing being done is building strong links with other agencies and other service providers to try to wrap those around the young people. In our detention centres we run a range of programs in the youth justice service centres. A big bulk of it, to be honest with you, is around education, because so many of the kids come in with a very poor history of education, so we really put the effort in to try to build their education. Probably one of the big shifts we want to make as we go forward at Banksia Hill, our detention centre, is: rather than having a structured day, which is very prison language—you get up, you do this, you do that and it is all very orderly—we want to have what you would call a ‘constructive’ day that is built around the needs of the young people. Deal with their education needs but if there are other needs around anger management, drug and alcohol issues or whatever we work those into the day, particularly around the young people. They are some of the things we are doing.

In the adult world there are a whole range of programs delivered in the prisons, particularly based on cognitive behaviour principles. They deal with sexual abuse, violent offending and drug and alcohol problems. There is one more, which has gone out of my head, but there are four or five key themes that they focus on in the adult system besides training, employment opportunities and education, which are also in there.

**CHAIR**—Do you think things are going to get a bit better? Obviously, a period of reassessment and restructuring has been going on, but do you have the feeling that things are going to get better? It is possible to feel very depressed and despairing indeed about the kinds of statistics that are about. I do not want us to have that feeling, but it is not irrational to have it. I am just wondering whether you feel as if you are getting hold of the issue?

**Mr McCulloch**—To be honest, I think there is a way to go. But I think we are putting a number of structures in place to begin to make things better, particularly at our end of the business, which is when the kids hit the system. I know the police are doing work in their system, and Robert referred to some of that. Robert Somerville referred to some of the other work that is being done. Personally, I think there is reason to be optimistic. I think the trigger is for us all—and Robert referred to this, and so did the president of the children’s court—to look at the extent to which we engage with Aboriginal families and Aboriginal communities in that process. That is the trick and the challenge. Otherwise, we will just design another system that excludes them.

**Mrs Collard**—Just on that, the other to part that is that obviously this discussion is the result of us not having done enough in the beginning. With child protection we are trying to build a system for the way we work with families. We are the last resort as well. We are empowering families to take responsibility. That is ultimately our aim. I do not think there are enough programs out there to empower families. The ultimate problem in our communities is taking responsibility. I had this discussion yesterday. Sometimes when we get the kids it is almost too late. It is the same for most of the systems represented here. But there are kids in the middle, and if we hurry up and get there they might not come into our systems. Dealing with that is only a small part of our responsibility, because our major core business is all at the front end. In some smaller country towns, because of the resources we have, they get caught up in that crisis mode.

Whilst we are trying so hard to identify the kids who are at risk, there are not enough resources. We seem to react.

I think there is a lot of goodwill. There are a lot of people wanting to do a lot of things, but I am always scratching my head about the early years. We are talking about it and we are getting there, but there needs to be a lot more emphasis on it and the parenting stuff. We have introduced a responsible parenting program. Again, we just do not have enough resources to extend right throughout the state. In some areas—for example, in the Kimberley—we have identified families where the little ones have been found walking around Kununurra. In working with those families the aim is to empower them to take responsibility. But we also need to identify other issues. Sometimes, before you can get to the hard end issues, you have to deal with other things, such as whether they have a driver's licence, whether there is a clean house and whether they can cook. The budgeting, the income management, has made a difference to some of our families, but income management is only one tool. There need to be a number of tools working together. If we identify those kinds of programs and build on all the other stuff, we might be able to improve in the future.

**Mrs VALE**—From what we have heard today, there are resources that are put aside or allocated already for the correctional side of inappropriate social behaviour, to the tune of millions of dollars. We have heard that we could send some of these children to King's School and still have change. So it is just a matter of the allocation of resources, I think, Jenni.

There is one question I want to ask you all. You are all here today because of this particular issue. Have you ever met before as a group to discuss the challenges and issues that you have, the lack of resources and how there could be some allocated? You obviously need some politicians or policymakers as part of your committee. If you have not met before on this particular subject, will you continue meeting in the future?

**Mr McCulloch**—My comment would be that the Youth Justice Steering Committee actually includes all these agencies—not these people, but the agencies.

**Mrs VALE**—Great.

**Prof. Somerville**—There is also a senior officers group that all of us, all the agencies, are on and that meets to discuss these issues.

**Mr Skesteris**—Previously, all of us have worked together on the outcomes from the Gordon inquiry over many years, so I think we have collaborated very intensively.

**Prof. Somerville**—Can I say one small thing. As you are aware, this is a really complex issue. The issues that are in the metropolitan area are actually the same as the issues in remote areas; it is just the context that is quite different. We can quite often put a simple solution in place that we think is going to solve the issue. Putting more hostels in place to take Aboriginal kids away again will end up with the cry of 'stolen generation'. However, if it is mums deciding that they want to send their children from Broome to an educational provision in Perth or Sydney, that is a very different scenario because it is mums deciding to send their children down to access a hostel. So it is about choice.

**Mrs VALE**—Perhaps hostels in the local community, Robert?

**Prof. Somerville**—I worry about the whole concept of hostels. Three generations of my family were taken away and placed into hostels and homes and so on because of governments making decisions on that. When the Aboriginal community makes a decision about a child accessing a hostel that is very different from when I or Jenni or anyone at this table make the decision that a child has to be taken away to be placed in a hostel.

**Mrs VALE**—You say taking away. Why is it taking away if, say, there is an educational facility, even if it is a weekly boarding school, right in the community?

**Prof. Somerville**—A boarding school is an option that people decide to access, but if a government department is making the decision—

**Mrs VALE**—Whatever word you use, I am talking about a quality educational facility that might be available and there might be a call for it to be based on a hostel type facility. I come from the electorate of Hughes, which is eastern Liverpool and western Sutherland shire in southern Sydney. We have had an Indigenous hostel in my electorate, not far from where I live, for more than 40 years. It is run by the Aboriginal hostel association, I am told. A lot of the children come to that hostel from remote areas of New South Wales and a lot of those kids are really homesick.

**Prof. Somerville**—That is their parents' choice.

**Mrs VALE**—I do not know who chooses to send them there and I do not know the system.

**CHAIR**—I think what Robert is saying is that that is what is critical.

**Prof. Somerville**—That is a critical issue.

**Mrs VALE**—That is their choice, yes. But it seems to me that even Indigenous folk and Indigenous mothers would like to think that the accommodation could be local, really close, and the children could come home for weekends.

**Prof. Somerville**—Yes, if it is the parents' decision. But in Western Australia we used education as the reason we took children away—we took them away because we wanted to provide them with a better education.

**Mrs VALE**—I do not think we go back there, and I do not think anybody is even suggesting that. However, my grandfather told me when I was a little girl that education is the only salvation for being born a woman.

**Prof. Somerville**—And education is one of the salvations for being born Aboriginal.

**Mrs VALE**—For every one of us. We cannot continue to deny Indigenous children an education. When I was nine, if I thought I could choose not to go to school I would not have gone. Sometimes we have to force children to do things that are good for them ultimately. If it means getting an education, we might have to think about how we force children. I forced my

children to go to school. They had to: the state forced them to go to school, otherwise it was truancy, and that is an offence against the state. But it seems to me that in Australia, if I can take a very objective view, we force mainstream children go to school but we do not necessarily force Indigenous children to go to school.

**Prof. Somerville**—It is interesting that you use the word ‘force’.

**Mrs VALE**—It is force. We force mainstream children to go to school. And, Robert, I probably would not have been there had I not been forced—I would rather have gone fishing any day.

**Prof. Somerville**—We certainly have to have a ‘no tolerance’ process. Every child needs to be at school every day.

**Mrs VALE**—Absolutely. And I think it is about tough love. You are right about involving the mothers and the fathers. We talk about families and we have got to actually understand—perhaps Jenni would know—the kind of family structures we are talking about. Families are a little bit like rainbows. They come in lots of different colours. We have to learn how to reinforce every one of them. Even if it is a single-parent family, they need support and help.

**Mrs Collard**—Can I clarify that we do not just remove children because of education. There are a number of reasons.

**Mrs VALE**—Yes, I know.

**Prof. Somerville**—You do not remove children full stop, but I am talking about—

**Mrs VALE**—The issue of choice is an interesting thing, but I think you are right: we have to involve the family and the community in that kind of decision making otherwise nothing is going to have any dividends in the future. That is what this committee is trying to look at—providing some dividends into the future.

**Prof. Somerville**—When we look at the big picture, it is about moving so many of these families from abject poverty and being able to move them forward. Some of the things that happened in Canada included moving Indigenous families from that abject poverty area into employment and restructuring the tax system so that people could access a job and not get less money than they would get on unemployment. They are the sorts of things I think we need to look at to move away from the poverty cycle that we have got.

**Mrs VALE**—It is looking outside the square, in so many different ways.

**CHAIR**—We have come to the end of our time and we thank you very much. It is obviously very encouraging to see that there are very strong attempts being made in Western Australia to employ more Aboriginal people in the mining industry. We can see that there have been some recent and almost spectacular advances in that respect. You said something interesting, Robert. You said that the problems that you can identify in Aboriginal communities are generically similar in the city and in the bush; the difference is the context. Can you explain that a bit more?

A lot of the things we have been talking about in the last couple of minutes have also been about remoteness. I am very interested in your proposition that the issues are the same.

**Prof. Somerville**—When we negotiated the national directions in Aboriginal education across Australia with director-generals and with community, we went to New South Wales and Victoria and they said, ‘If you talk about remoteness we are not going to talk to you, because West Australia, Northern Territory and Queensland always think it is remoteness.’ We said, ‘We want to talk about what the issues are.’ Their issues were exactly the same—kids not going to school, poor literacy and numeracy and so on. When we talked about where it was, the context was quite different. They had small numbers of young people scattered across urban settings but the issues were exactly the same. That is what I talked about—issues and context.

**Mrs VALE**—Robert, when we talk about choice and choosing, it was interesting to hear some of the evidence from the judges today that some young Indigenous children choose to commit serious offences that will be rewarded with going to detention. That is really quite profound—that they would deliberately commit offences where they felt they would be rewarded by going into detention, because they get three meals a day and some kind of structured, safe environment. I think that is a real challenge for all of us.

**CHAIR**—We are very grateful that so many of you have taken so much time out of busy lives to give us this evidence and indeed to supplement the impressive written submissions that we have received from you. Thank you very much indeed. At least I see that you all agree with us that this happens to be a profoundly important matter for government at all levels. Thank you again.

**Proceedings suspended from 11.09 am to 11.28 am**



**SCOTT, Ms Michelle, Commissioner for Children and Young People**

**CHAIR**—Welcome, Ms Scott. I think you have seen how we do things. I invite you, if you feel so inclined, to make a statement to begin with and then we can discuss it.

**Ms Scott**—I advise the committee that I am the first Commissioner for Children and Young People to be appointed in Western Australia, having taken up my position in December 2007. I am bound to comply with the principles of and to undertake the functions set out in the Commissioner for Children and Young People Act 2006. The functions under that act are very broad indeed. Section 19 sets out a wide range of functions. In particular they include to advocate for children and young people under the age of 18, to monitor laws, policies and programs, and to promote laws, policies and programs that enhance the wellbeing of all children and young people.

There are approximately 500,000 Western Australians under the age of 18 and there are almost 26,000 Aboriginal children under the age of 18. Aboriginal children in Western Australia make up 44 per cent of the total population of Aboriginal people, whereas non-Aboriginal children make up about 25 per cent. It is one of the fastest growing populations in Western Australia and no doubt throughout Australia.

