

# Putting the picture together



Inquiry into Response by Government Agencies to Complaints  
of Family Violence and Child Abuse in Aboriginal Communities



**Cover artwork:** JODY BROUN is currently the Acting Director for Equal Opportunity in Public Employment. Prior to that, she was the Executive Director of Aboriginal Housing and Infrastructure, Department of Housing and Works, for 7 and a half years. Jody also taught for 8 years in an Aboriginal college.

Jody has family links in the Pilbara and the Injibarndji language group and has practiced art for over 20 years. Her art has focused on Pilbara landscapes and political comment on Aboriginal issues.

In 1998 she won the Telstra National Award for Indigenous Art for her painting *'White fellas come to talk 'bout land'*. The painting, which depicted an Aboriginal group being consulted by non-Aboriginal people who flew in, comments on the inappropriate way of consulting on land issues.

The painting for the *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* depicts a family group; the seagulls (circling) represent government agencies. Symbolically the child is outside the group to illustrate his/her isolation in the whole process.



## **I want to be free<sup>1</sup>**

*If you want to be with me  
Show me that you love me  
Don't get wild, don't get jealous  
Hey man be true to me  
Don't destroy my life, my spirit  
I'm not a slave, I'm not a rag doll  
To be toyed with by you*

### **Chorus**

*I want to be free  
Free as a bird  
But I'm still fighting for our freedom  
Us women need to be strong inside to fly  
We gotta stand up for our freedom*

*So be kind, treat me like a wife  
Don't lock me in the room  
I don't want to be suffocated  
Don't want to be punched or bashed by you  
And if I say I don't want to be with you  
It's time for you to leave  
It's time for you get out of my life  
Don't abuse my body please*

### **Chorus**

*I want to be free  
Free as a bird  
But I'm still fighting for our freedom  
Us women need to be strong inside to fly  
We gotta stand up for our freedom*

---

<sup>1</sup> Written by girls from Warburton High School and Primary School in a workshop with NPY Women's Council Domestic Violence Service Worker, Daisy Ward. The students performed their song at the Ngaanyatjarraku Tjanampa Music Festival on the 11th and 12 May 2001. NPY Women's Council August 2001, NEVER GIVE UP News, Alice Springs.



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*Front cover artwork:* Jody Broun

# Putting the picture together

Inquiry into Response by Government Agencies to Complaints  
of Family Violence and Child Abuse in Aboriginal Communities

*Inquiry Members*

*Mrs Sue Gordon (Chairperson)*

*The Hon Kay Hallahan AM*

*Mr Darrell Henry*

*31 July 2002*



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## ACKNOWLEDGMENTS

*To live in communities free of violence and abuse is the acknowledgement we all hope for*

It is a privilege to have the opportunity to contribute to better services for Aboriginal people and the Inquiry recognises the generosity of Aboriginal people who have once again told their story. The implementation by government of this reform package is the acknowledgement that they deserve.

The Inquiry recognises the help of many service providers, both government and non-government. The provision of resources and political support to implement reforms in their service delivery is the acknowledgement they need. To live in communities free of violence and abuse is the acknowledgement we all hope for.

The Inquiry recognises the contribution of all the many individuals and organizations that have supported the Inquiry.

The Inquiry acknowledges the significant work of the Child Protection Clearinghouse. Staff from the Clearinghouse (Janet Stanley, Katie Kovacs and Adam Tomison) and Indigenous Advisor (Kyllie Cripps) reviewed relevant literature on child abuse and family violence for the Inquiry. The literature review is provided as an attachment to this report. Significant parts of this work are included in various chapters, particularly chapter 15. Where the Clearinghouse authors provided an opinion within the literature review that opinion is sourced to the authors of the Clearinghouse literature review. Otherwise the material from the review is cited as a primary source.

The University of Western Australia reviewed relevant literature on customary practices to allow the Inquiry to assess the assertions that family violence and child abuse had a basis in the custom or practice of traditional law. Literature from that review is cited as a primary source unless an opinion is offered by the authors of the review, in which case it is sourced to the commissioned document.

It is important that the voices of Aboriginal people are heard in this report. Quotes from submissions, consultations and other written material provided to the Inquiry are included in the report. Where the material is quoted in the text, it is used to support the arguments of the Inquiry. Where material is placed in side boxes alongside text, then it is provided to reflect the range of views put to the Inquiry and may or may not reflect the views of the Inquiry.