I am an independent person in that I report to the Western Australian parliament; I do not report through a minister. One of my priorities since I took up the position in 2007 has been juvenile justice. Before I talk about what some of the concerns are for me as commissioner, I would like to say that I have travelled extensively throughout the state. I know you are going to Fitzroy Crossing this afternoon. I have been there on at least two occasions, to the Kimberley on numerous occasions and to the wheat belt down south, and everywhere I go agencies, individuals and families are concerned about juvenile justice in their community. They tell me about some of the challenges in their local community but they also tell me about some of the positive things that are going on in their community to address this issue.

The first point I would really like to make to the committee today is the fact that 96 per cent of children and young people have no contact or little contact with the criminal justice system. I want to say that upfront for two reasons. Firstly, there is a very negative image of children and young people portrayed in our media. If we accepted everything we saw in our media, we would think we had a significant epidemic on our hands. That is not the case. In June 2008 the Auditor General conducted an independent inquiry into the Young Offenders Act in Western Australia, and that report was tabled in the Western Australian parliament. He found that 96 per cent of children over the last five years had very little contact, if any contact, with the criminal justice system. He also found that over the five years from 2002 to 2008 there were about 1,000 young people who had regular contact with the criminal justice system. Besides the issue of the media's portrayal of young people, I want to talk about the numbers because I think they show that it is not an insurmountable problem. We are talking about a small number of young people. With the resources of a community such as Western Australia and indeed Australia, we should be able to tackle a problem as small as this in terms of numbers. So I want to start off giving my evidence on a positive note today.

Notwithstanding that, Western Australia has a significantly poor record in relation to the detention of juveniles in Western Australia. The current average daily rate is 158, and that compares to Victoria, which has a much more significant population, with a daily rate of about 63. If you went to the detention centres Banksia Hill and Rangeview here in Western Australia, you would find that between 75 per cent and 80 per cent of the children in detention are Aboriginal. Eighty per cent of them will not receive a custodial sentence when they finally appear before the magistrate. A significant number of those children are there because there is no other accommodation for them that is safe. To detain a child in a detention centre costs about \$500 a day. It is one of the most expensive accommodation options we could be providing. My argument is that many of those children should and could be more appropriately diverted away from detention.

There have been some positive initiatives here in Western Australia, particularly arising from the Auditor General's report. I wrote myself to directors-general of the Department of the Attorney General and the Department of Corrective Services, the Police Commissioner and the Department for Child Protection requesting that they pay attention to the findings of the Auditor General. You heard evidence previously from a number of those agencies which are now working cooperatively to try and address some of the issues that the Auditor General raised.

In particular, we have two programs that are proving to be effective in Western Australia: the Geraldton Youth Justice Service and the Kalgoorlie youth justice service. I am not sure if you heard evidence about that previously, but both of those are having outstanding results even though they have been going only a relatively short period of time. I have visited Geraldton myself. The impressive thing about the Geraldton service is that it was the community coming together themselves to address a community issue. The chair of the youth justice steering committee is the Mayor of the City of Geraldton, and there are representatives from the community as well as from the agencies. Since the Geraldton and Kalgoorlie services have been operational, no young person has been transported from Geraldton or Kalgoorlie—which is a significant issue here in Western Australia—to the detention centres in Perth. That is a significant improvement, in my view, in terms of the benefits for the children.

The other thing that has happened as a result of the Geraldton and Kalgoorlie services is that there has been an increase in police cautioning. According to the Auditor General's report, the numbers of children being cautioned had declined significantly, and Aboriginal children were not being cautioned at the same rate as non-Aboriginal children. As a result of the Geraldton Youth Justice Service and the Kalgoorlie youth justice service, we have seen improvements in terms of the police cautioning children. The police have said to me that they now have confidence in the cautioning system. If a caution does not work then children are being diverted away from court. Responsible adults are being found for young people in the community. If they cannot be found in the community, young people are being placed in a small hostel. In Geraldton there is a three-bed hostel, and children are being accommodated there. It is a holistic, integrated, community based service that has good positive outcomes. These are the sorts of initiatives that we should be investing public funds and our community resources in to make a difference in the lives of children and young people.

I will just finish by talking about Kalgoorlie. Since the Kalgoorlie service became operational, there has been a 50 per cent reduction in court appearances of children. These are two important initiatives that could be replicated in other areas in the state.

Finally, addressing the issue of juvenile offending is a multifaceted approach and it requires a range of interventions. As you can see from the submission that I made together with my fellow commissioners, we are calling for a wide range of interventions and public policy, from supporting parents and families in the very early years of a child's life to increasing cautioning, increasing diversion programs and providing practical recreational facilities for kids in communities. There are a wide range of initiatives that need to take place if we seriously want to address this issue. One of the other things that I would like to say is that I, along with the commissioners, have been calling for COAG to receive reports on the juvenile detention of Aboriginal kids. That is because I think it is very much linked to the Closing the Gap agenda, which COAG has committed to, but we need to be doing things in this area very much if we want to make a difference in the lives of Aboriginal people generally. Thank you.

**CHAIR**—Thank you for that. Perhaps I could begin by asking if you might elaborate your idea that the issues of Aboriginal justice are relevant to COAG and the wider Closing the Gap program. Would you be able to say a little more about your own idea of the relevance of the one to the other?

**Ms Scott**—As I have travelled throughout the state, many of the individuals that I have met with have talked to me about very simple things. In Fitzroy, for example, I am sure you would hear this from the community members themselves, and Kununurra, where I met with community people and the police, is a very good example of where there are children as young as nine on the streets because it is not safe for them to go home.

**CHAIR**—Superintendent Emmanuel has mentioned this issue several times during the morning.

**Ms Scott**—Issues like family violence, alcohol restrictions and parenting services are the sorts of things that make a big difference to a family's functioning, and in the long term that is where our investment should be. In Western Australia one of my key priorities is the early years of a child's life. I know that this is very important to the federal government, and the federal government through COAG is putting a lot of emphasis on the early years of a child's life. In Western Australia we are behind the other states significantly. Just in basic services like child health nurses we are significantly short. We have had three parliamentary committees at the state level which now confirm that we are 105 child health or maternal health nurses short. When you go to regional communities, people talk about the lack of access to that basic information—the lack of access to good parenting programs, the lack of access to housing, the lack of access to education. All of those things are interrelated.

When you go somewhere like Kununurra, Carnarvon, Broome or even Northam, where I was recently, there is concern firstly that it is not safe for kids to go home. The police will tell you firsthand that there is nothing wrong with these kids. They are bored or they need to break in somewhere sometimes just for food. We should be doing a lot more around early intervention, and I think that is what the COAG agenda is all about: improving life expectancy, reducing infant mortality—and detention is a key part of that.

**CHAIR**—If you are considering the possibilities of early intervention you are also thinking about what the precise benefit that one hopes to deliver to children is—something about giving them self-confidence, something about their esteem, something about perhaps connecting them

to their own cultural identity. Are you able to talk about those values or those psychological circumstances a little more?

**Ms Scott**—I think they are very important. Also, though, it is a combination of things. Particularly in the regional and remote communities families talk about the cultural connection. Even in the metropolitan area there are a number of groups now working with the president of the children's court to try and reconnect Aboriginal children with their culture. I think that is very important but also it is very important that children are safe and feel safe, that they have adequate housing and that they attend school.

Recently I was visiting a primary school outside Perth, just an hour away, where 51 per cent of the kids attending are Aboriginal. They are making huge efforts to get kids to school because they see that as critical to their outcomes later in life. I know that you are going to hear evidence from the Aboriginal Legal Service of Western Australia, and they can talk more about this sort of issue. When I attended some of the detention centres soon after I was appointed commissioner I was shocked that some of the children in the detention centres not only cannot read or write but do not know the alphabet. They have never been to school or they have had very little schooling. Most of the significant Aboriginal leaders that I talk to—and families—talk about the importance of education. Education is a fantastic opportunity resource for children and young people. The children and young people who are actively involved in the criminal justice system do not have the opportunity for education. Often they do not have the opportunity for good parenting in their communities. Those things are very important as well.

**CHAIR**—Obviously, you have given us more of this analysis in your paper but could you possibly give us some best-practice, as it were, examples of programs for diversion in juvenile justice centres? Are there some programs that have struck you as being especially beneficial?

**Ms Scott**—I think Geraldton and Kalgoorlie are outstanding examples of that. Recently I appeared before a state parliamentary committee. I was giving evidence on some legislation that had been introduced in the Western Australian parliament. You might be interested in the evidence that Superintendent Budge gave. I think it was on 4 or 6 of February. He was talking about Northbridge, and I think you are almost in Northbridge at the moment. In Perth there has been quite a bit of comment about Northbridge and escalating violence in Northbridge. Superintendent Budge, who has responsibility for Northbridge, talked about the fact that particular categories of crime have actually been going down in Northbridge. I think burglary was one and theft was another. He was asked why that was the case and he said, 'Because the government agencies are working very well with the not-for-profit agencies, such as Mission Australia and the Nyoongar Patrol Service, and we have come up with a range of programs that are starting to address this issue, in addition to more police on the beat and those sorts of things.' He said that the results were positive. So diverting kids away is also about good agency collaboration, working effectively together so that when kids do not feel safe on the street there is somewhere safe for them to go or they can be taken home.

Allied with that in Western Australia our Department of Sport and Recreation has developed two recreational programs, one in Midland, which is in the east, and one in Armadale, which is in the south-east. Both of those programs are already positive, constructive activities for kids to be involved in in their own local community. They have already had an effect in a very short period of time over the last several months in reducing the number of kids who are going into

Northbridge. It is about practical, positive recreational facilities. When I have travelled in regional communities, that is also what they have talked about: positive recreational activities for kids to be involved in. In some communities they are just plain bored. They get involved in things because they are bored and there are not things for them to do. So there are lots of very good, successful stories about diverting kids away. We have got some good programs here. It is more cost effective, as the Auditor-General found, and there are significant savings in terms of diverting kids away than from detaining them in detention at \$500 a night.

**Mrs VALE**—Michelle, we have often heard the term ‘justice reinvestment’. I was wondering, given the context in which you work and the responsibilities that you have, if you would like to explain to us what you understand to be ‘justice reinvestment’ and how you would like to see it implemented.

**Ms Scott**—I have watched with interest Tom Calma and, more recently, Mick Gooda, the Aboriginal and Torres Strait Islander social justice commissioners, talking about this based on the US. I am not an expert on it. I am supportive of it to the extent that it is talking about local communities investing money in local community programs instead of investing it in detention. I suppose that is why Geraldton is a really good example. Instead of building a detention centre or a hostel in Geraldton, which is what a lot of people wanted, they put the money into a range of community services that would make a difference. I think juvenile justice, like a lot of areas, is driven not by good public policy and not by best evidenced research which tells us what makes a difference. The approach here in Western Australia of detaining children in detention is the least effective and most expensive option, so I am very supportive of justice reinvestment in the local community.

As I said, I was in Northam and Merredin recently, and the Northam community were talking to me about the very issue of justice reinvestment in the local community. In a little community outside of Northam, a police officer explained to me that they had had a number of incidents of anti-social behaviour. The community was concerned about it. The community got together and said, ‘What can we do about it?’ And together, through a range of community initiatives that did not cost very much money, they were able to reduce offending in their community. There are many of those sorts of examples. Leederville, which is not very far from here, is a business as well as a residential precinct. The incidence of graffiti was going up and businesses were worried about the YMCA in their area attracting young people and so forth. So the YMCA developed a graffiti program, which went into an urban art program. Young offenders were involved in that program. I am sure that you have read about many examples like those throughout Australia. In one simple area, such as graffiti, these programs are proving to make difference. The incidence of graffiti has gone down in Leederville. The program has been quite a success. That organisation is now seen as a leader in the community for turning those circumstances around. All of the research tells us that building detention centres is the most costly, least efficient and least effective solution in relation to juveniles.

**CHAIR**—It is astonishing to me, but I think we have come to the end of your allotted time. Is that true?

**Mrs VALE**—That is true, Chair.

**CHAIR**—Thank you very much, Ms Scott. That was very concise and clear. I think it is appropriate to be reminded that the great number of kids do not go near the juvenile justice system.

**Mrs VALE**—I think we need that positive reinforcement, too.

**Ms Scott**—It is important when all of us are engaged in trying to address some of these social issues that we do not become complicit with others who think it is a huge issue.

**Mrs VALE**—The point that you made, Michelle, about the necessity for good agency and collaboration is one that keeps being reinforced. We see so many good ideas across the board in so many different states, but they operate only within stovepipes or silos.

**Ms Scott**—Yes, that is right. That is another reason for reporting to COAG that the states need to work effectively to address this issue and to share the best practice and evidence that is around.

**Mrs VALE**—What works well.

**Ms Scott**—Yes, what works.

**CHAIR**—We are very grateful for the submission by your nationwide organisation. It is very helpful.

**Mrs VALE**—We have more states here from Kalgoorlie and Geraldton.

**Ms Scott**—Yes. Thank you.

[11.53 am]

**BARONE, Ms Mara, Counsel, Criminal Unit, Aboriginal Legal Service of Western Australia**

**COLLINS, Mr Peter, Director Legal Services, Aboriginal Legal Service of Western Australia**

**CHAIR**—Welcome. I think you have been hearing about the nature of our procedure. Do you have any comments to make on the capacity in which you appear?

**Mr Collins**—I have been in the position of Director Legal Services at the Aboriginal Legal Service since 2005. I have worked on and off with the Aboriginal Legal Service in Western Australia since 1995. Ms Barone is the in-house criminal counsel, our senior criminal advocate, and is based in our Perth office.

**CHAIR**—I now invite you to make an opening statement.

**Mr Collins**—ALSWA has 18 offices across Western Australia, so we are a regionalised service. We have nine offices staffed by lawyers. We employ 44 lawyers and 19 court officers. Court officers have a right of appearance in courts in Western Australian, so Aboriginal court officers appear on a daily basis in Perth courts and in regional areas. Out of the 44 lawyers, we are very proud to note that we employ 11 Aboriginal lawyers.

I am very conscious of the fact that those with much more expertise and experience than I have made submissions and given evidence to the committee about the systemic change that needs to take place for meaningful change to occur in reducing the number of Aboriginal children and young people in custody. What I seek to do now is to provide a bit of a snapshot, if I may, of some of the specific cases that the Aboriginal Legal Service of Western Australia deals with on a daily basis and that, in our submission, contribute to the number of Aboriginal children and young people in custody.

Before I start, on the weekend I read with interest an article in the *Weekend Australian* about a former Melbourne barrister, Richard Bourke, who works in Louisiana. He appears for people who are facing the death sentence. He was quoted as saying that, if you are poor and black in Louisiana, you face the serious prospect of fatal injustice. It is not quite as bad as that in Western Australia, albeit the case of Mr Ward highlights what can happen to people in custody. However, if you are poor and black in Western Australia, you do face the serious risk, in my submission, of avoidable times in detention because the system here is in crisis. I say that deliberately and after careful consideration.

The committee has heard a lot of statistical information. I want to add to that. I looked at the Department of Corrective Service's website this morning before coming here and it shows the number of people in custody in Western Australia. In January 2007, there were 128 children in detention and of those 94 were Aboriginal. This translates to 73.4 per cent of the total population in custody being Aboriginal and, of those, 70 were unsentenced—that is, 54.7 per cent or over half were in custody because they could not get bail. We jump forward nearly three years and 179 children were in custody as of Friday—there has been an increase in that period of 50

detainees—and 127 of those children are Aboriginal. That translates to 70.9 per cent; 82 were unsentenced—a little over 45 per cent. So not much has changed in three years.

It was noted in the evidence given to you by the Chief Justice and the President of the Children's Court that many Aboriginal children are offenders but that they are also victims. That rings true in our experience at the ALS. Many kids who end up in detention are profoundly damaged. Can I give you an example: in 2006, I acted for a young boy from Northam. He was 15. He had committed a series of serious dishonesty offences. He had club foot which needed surgical intervention when he was a baby; it had never happened and he still suffered from that disability. In addition, he had an intellectual disability and, tellingly, he was incontinent. He had not been toilet trained. He was in juvenile detention serving a sentence and he faced another sentence of detention. It is inconceivable, in my experience, as to what he must have suffered in custody as a young boy who was not toilet trained. These are some of the sorts of experiences that young Aboriginal kids in the system face who end up in detention.

ALS has recently been provided with some statistics in relation to the number of individual juveniles appearing before the courts. Across the state there has been an exponential increase in the number of Aboriginal juveniles appearing in the courts. If you go to the north of the state, for example, Kununurra, in 2004-05 there were 247 children in court; in 2008-09 there were 473—an increase of 91.5 per cent. That is reflected across the board in nearly every regional area of Western Australia.

Some of the major concerns for ALSWA as a consequence of that is the following. First and foremost is the question of policing practices. I want to preface what I have to say on this topic by acknowledging the important role that police play in our community. It is also acknowledged by ALSWA because we see on a day-by-day basis how difficult policing is in regional and remote areas. As part of that it is self-evidently acknowledged that police have an important role in investigating and prosecuting in relation to criminal activity. Having said that, Aboriginal kids between the ages of 10 and 14 are 20 times more likely in this state to be arrested than non-Aboriginal children.

The concern that ALSWA has is in the overpolicing of children in relation to relatively trivial offending. In our submission we refer to a number of cases. I will repeat three of the most important cases that we have referred to in the submission. In 2005 a 15-year-old boy from Onslow was arrested and charged with attempting to steal a \$2.05 ice-cream. By law that offence cannot be punished by imprisonment. You cannot be detained for that offence. He spent 10 days in custody. In 2009 there was a 14-year-old boy—off the top of my head—who was charged with stealing a 70c Freddo Frog in Northam. He was charged, released to bail and did not come to court because of an oversight on the part of his mother. He spent a day in custody. Several years back, a 16-year-old Aboriginal boy from Kalgoorlie threw himself in front of a car trying to kill himself. The car was damaged and he was charged with criminal damage. On Thursday I was advised by our lawyer in Geraldton that she had been to Three Springs Children's Court where a 17-year-old girl was charged with shoplifting \$6.57 worth of drinks. She had been arrested, charged, refused bail by the police and then driven 170 kilometres in police custody to Geraldton to appear in court when she was bailed by the magistrate. The application by the prosecution was to have her banned from the Three Springs town shire, but she lived there. These sorts of overpolicing matters occur frequently. They are not isolated cases. They



contribute in one way, shape or another, regrettably, to the ever-increasing numbers of Aboriginal kids in custody.

Another matter that is of great concern to the Aboriginal Legal Service is in relation to the prosecution of charges of disorderly behaviour. Aboriginal kids are routinely charged by police for using bad language to police. No-one likes bad language—I acknowledge that—but it often leads to charges of obstructing the police when the police attempt to arrest a child, that is, resisting arrest, and then there may be a situation where the child assaults the police officer, so a charge of assaulting police results. Colloquially it is known as ‘the hamburger with the lot’, but starts with the use of bad language.

**CHAIR**—In New South Wales it used to be called ‘the trifecta’.

**Mr Collins**—That is right. In 1991, the Royal Commission into Aboriginal Deaths in Custody handed down its findings. I seek to quickly refer the committee to an extract from those findings in relation to the death of David John Gundy. The commissioner said:

Over and over again during this commission there has been evidence about Aboriginals using the term—

starting with ‘c’—

in relation to police, usually with the result of a charge of offensive behaviour or at all events strong disapproval. I have often been led to wonder how police could continue to remain offended by a term they heard so often and so routinely.

... ..

Charges about language just become part of an oppressive mechanism of control of Aboriginals. Too often the attempt to arrest or charge an Aboriginal for offensive language sets in train a sequence of offences by that person and others—resisting arrest, assaulting police, hindering police and so on, none of which would have occurred if police were not so easily ‘offended’.

It happens every day. I had a case referred to me by a solicitor from our Perth criminal law unit on Friday exactly on point in relation to that.

At the other end of the spectrum, the serious offences, there are also, in our submission, improper exercises of police discretion which have the consequence of people ending up in custody. I can give the committee one example. The chair will know of the Indigenous Justice Taskforce, which was created some time ago by the Chief Justice of Western Australia. The task force was created as a consequence of police investigating child sex abuse matters in the Kimberley of Western Australia. Again, it is acknowledged that police have an obligation to investigate those things and ALSWA has no difficulty with that. However, we are troubled by these sorts of examples. A young man from a community called Oombulgurri was in a relationship with a 14-year-old girl. She committed suicide. The young man, who was 17 at the time, discovered his girlfriend hanging from a tree, which must have been incredibly distressing. He showed great courage to give a statement to investigating police for the purposes of a coronial inquiry but made an ill-fated comment to the effect that he had been in a sexual relationship with the young woman. He was subsequently, several years later, interviewed by police in relation to that comment and charged with having a sexual relationship with a child

under the age of 16—in my submission, a completely inappropriate exercise of prosecutorial power.

The problem with that is that you have the arrest process, you have children being taken into police custody and you have issues surrounding bail. If they are granted bail there are issues surrounding whether they will comply with bail—as in coming to court—or whether they will breach the bail conditions. If they are refused bail, they are then shipped thousands and thousands of kilometres to Perth, where the only juvenile detention centres are. On a finding of guilt, there are risks of imprisonment. More compellingly, on a finding of guilt they go onto a sex offender register, where they are required to report for seven years if they are juveniles, 14 if they are adults. Overwhelmingly, our clients breach their reporting obligations and in many instances they end up in custody.

What I am saying is that in those sorts of situations there are plainly sexual offences which require the intervention of the criminal law; there are others where there are issues surrounding education, health and those sorts of things where surely the emphasis should not be on criminalising young people by virtue of disadvantaged backgrounds, because they end up in custody more often than not. I am conscious of the time.

ALSWA is also concerned about bail conditions. Aboriginal kids are far less likely than non-Aboriginal kids to be granted bail, and in that Auditor-General's report which was referred to by the commissioner for children it was noted that 90 per cent of bail breaches involved Aboriginal children. That too mirrors ALSWA's experience on a daily basis. What we have found is we have young kids who are facing relatively innocuous criminal charges—for example, trespass, disorderly behaviour again or something along those lines—who are given curfew conditions but who may live in terrible family circumstances where it is unsafe for them to be at home, so they are out on the streets. We had an example last year of a young boy who was walking home from the Harry Potter movie, which he watched at the drive-in at Kununurra at about nine o'clock at night, which was in breach of his curfew. He was arrested and detained overnight. There are other examples similar to that referred to in our submission.