The Hon Dr G I Gallop MLA  
Premier; Minister for Public Sector Management  
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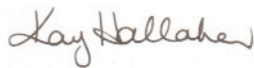
Dear Premier,

In accordance with the formal direction issued pursuant to section 11(1) of the *Public Sector Management Act 1994* to myself, the Hon Kay Hallahan AO and Mr Darrell Henry on 15 July 2002, we present to you our Final Report of the Inquiry.

Yours sincerely,



Mrs Sue Gordon AM  
Chairperson



The Hon Kay Hallahan AO  
Inquiry Member



Darrell Henry  
Inquiry Member

31 July 2002

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Records Manager	Miss Corrine Saunders
Report Facilitator	Ms Natalie Powell** BA
Records Officer	Mrs Marion Dwight**
Support staff	Miss Michelle Griffiths** Miss Joanne Haslam** BSc(Hons)

\* Officers were not employed at the Inquiry during the completion of the final report

\*\* Temporary personnel employed during the course of the Inquiry

## Chairpersons Forward

I firmly believe that the *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse* will only be the beginning of another long soul-searching journey for Aboriginal people in Western Australia (WA).

Aboriginal women have been saying for many, many years that family violence and child abuse must stop. Aboriginal people have been saying, treat us with respect, give us back our dignity.

In looking at the history of governments in WA since colonization, we can see that since 1829 governments have been aware of the need to be actively involved in Aboriginal Affairs, with the first real attempt in 1830 through the appointment of Aboriginal Protectors. The documented murder, violence, mistreatment, inaction and cruelty to Aboriginal people is only the beginning of how Aboriginal people have been treated by the government who should have been looking after them.

Successive governments in WA set up Royal Commissions during the period 1883 to 1987 to inquire into, not only the administration of the Aboriginal departments (as they were then), but the police system (Police Protectors), the social and economic conditions of Aboriginal people, the law as it related to Aboriginal people, specific allegations of ill-treatment of Aboriginal people and finally culminating in the 1987 Royal Commission into Aboriginal Deaths in Custody (RCIADIC).

In December 1992 following the RCIADIC, the Council of Australian Governments (which included Western Australia) endorsed a *National Commitment to improved outcomes in the Delivery of programs and Services for Aboriginal Peoples and Torres Strait Islanders*. The major purpose of this commitment was to provide a framework for coordinated intergovernmental action to redress Aboriginal inequality and disadvantage.

Then in 1993, the Western Australian Government released the *Aboriginal Plan 1993*, which provided a clear statement of State Government programs in Aboriginal affairs. The Plan listed the departments responsible, the objectives to be achieved and the financial resources provided for their implementation. In August the same year, a Social Justice Task Force was established to review activities of Government in relation to social conditions and the advancement of Aboriginal people in Western Australia.

Since then, various reviews, task forces, committees and the like have been set up to inquire into or develop plans and programs for Aboriginal people in this state. What in essence, this Inquiry has found, has been the distinct lack of coordination between government agencies in the consultation, planning and delivery of services to Aboriginal people.

Looking at this appalling history through Aboriginal people's eyes, it may well be said that this is just another Inquiry which prepares a report which will also be left to gather dust on a shelf. This Inquiry through the efforts of a very dedicated small team of research, legal and administrative staff has worked hard to fulfil the requirements of its Terms of Reference, and while further work is obviously required, would be extremely disappointed if yet again Aboriginal people *told their stories* and government did not listen. I am reminded at this point of *The Welfare and Community Services Review 1983/84* and a part of that review by Anne Deveson titled *If Only They Would Listen*, referring to children in care and governments not listening to them.

This Inquiry was criticised on its announcement in January 2002, that it was just another whitewash due to the very short timeframe, restricted powers, the Terms of Reference were too limiting, that it

## **Chairperson's Foreward**

would barely scratch the surface of the family violence and child abuse, and that it would not be able to cover the issues identified in the Coroner's report.

Support however, was tremendous and came from both the Aboriginal and non-Aboriginal community. This varied from Sister Bernadine of the Sisters of Mercy who had spent considerable time working with Aboriginal people in Roebourne, Joan Torr's Army Against Crime, the Western Desert Land Council, the Aboriginal and Torres Strait Islander Commission WA, NAPCAN, individual police officers and many, many others.