Our concern there is that some of these bail conditions are very punitive and are imposed by police. Then there is equally punitive policing of those conditions, unnecessarily so we say, which leads to children being in custody in lockups that are completely ill-equipped to safely house them. We have had experiences in Kununurra, for example, where a 12-year-old spent two separate stints of four and five days in the lockup. I have been there. I know what it is like. It is completely ill-equipped to safely house a child. The alternatives are that the child is effectively kept in a cell 24/7 in solitary confinement, which is totally undesirable, or they are in an environment where, despite all the goodwill and the best endeavours of police, there is a serious risk of mixing with adult offenders. We all know what the possible consequences in those sorts of settings are.

**CHAIR**—You share the concern of police about the absence of crisis care and bail hostel accommodation?

**Mr Collins**—It is a critical issue and I understand the difficulties police face if they are the only agency on the ground at night where young Aboriginal kids are effectively roaming unsupervised. We would like to see, as has been noted by nearly every person who has given

evidence to the committee this morning, far greater collaboration between the various agencies. For example, with crisis care in Kununurra, if a child is not a state ward or not experiencing what is called extreme stress, it cannot be that they cannot take steps to contact the relevant DCP worker to try and bail a child out.

One of the concerns I have as the director of the Aboriginal Legal Service is that there seems to be a complete inability at times on the part of the system to understand the damaging effects upon Aboriginal kids of being in custody. It is overlooked. You cannot help but translate into your own experience. As a 13-year-old boy growing up in suburban Melbourne, the whole concept of me being arrested and taken down to a police station was beyond belief, but this happens all the time to Aboriginal kids and, as I said, the damage must be profound and probably long lasting.

**CHAIR**—It is always worth remembering that a high proportion of 13- and 14-year-old boys commit minor criminal offences. It is just that 95 per cent of them are never even reported.

**Mr Collins**—That is right.

**CHAIR**—I did worse things than the boy you just mentioned.

**Mr Collins**—I do not want to incriminate myself too much, but I was in the same boat. That is what young kids do.

**Ms Barone**—There is a lack of an appreciation that even a very small time in custody, whether it be hours, days or a week, can be and has the potential to be an absolutely ruinous event in a child's life. That is often overlooked when we say a child has spent some time in custody so we will not take any further action. What is not put in place is an indication that that child did not need to be there in the first place.

**CHAIR**—We are interrupting because it seems people such as yourselves are so eloquent in explaining the problem that we will not have enough time to discuss all the things you would like. Can you talk briefly, however, about the effect of imprisonment on young adults, who are also the object of our inquiry, and the habituation in some communities among young men from spending time in prison?

**Ms Barone**—It is not necessarily what the direct impact of imprisonment might be; it is what is not gained by imprisonment. There certainly has to be a recognition that imprisonment or detention has a purpose in the community in terms of punishment or retribution. But short times in custody do not gain anything. It is too short a time to provide anyone with a useful, meaningful program to change long-term, entrenched drug problems, alcohol problems, anger management problems and sexual abuse problems.

A tendency towards small amounts of time in custody, whether it be by way of sentence or by way of remand, achieves nothing, but that time has the potential to ruin everything. During that time you may lose your job. You are likely to lose your house. You may lose your children. You may lose contact with your family members. There is the potential to lose everything and the system has no ability to give anyone a real chance at change. So although imprisonment in a

longer term setting certainly has the ability to provide somebody with some useful tools to change, a short time in custody really does not.

**Mr Collins**—Building on that, the Aboriginal experience in Western Australia is of imprisonment. There are so many Aboriginal men who start off by serving time in juvenile detention centres who progress to adult jails as young men and then effectively spend a life sentence, by instalments, in and out of jail. They start off with young cousins in custody with them and then go on to being uncles who have young nephews coming through, fathers and brothers. The experience of many young Aboriginal men is of being in jail. That is an incredibly unhealthy thing. One of the things that continually strikes me about the experience of young male offenders that we act for is the absence of appropriate parental role models, but particularly men. They do not have the men in their lives to provide discipline, to provide supervision and to provide encouragement. If you do not have your dad there or you do not have an uncle to put an arm around your shoulder when it is needed or to give you a kick up the backside when it is needed it is incredibly difficult, I think. The whole jail experience does not reform. The cliched line is that if you go to jail you learn the craft of crime. The rate of recidivism that occurs in WA is absolute proof of that fact, regrettably.

Mandatory sentencing in this state is something that I would like to address the committee on, very briefly. We now have a raft of mandatory sentencing laws. The most recent one is the mandatory sentencing provisions with respect to assaults on police which cause injury. The charges are starting to come through. I have two files in front of me, both involving young Aboriginal men. One involves a 17-year-old who has never been in trouble before and who is doing a traineeship through the Australian Medical Association. He is a decent young man. He had a bad night, he drank too much and he got angry. He kicked a cell door and the door ricocheted back and struck a police officer and cut his forehead. He faces the prospect, after Easter, of a mandatory sentence of three months detention. Our hands are tied in many respects. We are trying to encourage the prosecution to withdraw the charge, but he turns 18 in a couple of weeks time. Once he turns 18 he faces nine months in.

We have another client who is no angel. He flung himself in front of a car last week, trying to kill himself, and then got up and assaulted the driver, allegedly. The police arrived and he punched the driver. He has been in Royal Perth Hospital with a head injury. He is now facing the prospect of nine months imprisonment as well. These laws will operate incredibly inequitably against Aboriginal youth and will, in turn, increase the numbers of people in custody.

What is the way forward? It is very easy, I think, sitting in our position, to be critical of the system. I do not want to be seen to be unduly critical. At a very fundamental level—and I am no expert—I think there needs to be genuine engagement on the part of all government agencies who have some involvement with Aboriginal people to engage with Aboriginal individuals in the community. Their input has to be encouraged. Their opinions have to be valued and they have to be acted upon appropriately. For so long Aboriginal people in this state have been sidelined and ignored and had things imposed upon them from the top. There has to be capacity building. The ALS would like more funding, if I can advocate on our behalf. In this area we are swamped on a day-to-day basis by the number of cases that we have to deal with, especially in the criminal jurisdiction. Last Thursday two Aboriginal lawyers from our Kununurra office went to Halls Creek and appeared for about 120 clients. That is the sort of workload they face on a regular basis.

What we would like to do is have the capacity, which we do not currently have, to try to develop collaborative arrangements with police, community corrective services and the other agencies in the justice system to develop diversionary programs for young Aboriginal kids, to develop restorative justice programs and to develop mediation programs, in particular ones in the area of offender-victim mediation because so much of the violent offending within Aboriginal communities involves Aboriginal kids committing offences against people they know. That is an awful reality but if there is scope for victim-offender mediation things can improve. We would like to see Aboriginal sentencing courts rolled out across the state. I think it is scandalous that there are only two effectively working at the moment. The capacity to have people engage in these courts in a meaningful way—

**CHAIR**—We have heard several times of the effectiveness of the existing courts.

**Mr Collins**—Yes, and I think, Mr Chair, one of the important things to note is that there have been some studies around sentencing courts looking at rates of recidivism and some of the findings have not been all that positive. I think rates of recidivism is only part of the story. I think one of the principal objectives of these courts is to have people who appear before the courts being able to engage in a meaningful and culturally appropriate way. For so many of our clients the whole court experience, despite all the goodwill in the world, completely misses them. You will appear for a kid who will get sentenced to detention and you have made a submission that has gone for two hours on their behalf and the judge has addressed them for half an hour. But the kid will come down into the cells and say, ‘What happened to me? What was all that about?’ That is where Aboriginal sentencing courts with the involvement of community elders and Aboriginal agencies—so all of that—can enhance the process. Sometimes if a kid gets it that might mean they do not come back. We desperately need an Aboriginal interpreter service in this state. It is a scandalous state of affairs that an Aboriginal person who does not speak English as their first language will go to every court in Western Australia and not have an interpreter available to them. We have to go to the NT to get interpreters to come to this state to interpret so we can take instructions from our clients. It should not happen in 2010—in a state as affluent as Mr Chair has observed Western Australia is—when people from other countries will have, appropriately so, access to an interpreter at the end of a phone call. I think I have said enough.

**CHAIR**—Ms Vale wants to ask several questions, as she should, but we have to be a bit careful about the time, and that is really only because you have all been so eloquent.

**Mrs VALE**—I want Peter to have the opportunity to explain to the committee, so it is on the record, why these young people do not have a role model within their family unit or group. That is something that I actually heard too this morning and I think an explanation would be worth while. There are many people that come from other states and do not understand why young Indigenous people do not have an appropriate role model.

**Mr Collins**—I think there is a multiplicity of reasons. One, and this is not an exhaustive list, is that the effects of removal policies, stolen generation policies, are grossly underestimated in that removal policies stripped families of continuity of caregiving and of parenting skills and those sorts of things. So, very sadly, there are generations of Aboriginal kids who have not experienced appropriate parenting over the years. Their parents do not know how to do it. Another issue obviously relates to problems with substance abuse. If a household is bedevilled

by alcohol or substance abuse, often the parents might be physically there but in real terms they are absent. Another aspect is imprisonment. Many Aboriginal men are in jail. I think at the moment the statistics are that about 40 per cent of the total prison population comprises Aboriginal people. So the men are not performing those roles and so the kids miss out, the males in particular. That probably sounds like a fairly simplistic answer to your question, but those are the sorts of things that leap out at me as some of the reasons why kids are missing out in terms of having appropriate male role models in their lives.

**Mrs VALE**—It is probably a very obvious one to people like you who are at the coalface, but it is not necessarily one that you would immediately think of to start with.

**Mr Collins**—I understand what you are saying.

**Mrs VALE**—Also, do your clients who come to you actually have any opportunity for mental health support or to address any drug issues, including alcohol abuse? Are there any programs available to help them?

**Mr Collins**—Yes, there are.

**Mrs VALE**—Because often the offending is to do with alcohol or drugs, isn't it?

**Mr Collins**—Undoubtedly. The catalyst for a lot of offending is alcohol or drugs or both and mental health issues also loom large. Again, I think the issue of mental health and mental illness as a contributing factor to Aboriginal offending in this state is grossly underestimated. My personal view, for what it is worth, is that so many prisoners whom we act for, who are in jail, have undiagnosed and therefore untreated mental illnesses. To answer your question, yes, there are agencies out there which provide services for alcohol and drug treatment and counselling, and mental health services are also out there. However, the critical shortcoming is in regional and remote WA. For example, there is no sex offender treatment program north of the 26th parallel, which means that there is no sex offender treatment program in the community north of Carnarvon in Western Australia. There is none in the Kimberley and none in the Pilbara. There is no community based petrol-sniffing program in those desert areas of Western Australia—the East Kimberley, the Pilbara and the Ngaanyatjarra Lands on the Western Australian-Northern Territory-South Australian border. There is no petrol-sniffing program on the ground in those areas. So many regional towns in Western Australia have critical alcohol abuse problems because people will go from, say, desert communities, which are predominantly dry—for example, Warburton, on the NT-WA border—700 kilometres into Laverton, to drink. There are huge problems around antisocial behaviour, largely alcohol related, in Laverton, yet there is no alcohol program. There is no sobering-up shelter, there is no night patrol.

I acted for a kid from that place two weeks ago, who committed a nasty armed robbery, and he was going to jail. He was 18. I asked him, 'What do you do in Laverton?' He said, 'There's nothing to do.' He said, 'We just wander the streets every single day.' So it is any wonder, if that is the daily reality for a kid like him, that the lure of alcohol is almost irresistible and when, under the influence of alcohol, he commits serious offences and he is in jail.

**Ms Barone**—Can I come in on that point. I think the President of the Children's Court spoke about centralisation. That is a critical issue in this state because it is so large and a lot of the

population is obviously based in the metro area of Perth. Centralisation is a problem for two reasons. In the court system, most of the time you have a local magistrate who is on circuit and who will only be in a small town for either a day or perhaps only half a day or once a month or once every couple of months. That means that that community is not seeing justice done in their community often enough on a personal enough basis. Certainly, at the superior level of courts, such as the District Court or Supreme Court and even the Children's Court, there is a tendency to try to speed things up by centralising to Perth and using videolink facilities. That is certainly a good option for things such as bail where the critical thing is time and, if possible, to get the person out and into the community. But it is not justice if justice is done by telephone link or videolink. A superior court needs to sit in the community not only to deal with the offender in their community but to have the opportunity to hear evidence from that offender's wider community, their family, to know what services are available in that community but, more importantly, to know what is not available, to be able to feed back into the agencies which may have the ability to impact. Removing justice from the community in terms of it sitting there removes justice from the community and that needs to change.

Another really critical issue in relation to centralisation is the centralisation of services. Obviously, that has a practical advantage in that you only have so much money to go around. But there is no point having all of your services focused out of Broome and needing to visit the small communities that surround it—for example, visiting psychologists, drug agencies, community justice services, juvenile justice services. Visiting once a day or once a month and needing to see 40 children during that small period you have in the community really provides nothing of any significance to that child. You are not going to change a child's life by having a very small conversation once a month. It is not supervision.

**CHAIR**—There are obviously some unavoidable consequences of remoteness. So what are you saying should occur?

**Ms Barone**—Centralisation is obviously important. I would say it is far too centralised. Certainly, better resources need to be put in place.

**CHAIR**—Are you saying there should be more community workers of one sort or another visiting once a week instead of once a month?

**Ms Barone**—Absolutely. And that comes down to having resources. It comes down to having attractive employment conditions such as housing, and schooling for the children of the people you want to employ; having the office and the building there to have that person available; or finding a community member who can fill the administrative support roles—all those things are essential, and they only come with an investment of money into the regions. We have a policy of royalties for regions—

**CHAIR**—Presumably the distances are so great in the Pilbara or the Kimberley that Western Australia has to have its own tailor-made, bespoke system.

I am sorry, because we could obviously keep talking to you for a long time, but we have run over time and there are others waiting. It is a pity that we cannot talk longer, but we have your written submissions and we are grateful for your time and indeed for the passion and good sense that you have shown as you have given us your evidence.

**Mrs VALE**—Thank you, Mara and Peter, very much. I think we have certainly got the strong message that we have a crisis situation in juvenile justice here.

**Mr Collins**—Thank you very much for the opportunity to give evidence.

**CHAIR**—Thank you.



[12.32 pm]

**CROFT, Mr Ismahl, Congress Member, Representative from the West Kimberley Region, State Aboriginal Justice Congress**

**HART, Mr John, Congress Co-Chair, Representative from the Mulga Mallee Region, State Aboriginal Justice Congress**

**RADCLIFFE, Mrs Leza, Yamatji Representative, State Aboriginal Justice Congress**

**CHAIR**—Welcome. I think you are particularly going to talk to us about the Aboriginal Justice Agreement. I apologise—I am not sure what specific position each of you holds or if that matters. Are you volunteers?

**Mr Hart**—Yes.

**CHAIR**—It sounds to me, John, as if you are going to start off.

**Mr Hart**—Yes. My full-time employment is as a police officer. I will have 34 years of experience up next week. I am the sergeant in charge of Kalgoorlie-Esperance prosecuting and I prosecute the Magistrates Court, Children's Court and Kalgoorlie-Boulder Community Court in Kalgoorlie. My circuit courts include Magistrates Courts and Children's Courts in Esperance, Norseman, Coolgardie, Leonora, Laverton, Warburton and Warakurna.

With the Aboriginal Justice Agreement, I am the co-chair of the Kalgoorlie-Boulder local justice forum; co-chair of the regional justice forum, which includes the area from Wiluna in the north to Esperance in the south and east to Laverton; and I am now the co-chair of the State Aboriginal Justice Congress, which is meeting today and tomorrow.

I will tell you a bit about the state congress. The State Aboriginal Justice Congress is the peak state-wide forum for the AJA. It comprises two Aboriginal representatives, one male and one female from each of the 10 regional justice forums. The Western Australia Aboriginal Justice Agreement is a partnership between government and Aboriginal communities with the support of key government and non-government agencies. The AJA engages Aboriginal people at local, regional and state levels in developing strategies to improve justice outcomes for Aboriginal people. The AJA takes a bottom-up approach with local justice forums currently in around 30 selected locations across WA. Representatives from each of the local justice forums come together at a regional justice forum, and currently there are six regional justice forums throughout Western Australia. The Department of the Attorney General provides support to the AJA through secretariat support of the state congress and coordination of local and regional forums.

The state justice plan does not represent WA government policy. It represents the views of Aboriginal people as gathered through the network of local, regional and state justice forums established through the Aboriginal Justice Agreement. It has a high-level focus on issues that require state-wide policy or legislative changes. The state congress is supported by the Department of the Attorney General and will negotiate specific agreements with relevant state and Commonwealth government agencies to implement the action plans of the State Justice

Plan. These agreements will say what action will be taken to address these priorities. The key priorities of the State Justice Plan are to reform the criminal justice system, achieve fair treatment for Aboriginal people by improving community knowledge of the legal system, provide more effective policing at the community level, provide court and justice services which are more culturally secure, increase access to diversion and rehabilitation programs and keep offenders close to country. It is to tackle alcohol, drugs and mental health by ensuring quality access to the right services for all and building community capacity to deal with alcohol, drug and mental health issues. It is also to strengthen families and communities by strengthening cultural identity and assisting with healing, provide Aboriginal parenting support and reduce family and community violence, which in the long term provides safe and sustainable communities, a reduction in the number of victims of crime, a reduction in the overrepresentation of Aboriginal people in the justice system and a reduction in juvenile contact with the justice system by Aboriginal youth. The State Justice Plan has been published and was presented to the Attorney General in WA on 29 August last year. I will hand over to Ismahl to give the second part of the presentation.

**Mr Croft**—I would like to touch on what John has said, and I want to go through our plans. Page four of our justice plan is an overview of our priorities and key strategies. John touched on a few of the strategies earlier. In the centre are youth and families, which is the main target we want to look at. I will go through the strategies. One of them is to provide young people with information about their legal rights and responsibilities to schools and other situations—for example, correctional facilities.

Another strategy is to increase the visibility of police in communities and increase the engagement between police and communities through processes such as visits by police to local schools, location-specific cultural awareness training provided to police by Aboriginal elders, and police involvement in local and regional justice forums. Another is to expand Aboriginal community court processes to more locations throughout the state, including smaller communities, with magistrate circuits and children's courts. These community court programs must provide supporting programs and services similar to the Geraldton family and domestic violence court, the Barndi Malgu court.

Other strategies are: increase availability of programs which divert people away from the criminal justice system and address their underlying causes of offending, especially for young people, including providing alternative youth programs that involve elders teaching culture and cultural identity; conduct a survey of young people to find out why they are offending and reoffending and what would help break the cycle; introduce alcohol treatment diversionary programs and improve access to alcohol, drug and mental health services in courts, prisons and community based corrections; examine eligibility criteria for existing diversionary programs to increase access by Aboriginal people; keep offenders close to country to maintain community links and assist in rehabilitation, including reducing the number of young people being held on remand, and avoid transportation away from country; make greater use of audiovisual technologies; provide alternative bail hostels and emergency accommodation in regions, for example the DCS regional youth service currently in Kalgoorlie and Geraldton; and keep prisoners in local prisons and work camps, provide local health assessments for prisoners to avoid transportation away from country and ensure that prisoners released from prison are not stranded and that they have a way to return home.

There is also a strategy to develop and deliver programs led by Aboriginal people to help heal the damage from colonisation, loss of country and past child removal practices. These should involve all generations—grandparents, parents, teenagers and children—and include the following themes: family history, building personal identity, locally based Aboriginal cultural awareness, and strengthening roles and responsibilities in the family, particularly for males. Activities would include back to country cultural trips, walks, camps for fun and recreation and yarning sessions around a campfire or barbecue. Another strategy is to provide Aboriginal support. Past policies of child removal mean that many Aboriginal people need support from their peers to bring up children who respect themselves and their elders and are less likely to become offenders.

I would just like to touch base overall on my experience working in my area. Basically when we come to state congress we come with all these voices. The main voice that I always hear is from my old people on the ground. It goes back to the question you asked about how the men lost their way and are being disempowered. The old people feel they are losing their authority. At Fitzroy Crossing we have still got old people who walked out of the desert 60 years ago and who remember their first contact with European people. That determines a lot in that community itself in relation to the way of living and trying to adapt and keep a balance between the mainstream and your cultural identity. The old people are concerned about that.

You will hear from Wes Morris. He will be here after lunch. He will touch on the need for a greater number of diversionary programs for Aboriginal people. We have highlighted that with the Attorney General, Christian Porter, and even in Canberra, talking about the balance in terms of investment towards the justice system and diversionary programs. The government needs to look into where they invest. I do not know the exact number off the top of my head, but as far as I know, if you take a child out in country with elders, away from negative substances, for a week it will cost \$5 a day. While they are in a rehabilitation centre or in prison, it might cost \$500 a day. The balance needs to close. We as Aboriginal people know our problems and we know the solutions. I see that we are going backwards. We have the highest incarceration rate in Australia. I will stop there, considering the time limit that we have. I will pass on to Leza.

**Mrs Radcliffe**—I represent the Yamatji region on state congress. I am also employed by Geraldton Streetwork Aboriginal Corporation as the operations manager. We are a youth organisation. It is quite ironic that I am here today to be able to present and volunteer my time. As far as the Barndi Malgu court is concerned, which was specifically targeted in the report, it is a very successful program. I have been a community court representative and found it to be one of the most effective judicial processes I have ever worked within. I have previously worked for the Department of Corrective Services, many years ago as a court officer, so I was on the other side. From a community perspective, it has an impact across all areas of the family unit. It is not just the offender who is supported through the process. We are working with the court at a local level to expand the services provided by the Barndi Malgu court. I have had a very brief discussion with Magistrate Steve Sharratt with regard to including community violence, which is a major issue that is impacting across the board in the Yamatji region.

There are quite a few youth services within the Yamatji region. They are seriously underfunded. You have probably heard that in submissions across the board. I can tell you, from a person who manages one of the organisations, that it is seriously inadequately funded. We service in excess of 500 youth in any one-month period through the doors of our youth

organisation. We have three youth workers to deal with over 500 kids. Some of those kids do not have major issues but a lot of them do. We work quite effectively with other agencies, but, not having enough people on the ground to engage with the youth, our focus area is with young offenders. We work quite effectively with the Geraldton Youth Justice Service. We provide the support and the conduit into the Aboriginal community for cultural camps and things like that, which again is very, very effective. Cultural identity is a major issue in the Yamatji region for our youth. Knowing who they are and where they come from has a major impact on where they are going to go in the future. If they do not know who they are they will find it very hard to get where they want to go. Thank you for the time.

**CHAIR**—I am sure that Wes will talk to us later about the absence of a community court or, indeed, any significant diversionary programs over the huge northern part of Western Australia. I am quite interested in your opinions about the existing courts in Kalgoorlie and Geraldton and the relationship they have to the wider community justice system.