All government agencies involved provided significant information to the Inquiry and many offered logistical assistance during the Inquiry's community consultations across the state. Particular thanks are extended to the Department of Indigenous Affairs, Western Australia Police Service, Department for Community Development and Aboriginal communities who provided transport in remote parts of the state. Aboriginal communities and non-government agencies have also been generous in the time they have spent discussing matters with the Inquiry.

During the Inquiry, while not part of the Term's of Reference, there was a need for complainants and others to access government services. The Inquiry initiated and developed strong and effective lines of communication with the relevant government agencies to assist in meeting those needs. Those services included counseling, health care, police investigation and the provision of housing. The Inquiry also notes the assistance provided by individuals who acted as facilitators – in a voluntary capacity – between the Inquiry and individuals in the community who wished to give information to the Inquiry.

The Inquiry heard during its community consultations, very loud and clear that family violence and child abuse are not cultural. In recent times some Aboriginal men have begun speaking publicly against family violence and child abuse, notably Noel Pearson from Cape York in Queensland and Sandy Davies from Geraldton here in WA. I personally hope that more Aboriginal men will also step forward and support Noel and Sandy, who are both saying that it is up to Aboriginal people themselves to take responsibility for the problem.

The real journey for Aboriginal people is to now face the social issues of family violence and child abuse, which are tearing families and communities apart and putting children at risk. This is not only by non-Aboriginal predators, but by their very own families. Without both Aboriginal women and Aboriginal men standing up and saying no more family violence and no more child abuse, the future for Aboriginal children will only lie in higher statistics of Aboriginal youth suicide or higher Aboriginal imprisonment rates.

Finally, land and reconciliation are major issues, but without our families and children safe from family violence and child abuse, they are but a hollow gesture for the future.



**Sue Gordon AM**  
*Chairperson*

31 July 2002



**OFFICE OF THE PREMIER**

197 ST GEORGE'S TERRACE, PERTH, WESTERN AUSTRALIA 6000  
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15 January 2002

Mrs Susan Gordon  
Chairperson  
Inquiry Into The Response By Government Agencies To  
Complaints Of Family Violence And Child Abuse  
In Aboriginal Communities  
Level 9, 214 St Georges Terrace  
PERTH WA 6000

Dear Mrs Gordon

**INQUIRY TERMS OF REFERENCE**

Please find attached a formal direction to yourself, Mrs Hallahan and Mr Henry to conduct an Inquiry Into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities. The terms of reference for the Inquiry are contained in the direction.

As you will be aware, the Inquiry is established under section 11 of the *Public Sector Management Act 1994* and, as such, the powers conferred on the Inquiry under that statute are limited to an examination of matters relating to the Public Sector.

I wish you and your fellow members well in conducting this important Inquiry.

With best wishes.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Eric Ripper'.

ERIC RIPPER MLA  
A/PREMIER AND MINISTER FOR PUBLIC SECTOR MANAGEMENT

Att.

## Terms of Reference

### INQUIRY INTO RESPONSE BY GOVERNMENT AGENCIES TO COMPLAINTS OF FAMILY VIOLENCE AND CHILD ABUSE IN ABORIGINAL COMMUNITIES

Pursuant to section 11(1) of the *Public Sector Management Act 1994*, I hereby direct Mrs Susan Gordon AM (Chair), the Hon Kay Hallahan, and Mr Darrell Henry as suitably qualified persons to hold a special inquiry to:

1. Examine the issues raised by the Coroner's inquiry into the death of Susan Taylor in relation to the way that Government agencies dealt with the issues of violence and child sexual abuse at the Swan Valley Nyoongar community.
2. Examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally.
3. Report to me with recommendations on practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.

Specifically the Inquiry is to:


- Examine the activities of State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities;
- Identify the barriers and capacity of Government agencies to address the issue of family violence and in particular child sexual abuse in Aboriginal communities;
- Comment and make recommendations on the mandatory reporting of sexually transmitted diseases occurring among children and juveniles;
- Comment on any limitations of DNA testing in the Aboriginal community; and
- Propose support measures for children reporting abuse.

The Inquiry is to consider current research into the prevalence, causes and solutions to Aboriginal family violence.

The Inquiry is also to liaise with the Interdepartmental Committee on Sexual Assault to avoid duplication and ensure complementary outcomes.

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

The Inquiry is to report to the Premier by 31 July 2002, with an interim report to be presented by 26 April 2002.



ERIC RIPPER MLA  
A/PREMIER AND MINISTER FOR PUBLIC SECTOR MANAGEMENT

## EXECUTIVE SUMMARY

On the 28 November 2001, the Premier of Western Australia, the Honourable Dr Geoff Gallop, announced that the State Government planned to hold a Special Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities.

This was prompted by the coronial inquest into the death of 15-year-old Susan Ann Taylor at the Swan Valley Nyoongar<sup>1</sup> Community (SVNC) in Lockridge in 1999. The Coroner's report included allegations of physical and sexual abuse at the community, and raised questions, such as the mandatory reporting by health officials of sexually transmitted diseases and the practices of various government departments and other agencies.

The Inquiry commenced its preliminary work and planning on 14 January 2002 and provided an *Interim Report* to government on 26 April 2002.

The Terms of Reference required the Inquiry to examine the actions of government agencies in responding to family violence and child abuse. In addition and most importantly, the Terms of Reference required the Inquiry to examine causes, prevalence and solutions to family violence (which according to Aboriginal community definitions includes child abuse). The Inquiry understands that the government, through the Terms of Reference given to the Inquiry, is committed to real changes to protect Aboriginal children and victims of violence, and to allow them to live free from fear so that they can develop to their full potential.

The Inquiry's Terms of Reference have been subject to ongoing interpretation through relevant government agencies and other bodies. The Inquiry, mindful of different interpretations of various definitions, has not confined itself to forming a view on any 'correct' definition of 'family violence' or 'child abuse'.

### Approach to the Inquiry

Within the six month time frame the Inquiry was required to:

- Examine a range of matters in relation to the activities of government agencies in responding to family violence and child abuse with particular reference to the SVNC
- Consult widely, including with representatives of Aboriginal communities
- Consider current research into the prevalence, causes and solutions to Aboriginal family violence
- Conduct formal hearings
- Receive and consider submissions from interested individuals and organisations
- Provide an Interim Report

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<sup>1</sup> 'Nyoongar' has also been referred to as 'Nyungah'. The Inquiry has used this spelling as per the Terms of Reference. Where 'Nyungah' has been used, this is part of the title.

## Executive summary

- Consider a number of matters relating to government agency responses to family violence and child abuse including:
  - Any necessary legislative and administrative measures
  - The mandatory reporting of sexually transmitted diseases
  - Support measures for children reporting abuse
- Recommend practical solutions
- Ensure government agencies had the opportunity to address any possible adverse findings.

The Inquiry has therefore focussed on the services of seven government agencies that most directly address the problems of family violence and child abuse.

The focus of the Inquiry has been on appreciating a range of perspectives, including:

- Aboriginal people generally, and clients of child protection and family violence services in particular
- Service providers, both government and non-government
- Senior managers within relevant government agencies
- Research findings regarding how government agencies:
  - are impacting on the problems of family violence and child abuse
  - can more effectively respond to the problems of family violence and child abuse.

Given the magnitude of the problem, and notwithstanding the obvious efforts and good intentions of agencies, it is imperative that changes are made to:

- Better respond when family violence and child abuse occur
- Deal effectively with the underlying factors that both result from, and cause family violence and child abuse
- Develop a comprehensive systemic approach to family violence and child abuse that goes beyond the approaches of individual agencies and their concerted efforts to coordinate those activities.

Acknowledging the importance of involving all stakeholders in the formulation of detailed plans, this report has focused broadly on what needs to change and the identification of further issues to allow for further detailed planning.

## Section 1 – Introduction and overview

This section explains the Inquiry's methodology and the relevant legislative provisions which directed the work of the Inquiry. Those provisions required the Inquiry to focus on the actions of government agencies and their responses to family violence and child abuse. Notwithstanding this imperative, the Inquiry has taken a broad approach so as to better understand family violence and child abuse and the role of government agencies within the service system that respond to these problems.



## **Section 2 – Overview of family violence and child abuse, including causality and prevalence**

The Inquiry explored a range of definitions of family violence and child abuse and acknowledged that different understandings of, and approaches to, family violence and child abuse create difficulties for interdisciplinary and interdepartmental work.