**Mr Hart**—With Magistrate Sharratt I started off the court in Geraldton. The whole idea originally was for it to be an all Aboriginal court, with staff and JPs sitting on the court rather than a magistrate. When I got over to Kalgoorlie I found they already had a community court set up. It is really just another version of the domestic violence court in Geraldton except it is for all sorts of offences not just domestic violence. In Kalgoorlie we do not have the support that they have got in Geraldton from the other agencies. It was easy to run the court in Geraldton because you had the other agencies. Everybody did their bit for the perpetrator and the partner gets the counselling they need. Unfortunately, in Kalgoorlie we do not have that sort of support from the other agencies—there are not enough staff.

All they have to do in the community court is plead guilty to their offence and then we will sit around a table—and it is set up as an Aboriginal court with paintings on the table and on the walls. The magistrate sits with two elders, the prosecutor, the CJS or youth justice services' solicitor, the offender and a parent or guardian. You go through the offence and before a penalty is issued we talk to them, especially the young ones. Some of them take longer. This not like the normal system where you are in and out in two minutes. If they have a problem, we sit down and try to sort out their problems before they leave the courtroom.

**Mrs VALE**—You actually engage with the young people?

**Mr Hart**—Yes, everyone around the table in the courtroom. We considered one to hint at suicide. He never got out of the courtroom until we were satisfied that he was not going to do it, and that took over one hour and a half. When he left he felt a lot better. We do not only kick them down; we also lift them up. We give them whatever counselling they need and we push them towards sports and education—and that is most of the time my job; the others have things they talk about.

**CHAIR**—This state justice plan is pretty impressive. It is a pretty good analysis. We have been going around the country talking to all sorts of people—academics, lawyers, community groups and all the agencies of government. If you distilled what everyone has said, it would end up looking pretty much like that. It would be a bit different here and there. It is quite unfair to ask you such a big question with about three minutes to go, but what is missing now? I think the main thing you are saying is that there are just not enough resources. You know what you want

to do, but there is just not enough money being spent on it. I do not want to put words in your mouth. Assuming this is a good enough way of approaching the issue, what do you need now?

**Mrs Radcliffe**—Sorry to jump in, John, but adequate resourcing of the whole process. It is not just about the glossy documents and getting the agencies to the table; it is about having staffing within that structure to be able to provide support to the community people are trying to engage with—having enough staff in the Kimberley, the Pilbara, the Yamatji region, the Wongi region, the metro area and south in the wheat belt. We must have enough people to be able to engage with everybody.

This is one of the better true representations of the Aboriginal voice with regard to justice issues. I have been involved in it for quite awhile but I am only a new member of congress. We access a lot of people at a regional level and a local level because the issues are current and relevant to people. In our different areas we have come up with our strategies for our region and they have been combined in that one document. That is a good representation of what we hope to achieve at a state level.

**Mr Hart**—Every region is different. You are going to have different problems because the state is so big. We sat down and workshopped each priority and worked out the common problems in each one—and that is basically what ended up in there—and how we go about fixing those problems with the help of the other agencies.

**CHAIR**—The difference between you and many of the other people who have been giving evidence is that you are all Aboriginal people and you are saying clearly what you think we need. I suppose I am right to assume that you feel as though there is a better level of cooperation through this agreement than we have seen before. I apologise for this, but we keep running out of time. What else do you reckon government ought to be doing? You are saying that we need more resources. I think you are saying that in those places where all the government agencies work together you can see that the results are much better. Is there anything else you particularly want?

**Mr Hart**—Personally at this stage I think there is the fact that we are all Aboriginal here—that document was put together by all Aboriginal people. I think that, for the time being, we need to give that time to work. If we come across problems, then at the next state congress meeting we bring it out and we sort it out. But that is the start. That is where we want to start from. Yes, everyone needs resources. But we can get around most of ours simply by changing the way we operate in our areas for things like school visits. We used to have 10 or 12 Aboriginal police officers in Kalgoorlie. Now we are going to four, including me. I cannot get out of court every day to visit schools. When I am there or when I go on circuit I do, because I consider that part of my job. But you can get around it by utilising other resources in the towns rather than just relying on the main areas where you operate from. Everyone wants more resources, but with our plan we just need to let it roll. We meet three times a year. What comes up at a local and regional levels I take to state congress, as we all do, then we talk about anything that came up since the last meeting. I might come up with an idea that is also suitable for Fitzroy or somebody might tell me an idea that might be suitable for Fitzroy. That is where it comes out. It may be that we can get around utilising that particular agency that has been trying to help by providing other advice or using a different agency who does similar work, who could probably do it better.

**CHAIR**—I notice in reading your document that there is a big emphasis on keeping people in detention or in diversion programs near country—I think that was the expression used. That is not possible over a big part of Western Australia at the moment.

**Mr Hart**—No. I would like to see youth bail hostels in the main regional centres.

**CHAIR**—You are the fourth witness in a row that has said that. I think we had better put that in the report.

**Mr Hart**—What happens is that they go away as small-time crooks and, by the time they have been down here in Perth for a few weeks, they come home experts, and we do not really need that. We have enough victims of crime as it is without them coming back with more knowledge.

**Mrs VALE**—Under what particular government department or government auspice do you work, John? I notice that you have the ability to bring together different government agencies, which is something that we have heard all over the country is missing. Yet your congress appears to have the ability to do that. You said you started up with Magistrate Sharratt?

**Mr Hart**—That is as a police officer.

**Mrs VALE**—Yes. But under what government auspices or agency does your congress operate?

**Mr Hart**—Within the Aboriginal Services Directorate of the Department of the Attorney General.

**Mrs VALE**—Thank you for that. I did not fully appreciate that. How long has your congress been operating?

**Mr Hart**—I am not sure—a few years now. I have just about clocked up two years. So I would be up for re-election soon.

**Mrs Radcliffe**—Initial discussions and negotiations started late 2007, early 2008.

**Mrs VALE**—You are a new initiative in this particular field of endeavour.

**Mrs Radcliffe**—Relatively new.

**Mrs VALE**—You were talking about giving it time to see the results of some of the policies and initiatives you have put in place, John. I can see that.

**Mr Hart**—Everyone wants to run in and fix everything today; it cannot be done.

**Mrs VALE**—No. How often do you get back together with your different regional representatives to discuss issues?

**Mr Hart**—We have local justice forums every couple of months. We have regional forums four times a year. Some of them may have more than that. Then we come down to Perth for state congress three times a year.

**Mrs VALE**—Does every one of your regional committees have police officers like you involved?

**Mr Hart**—No, I am the only one. Locally it is the officer in charge of Kalgoorlie police station. Because the police are a signatory to the agreement, someone from the police comes along and sits in on the local forums.

**Mrs VALE**—You are the co-chair, so you are very hands-on as a police officer.

**Mr Hart**—Yes.

**Mrs VALE**—Do you think there would be value in other Indigenous police officers being involved? I am assuming that you do have other Indigenous police officers in Western Australia.

**Mr Hart**—It would be good if they could, yes. It would be great.

**Mrs VALE**—Is it done in a voluntary capacity or is it something you have been appointed to?

**Mr Hart**—Voluntary—as long as the commissioner gives me the day off to go!

**Mrs VALE**—It is a fantastic initiative from what we can see so far. I know the committee will be looking forward to seeing the results. Do you have to report in a couple of years time or is there ongoing assessment of the members of the committee?

**Mr Hart**—It is ongoing. We meet with the Attorney General this afternoon to thrash out some more things with him regarding reducing the incarceration rate. There are a few ideas and hopefully there will be some amendments to the Sentencing Act which may assist in preventing traditional people from the desert being sent to prison when there are other options available for the magistrate.

**CHAIR**—Thank you very much.

**Mrs VALE**—Can I say that, to me as a committee member, your evidence is very encouraging, especially to see this very strong Indigenous input into the problem, because I think the solutions are with you. Thank you.

**Proceedings suspended from 1.03 pm to 1.14 pm**

**MORRIS, Mr Wesley John, Coordinator, Kimberley Aboriginal Law and Culture Centre**

**CHAIR**—We will eat our lunch while continuing! I particularly thank Hansard and Broadcasting for operating almost without eating, as well as without any break for half a day.

I welcome Wes Morris, the Coordinator of the Kimberley Aboriginal Law and Cultural Centre, which is based at Fitzroy Crossing. I invite you, Wes, to give us your thoughts.

**Mr Morris**—I thank you, Chair, and the committee for giving me the opportunity to appear today. I want to begin by acknowledging the traditional owners, the Nyungar people, the Aboriginal custodians of the south-west area of Western Australia. We witnessed prior to lunch a presentation by the Western Australian Aboriginal Justice Congress. In that presentation you heard some of the overarching, broad-ranging issues that go across the whole of the justice agenda in Western Australia. I noticed that you referred in some of that discussion to me perhaps talking about Aboriginal courts. I would love to, and the elders would love me to also, but I will not. There are only so many things I can do in this short period of time, and I am going to talk mainly about youth justice diversion programs in the allotted period.

In terms of the meeting processes, the committee is of course going tomorrow to Fitzroy Crossing, and just before lunchtime tomorrow you will receive a presentation from our Indigenous staff and some community members in relation to how they implement on the ground our youth diversionary program known as Yiriman. You will get that firsthand experience tomorrow. Indeed, Chair, that will be the second opportunity that you will have had for that dialogue because, when you were the Minister for Home Affairs, close to a year ago you came to Fitzroy Crossing and there was the opportunity for a community workshop at that time. So you do have a sense of what that program involves.

**CHAIR**—I have very strong memories of that.

**Mr Morris**—Good! Before I come directly to Yiriman, KALACC lodged a written submission, dated 29 January this year, to this current inquiry. There were three key elements within the written submission. The first was the lack of a political will on both sides of politics. In relation to that, we referred to comments in the media by the chief justice in November last year saying that both sides of politics were not committed to youth justice diversion and that they were engaged in a bidding war to outdo each other on who could have the more hardline stance in relation to justice issues. The second issue in that written submission was the difference between government and non-government service provision, and you may have heard something of that again earlier today. There is a speech by Justice Reynolds, dated November last year also, in which the president of the children's court is referring to the desperate need for non-government service provision. The third element we put in our written submission was the failures of COAG. I would like to make some additional comments today on those three points before I talk directly about Yiriman.

I have placed on your desks a little folder which has three documents within it. I take it that the choice of coming to Perth and to Fitzroy Crossing is somewhat related to youth justice issues. I think it is also somewhat related to alcohol issues, so the first document that you will



see in the folder is a letter from the Hon. Jenny Macklin, dated 24 March 2010, which relates to KALACC's calls since November 2008 for the establishment of a Kimberley regional alcohol management plan. We were aware in early November 2008 that the Queensland government, at a cost of \$109 million, established a Queensland Indigenous communities alcohol management plan, so shortly thereafter we wrote to state and Commonwealth governments calling on them to do something similar in Western Australia.

Here we are 18 months later—and as you will see at the bottom of the second paragraph in Minister Macklin's letter—they have got as far as embedding officers of the department of health at the state and Commonwealth level within the COAG structures in the Kimberley. Within 18 months, what they have achieved is that they have embedded two staff members—a state officer and a Commonwealth officer—in the COAG processes in Fitzroy Crossing. This is not a commitment to \$109 million. This is not a commitment to a regional alcohol management plan. The letter says:

I am advised that the development of a Kimberley Alcohol Management Plan in conjunction with local communities is a priority task for the new staff members.

So they are to work on the alcohol management plan. But 18 months after we call for that, this is as far as we have got.

If you turn over the page there is a second document dated 25 June 2009. It is a media statement by the Hon. Warren Snowdon MP and the Hon. Brendan O'Connor MP. They are responding to the release in June last year of a paper called *Bridges and barriers: addressing Indigenous incarceration and health*, which was prepared by the National Indigenous Drug and Alcohol Committee, which is a subcommittee of the Australian National Council on Drugs. On 25 June last year—

**CHAIR**—That committee has given evidence to us.

**Mr Morris**—two ministers in their media statement refer to a \$4.6 billion COAG commitment to closing the gap in Indigenous disadvantage and life expectancy, health, early childhood, education and employment. They conclude their media statement by saying:

I will refer the report to State and Territory Corrections Ministers, as well as the Ministers on the Standing Committee for Attorneys-General and the Ministerial Council for Drug Strategy.

Their commitment was to refer this report to other ministers. I suggest to the committee that this is a deeply disingenuous document. They refer to \$4.6 billion in the context of a report which was on Indigenous incarceration. But of that \$4.6 billion, how much of that is actually targeted towards the kinds of programs that are directly linked to the justice system? I could be incorrect, but all I am aware of is that within the Commonwealth Attorney-General's Department there is a \$7 million allocation for justice diversion programs. I suggest to you that this \$4.6 billion is mainly housing money, and there is education money in there. There is a minimal investment in relation to the nexus between alcohol and drug problems and the justice system. There is absolutely minimal investment in that regard. That is why I suggest to you that this is a deeply disingenuous document and that COAG to date has not established any frameworks for addressing the justice issue.

To take that one step further, what we do have is a COAG structure built around these six building blocks. It is almost the perverse irony that most of those building blocks do have national partnership agreements, but of course one does not. The one that does not is the safe communities building block. In government-speak, these justice issues and these alcohol issues that we are talking about come under the umbrella of the safe communities building block, but it happens to be the one with no national partnership agreement and thus no funding.

**CHAIR**—So you are not contesting the existence through the forward estimates of \$4.6 billion of spending but rather pointing out correctly that only a small amount of it is directly applicable to justice and related health issues?

**Mr Morris**—Absolutely. Those first two documents were just one-page documents. The third document is a 32-page document dated March 2009 and it the KALACC business case for a Kimberly regional youth at-risk diversion program. State and Commonwealth governments received this business case in March 2009. In March 2010—nearly April 2010—we are yet to receive any substantive response from either state or Commonwealth governments in relation to it.

It is a 32-page document. I do not intend going through it now, but it sets out how we would seek to work with the troubled youth and young people of the Kimberley to address the fact that there have been 100 suicides in 100 months in the Kimberley and to address the fact that there are a large number of youths in the Kimberley who are in contact at present with the criminal justice system. This is our proposal and our plan to respond to those issues of suicide, drug and alcohol use and contact with the justice system. This is our plan, our response, from a year ago, and we are yet to receive a substantive response from either state or Commonwealth government. We have received any number of items of correspondence from seven Commonwealth ministers and three state ministers, basically just acknowledgements. You would not describe any of them as a substantive response. That is some of the context and the background to the issue.

I did say that in the allotted time today I wanted to focus particularly on the issue of youth diversion and that is what I will now focus my attention towards. You did hear before lunch some comments in this regard by Ismahl Croft. Just by way of context, Ismahl used to work for KALACC. When he worked for us he was engaged in the implementation of our Yiriman program. Tomorrow, as you know, you will hear presentations by our current staff who are engaged in the delivery of that program.

Also by way of context, the Law Reform Commission of Western Australia in September 2006 delivered this document, which is the *Aboriginal customary laws* final report. Contained within that is recommendation No. 50, which is ‘Diversion to a community justice group’. But on the previous page, page 203, in fairly large font at the top of the page, it is important to see what the commission actually says. The commission actually says:

The Commission’s view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes.

Those words are written in large font at the top of page 203: ‘Aboriginal owned or Aboriginal controlled processes’. That is what the Law Reform Commission said back in September 2006.

As I think the committee would be aware, in January this year I and Duncan Ord, the executive director from the Department of Indigenous Affairs, met with the Attorney General of Western Australia, Mr Christian Porter. The Attorney General made it clear to Mr Ord and to me that the Western Australian government had indeed, in December last year, signed up to the National Indigenous Law and Justice Framework—and, yes, part of that framework is the expansion of diversion programs. But the Attorney General made it abundantly clear to Mr Ord and me in January this year that, when the government signed that, what they were committing to was an expansion of government owned and delivered programs. The emphasis was on entirely government owned and delivered programs. There was not any glimmer of evidence that there was any enthusiasm by the Attorney General for any investment in Aboriginal owned or controlled processes, despite any number of reports dating back to the Law Reform Commission report of September 2006.

KALACC is interested in the issue of youth diversion. There are three levels at which we have this interest. Our Yiriman program has been going for eight coming up to nine years now. For the entire period of the history of the program, it has worked as a general youth diversionary program. You have heard some of the discussion about the importance of young people connecting with their elders, connecting with their country, getting away from drugs and alcohol and developing a sense of identity and self-worth, and that is essentially what Yiriman has done for eight or nine years, principally through back-to-country trips, which are based on a cultural model. When I say ‘cultural model’, I mean that there are cultural activities that occur whilst they are on those trips but there is also a cultural ownership and leadership by the elders.

In addition to those intensive two-week trips, having built a change in that young person’s life, we then try to build on that through a range of ongoing mechanisms. What those ongoing mechanisms are can vary. One example, for instance, is to envisage Yiriman as being a junior ranger program. For instance, we work with young people and then we work with our sister organisation, the Kimberley Land Council, and try to get those young people employed in productive work such as Indigenous ranger employment. So we have the two-week program that we run and then, looking at that longer term relationship, our ongoing intervention into that young person’s life. We have done that for eight or nine years.

Then—as you are aware, Chairman—in the first four months last year we changed that methodology. We added to that standard methodology. It was not something that we had consciously planned, but, in the January and December period, a number of young people had committed offences in Fitzroy Crossing and we saw the need and the opportunity through the magistrate at that time, Magistrate Rob Young, to work with the magistrate on a formal youth diversion program. So we ran that between January and April 2009.

The magistrate was very pleased with the outcomes from that program. The diversion that occurred across that four-month period was a diversion to Aboriginal owned pastoral stations. The young people were in trouble. They were sent out to the pastoral stations. They worked hard for four months and then at the end of that period they came back to the magistrate. They had to report back to the magistrate, but also sitting alongside the magistrate were three of the KALACC elders. So they were not only accountable to the white magistrate; they were also accountable to the elders in that courtroom. It took the entire day from about 8.30 in the morning. I think the court session finished at about 6.30 in the afternoon. It was a very long, intensive process but it was regarded as being a highly successful process.

Unfortunately, some of those same youths have re-offended but new youths have also offended just recently, in the last two months. We are hopeful that the local COAG people in Fitzroy Crossing will now fund us for a second youth justice diversion trial program. We will be implementing that between now and 30 June this year—our second trial at a formal youth diversion justice program, which is about to be implemented.

The third level at which we would like to have an interest in these areas is a work camp. We know that there are work camps across Western Australia but what we are talking about here is an Aboriginal owned and controlled facility targeted at young people who are in trouble. We have the mechanism whereby we can work with young people for two weeks at a time on country. We can work with pastoral stations for perhaps four months. But we would like to have a facility set up where we could work with those troubled young people. They are the three levels at which we would like to be operating with this justice diversion.

The main emphasis today, I suppose, is that you will hear any manner of discussion, and you have referred to your opinion that the Western Australian justice agreement is a good document, so there is that broad-ranging framework. In the time allocated to me today I am just trying to emphasise that, amongst that broad range of strategies that all have their merit, one of those important strategies is diversion to Aboriginal owned and controlled processes. We think we have a mechanism whereby we can do that in terms of the preventative side but also in terms of those early interventions in the justice system. How that actually works on the ground you will hear more about from our Indigenous staff tomorrow.

**CHAIR**—Thank you, Mr Morris, for that precise explanation of your objectives today. It is a great pity that the time suggests that possibly we should hear from Rio Tinto rather than on the basis that we are going tomorrow and you know that we know a lot about your activity. Thank you, though, for the precision and force with which you have presented your ideas.

**Mr Morris**—Thanks for your help generally today, and I know that you will enjoy the experience tomorrow.

**Mrs VALE**—And thank you for this document.

**CHAIR**—Probably, if we do not speak to Rio Tinto straight away, we will not be able to talk to them at all. But we look forward to being in Fitzroy. You are staying in Perth, I take it?

**Mr Morris**—I will be here. I will not be with you tomorrow.

**CHAIR**—Thanks again.

[1.35 pm]

**BURROW, Mr Andrew Charles, Superintendent, Work Readiness and Education, Rio Tinto**

**CHAIR**—Welcome, Andrew. Thank you for coming and for being so interested in these issues as to sit all day listening to the evidence. Would you be good enough to give us your statement?

**Mr Burrow**—Thanks very much. Work Readiness and Education is within the communities division of Rio Tinto Iron Ore. It gives me great pleasure to be able to attend today to listen to what has been happening and to tell you a little bit about what we are doing. By way of background, the document I have handed to you is a summary of the opinions and thoughts of me and several of my colleagues. My colleagues in particular have a lot of experience of working with Indigenous communities up in the Pilbara area and have a lot of contacts there. We have worked through the questionnaire that was circulated last week or the week before and put our collective comments and thoughts on it. Given the amount of time I have I will not spend any time on that. You are welcome to have a look at that at your leisure; if you have any questions, do not hesitate to get back to me.

I will give you an overview of what we do. I have a total of seven people reporting to me. Five of them work directly with our work ready programs. One of them coordinates driving instruction and does a lot of work with resolving issues related to suspensions and that sort of thing. I have four people essentially working in a mentoring role. By way of background, the work ready programs are a subset of the larger Rio Tinto strategy to engage Indigenous people in the workforce up in the Pilbara. The work readiness group's task is to try and engage Aboriginal people who are currently unemployed for a variety of different reasons. We try and put them through a program that will equip them to apply for employment with one of our operations and, ideally, get into the workplace and hold down a meaningful job in the long-term. So we are very much at the rock face of getting people ready and trying to equip them to cope in the workplace.

The work ready programs as such started around 2006. We have now run quite a few of them, in centres as diverse as Nullagine, Onslow, Tom Price, Paraburdoo, Karratha and Roebourne. The programs typically run for anything between 12 and 16 weeks. We work in close collaboration with the Pilbara TAFE. The work ready programs are structured around a program that is delivered by the Pilbara TAFE. They are typically based around certificate II in metalliferous mining or certificate II in resources and infrastructure operations. The formal side of the component provides a framework to engage and intellectually challenge the participants of the course.

It enables us to have, if you like, a captive audience that we can work with—through the efforts of our mentoring people—in parallel with the coursework on what we call the workplace and life coping skills, which are equally important when people get into the workforce. By that I am talking about issues like driving licences, overcoming drug and alcohol problems, teamwork, giving people the opportunity to develop their self-esteem, and basic financial management and financial planning. It is pretty wide-ranging. We also put in quite a bit of effort to try and close the gap between where a lot of people are and where they need to be in terms of numeracy and literacy. That is important to not only enable people to cope within the workforce but it is also

necessary to help them complete some of the courses that are part and parcel of the TAFE course.

Given the short amount of time I have to talk, one of the areas that I would like to spend a bit of time on is the area of driving licenses. If I applied the 80-20 principle, I would say that 80 per cent of the problems that we experience in terms of getting people into the workforce one way or another have centred around driving licences or lack thereof. Part of the issue has been within Rio Tinto's operations, particularly inland. Until relatively recently, there was pretty much a binary go, no-go entrance requirement into the mine workplace. It said you had to have a full C-class motor vehicle licence. That approach has started to soften and a more pragmatic approach is starting to be taken. In the coastal areas, where we have a different type of operation, it is a lot more to do with loading ships and unloading trains and that sort of thing. The requirement for full C-class licences has been a lot less. They have been prepared to take on people with learner's licences on the proviso that we can get them through to a P-plate licence within a six- to nine-month period. In a nutshell, it would be true to say that the baseline minimum requirement of the mining operations within Rio Tinto is that people need to have a P-plate licence. In terms of a time frame, we would typically budget seven to nine months for a novice driver, which presents us with a fair challenge in terms of how you keep people engaged for that period of time so that they do not get into mischief, but it provides us with time to engage with practical driving instruction.

A lot of the effort of my team is involved in providing people practical driving instruction. One of the big gaps that I see up in the Pilbara at the moment, and this has particular relevance to youngsters coming out of school, where at 16½ or thereabouts they do their Keys for Life program and then at 16½ or 17 they can apply for a learners licence—this point was alluded to by Justices Reynolds and Martin earlier this morning—is in terms of access for people to practical driving instruction resources. By that I mean there is a lack of qualified licensed drivers and there is a lack of roadworthy vehicles that are maintained and fuelled. The issue of time is a major one. I would certainly suggest that, if there is any initiative that could make a really big difference in terms of enabling people in the remote communities to get access to employment, it would be some program that operates hand-in-hand with senior schools in the area to provide youngsters with access to practical driving instruction. Certainly from our experience, the lack of a driving licence is a major obstacle to getting employment. I would certainly endorse the concept that was talked about earlier this morning: having a regional driver's licence, which is applicable for people working in rural areas where you do not have the complications of driving in a major city.

I have mentioned the issue of time, which is an issue for people in those areas. We are in the process at the moment of negotiating with some of the driving schools in Karratha and Roebourne to support the Work Ready programs that we started in Roebourne a couple of weeks ago and which we are due to start in Karratha within a couple of weeks. Just to give you an idea of costs, we are budgeting on 40 contact hours of driver instruction with a novice pupil. It takes about 15 hours to get a person through the practical driving test and then 25 hours to get them through the six-month 25-hour logbook requirement, which is part of the Western Australian driving requirements. The typical cost per student is about \$2,800. I guess that would be a good indication to you of just some of the financial difficulties that people in these remote areas face, let alone access to vehicles and licensed drivers. So anything that can be done to simplify it would make an enormous difference.

**CHAIR**—It is a bizarre thing, isn't it? We are talking about getting a driver's licence not getting a degree in medicine,

**Mr Burrow**—What I am talking about are the statutory requirements to get a driver's licence, which are requirements of the Western Australian government.

**CHAIR**—Earlier today somebody indicated to us that there was a Western Australian government task force now addressing these issues so, hopefully, something will come of that. I might say that to a lesser but significant degree this issue exists in other remote parts of Australia too.

**Mr Burrow**—Yes. I would not be able to comment on other states within Australia, but certainly from our perspective as an employer it is the single greatest obstacle to getting people into the workforce.

**CHAIR**—Most extraordinary, but it is still extremely important that we amongst others should know of it. I think it would be accepted by absolutely everyone that has given evidence to us today that one of the best ways to deal with disadvantage for Indigenous people is to be able to find more work outside the metropolitan area, and the mining industry is better placed for that purpose than any other at the moment, except for the pastoral industry in some places. As I understand it, Rio Tinto is now employing many hundreds of Aboriginal people.

**Mr Burrow**—That is correct.

**CHAIR**—Can you briefly explain how you are finding that experience, the almost bizarre issue of a driver's licence aside?

**Mr Burrow**—That has been an interesting and challenging experience for us. Our objective within Rio Tinto Iron Ore operations in the Pilbara is to basically get a workplace demographic that mirrors the overall demographic of the Pilbara. Based on current population growth projections we set for ourselves a target by 2015 of getting 20 per cent Aboriginal people within our workforce in Rio Tinto Iron Ore in the Pilbara. Of that 20 per cent, 10 per cent would be local Pilbara based Aboriginal people and the other 10 per cent would be Aboriginal people from the rest of Australia. We are taking people in via the Work Ready programs as well as in every other opportunity we can find. I would suggest that at the moment, bar restrictions such as drug dependency and insurmountable health problems and not having a driver's licence, anyone that is willing and interested in getting employment has got a pretty good chance of getting in. We are certainly making great efforts to try to change that demographic of employees within our organisation.

**Mrs VALE**—Andrew, how do the young Indigenous people contact you—or any Indigenous person? Do they just come to Rio Tinto and apply or do you have a mobile office that you take to a lot of the regional centres?

**Mr Burrow**—It is all of those. It depends very much on the area that you are talking about. A lot of the recruitment, particularly in the remoter areas, is done with Aboriginal mentors and people like that. We have people who are pretty close to the local communities, so we have

contacts with people in the local communities. The word-of-mouth mechanism is used quite extensively.

**Mrs VALE**—And you have Indigenous mentors?

**Mr Burrow**—Yes. On my team I had one Indigenous mentor. He has recently moved into an operations role, so I am busy recruiting a replacement for him. Another one of my mentors is married to an Aboriginal person. The driving coordinator/instructor is an Aboriginal person. There are also two persons who are not Aboriginal but who have been working with Aboriginal people for quite a few years.

**Mrs VALE**—Do Rio Tinto have any roles for Indigenous women within your employment strategy?

**Mr Burrow**—Yes. I would say we would not discriminate between men and women in terms of having any particular preference. In a nutshell, we have quite a lot of Aboriginal women working within the workforce. There does tend to be a bit of a difference in the areas that they are interested in working in. For example, my anecdotal observations would be that the women tend to prefer working in administrative, catering or health and safety types of roles, whereas the men tend to prefer some of the heavy equipment operation or getting into mechanical or electrical trades and that sort of thing. There are exceptions to that.

**Mrs VALE**—What amazed me when visiting the big uranium mine up in the Northern Territory was the number of women drivers who were driving those huge trucks. It was just amazing. The management said that not only were they far better drivers but they seemed to be far more gentle on the trucks too.

**Mr Burrow**—I have heard that anecdotal comment as well.

**Mrs VALE**—It was just interesting to see Indigenous women driving huge trucks. It was a totally unexpected combination.

**Mr Burrow**—I would say that the one thing that probably does work against women is that a lot of women have family commitments. That is particularly the case with our fly in, fly out sites. I think that the fly in, fly out working regime is a lot more difficult for a woman with a family, particularly a young family, to manage.

**CHAIR**—I notice, Andrew, that Rio Tinto agrees with the Kimberley Land Council and the Kimberley Aboriginal Law and Cultural Centre in that you support rehabilitation programs that have access to pastoral stations where offenders are able to develop social and work skills in a practical environment.

**Mr Burrow**—Yes.

**CHAIR**—It is interesting that you should come to the same conclusion.

**Mr Burrow**—Yes.



**Mrs VALE**—Andrew, do you have any mechanisms other than the ones you make yourself to put some of your suggestions to government, to the Department of Families, Housing, Community Services and Indigenous Affairs, regarding especially the drivers licences? Having that kind of submission from an organisation of your standing, I should imagine, would carry quite a bit of weight with government officers.

**Mr Burrow**—Yes. Obviously, within our organisation there is an increasing and fairly acute awareness of the impact that driving licences have on the employability of people. I certainly know that some of the senior people within our organisation are fairly actively lobbying on that. I think all of us take whatever opportunity we can to push the point. I think it is a collective approach. I would like to see a Pilbara driving academy working up there. We are doing what we can, within the constraints of our financial and manpower resources, to try and bridge that gap.

**Mrs VALE**—A Pilbara driving academy would be in high demand.

**Mr Burrow**—That would be my dream, yes.

**CHAIR**—What do you see as the company's ultimate interest in adopting a policy which aims to achieve a workforce comprising 20 per cent Aboriginal people?

**Mr Burrow**—I think a mixture of reasons lies behind it. Common sense says that, one way or another, as a community we need to engage the local community, because if we do not it will be at our peril and at our children's peril. If we do not do something about the level of unemployment and social disenfranchisement and that sort of thing, as a society we are setting ourselves up for problems. I think there is a recognition that we collectively need to do that.

Certainly, our access to mining areas is dependent on legally binding agreements with the traditional landowners. In terms of those agreements, we have legally binding commitments to employ Indigenous people. It makes a lot of sense in many areas to be employing local people rather than people who come in on a fly in, fly out basis because you get a more stable workforce who, hopefully, are all committed. So I think there is a combination of sociological commonsense and economically pragmatic reasons that we do that, and part of that is the legally binding agreements—

**CHAIR**—A combination of corporate social responsibility and enlightened self-interest.

**Mr Burrow**—Yes.

**Mrs VALE**—It is like a social re-investment rather than the justice re-investment that we have heard about today. This is a real social re-investment, isn't it?

**Mr Burrow**—Yes.

**Mrs VALE**—You are to be commended for it. I know that your organisation would see down the track a dividend for itself in having that stable workforce and a better educated or a better skilled workforce that is available to it as a pool.

**Mr Burrow**—Yes. The other thing I will mention very quickly, if I have a bit of time, is that my team works very closely with the Roebourne Regional Prison. We support a work-ready program that is run by Roebourne Regional Prison, which we give a certain amount of logistic and moral support to. An example of the sort of thing that we have organised for prisoners in terms of moral support is when we took a group through our operations in Dampier and Cape Lambert last year. We showed them the job opportunities there and took them for lunch at the local restaurant. We visit them every week or two. There is a very well set up training facility that used to be a radio navigation centre about 10 or 20 kilometres east of Roebourne. With the Cape Lambert operations, we will shortly be kicking off a trial prisoner employment program with Roebourne prison. In terms of that trial program, we will be engaging four people who are still incarcerated but who are getting towards the end of their terms. These four people will be starting in the workforce and, hopefully, if everything goes as we expect it will, this will become a routine arrangement that we have with the Roebourne prison.

**Mrs VALE**—Do you mean it is a pilot program?

**Mr Burrow**—For us it is. We are very excited about the potential that it presents in giving people within the prison environment hope for the future.

**Mrs VALE**—You have a cohort: you have four of them going. I have heard of Indigenous programs before where there has been only one person involved. I think it is great that you have a cohort of four people whom you are doing the program with.

**Mr Burrow**—We are starting with four and, hopefully, if it all works well, there will be more than that next time.

**CHAIR**—Thank you very much, Andrew. We are obliged by our own timetable to cease the Hansard recording of the proceedings. We thank you very much for your patience in sitting here all day. We greatly admire the work that is going on. When one thinks about the circumstances 20 years ago and the transformation that has occurred in the way that industry is able to engage, it is deeply encouraging, I must say.

**Mr Burrow**—We are certainly very encouraged by it.

**CHAIR**—Thank you very much.

**Committee adjourned at 2.00 pm**