The framework for understanding child abuse has moved from an incident focused approach which examines individual actions towards children, to an ecological approach which examines a range of factors within the child, family, community and society which interact. This broader approach requires a focus on an assessment of the needs of the child and family and developing an understanding of the cumulative effects of a wide range of negative factors within the child's life.

Similarly models for understanding family violence have moved from a focus on the activities or personality of the perpetrator, to a more inclusive model which examines a range of factors. Research is beginning to explore in more depth the complexity of this phenomenon.

Evidence and research provided to the Inquiry indicate that family violence and child abuse occur in Aboriginal communities at a rate that is much higher than that of non-Aboriginal communities. The statistics paint a frightening picture of what could only be termed an 'epidemic' of family violence and child abuse in Aboriginal communities.

There is an added complexity to the causes of family violence and child abuse within Aboriginal communities. The history of the colonisation of Australia has resulted in marginalisation, dispossession, loss of land and traditional culture, and the forced removal of children which has led to ongoing trauma within Aboriginal communities. These underlying factors are coupled with extreme social disadvantage including poverty, racism, passive welfare, drug, alcohol and substance abuse. Persistent assaults on Aboriginal culture, kinship systems and law have created a situation where Aboriginal communities are extremely vulnerable to family violence and child abuse.

## **Section 3 – Responses to family violence and child abuse**

Section three provides a comprehensive overview of service provision by the seven government agencies in Western Australia, against a backdrop of research on service developments in responding to family violence and child abuse.

The Inquiry noted and supported initiatives by the Department of Health (DOH) to build workforce skills, develop new models of service delivery and enhance interagency cooperation. A need was identified to better inform potential consumers the range of services available. The need for expanded drug and alcohol services was identified and the Inquiry supported the development of responses to the misuse of volatile substances. A need for more sexual assault services and the expansion of specialist services dealing with child abuse. The importance of training in understanding and responding to child abuse was acknowledged. The Inquiry made a range of recommendations in relation to employment and training of Aboriginal and non-Aboriginal staff.

## Executive summary

The Department for Community Development (DCD) provided a comprehensive submission to the Inquiry outlining models for future service delivery. The Inquiry agreed with the position that there needs to be a '*greater emphasis on building the capacities and strengths of individuals, families and communities*', whilst acknowledging the need to enhance services after abuse and neglect have occurred. Access to services by Aboriginal people in rural and remote areas was problematic. The draft action plan on Aboriginal Family Violence Strategy was supported and delays in implementation noted. The Inquiry acknowledged the complexity of service delivery generally, and specifically notes issues associated with delivery of services to 'mature minors', and children with a high level of need. The Inquiry found that DCD must be appropriately resourced to deliver the range of services required. A range of recommendations were made in relation to Aboriginal and non-Aboriginal staff. The Inquiry noted that there were communication difficulties with aboriginal communities which in part related to the historical services delivered by DCD.

The Inquiry noted and endorsed the work of the Homelessness Taskforce, and acknowledged the important role of adequate housing in reducing pressure on families and hence reducing family violence and child abuse. The Inquiry identified significant waiting times for Aboriginal families wanting to access housing. The Inquiry is aware of a significant need for the overall provision of more crisis accommodation and a better integration of crisis and long term housing across all government and non-government agencies. The Inquiry made a number of recommendations in relation to consultation with communities, type of housing provided and training for staff. The Inquiry is aware that the provision of housing is constrained by logistical and geographical factors.

The Inquiry endorsed a number of activities of the Western Australia Police Service (WAPS) particularly the new system of recording interviews with children, the importance of the child investigation unit, WAPS involvement in the Joondalup Domestic Violence Pilot Project and the recommendations of the *Koodjal Maar Baldjar: Reaching Out Together – Police and Indigenous Gathering Against Family Violence*. The Inquiry has made a number of recommendations about staffing, particularly training for staff. The Inquiry found that distrust of WAPS was a barrier to Aboriginal people making complaints of family violence and child abuse. Many Aboriginal communities identified the need for policing services to be more available within their community, particularly within remote communities. The Inquiry found there was a need for policing services to be maintained at all times and endorses the additional 40 new Aboriginal Police Liaison Officers.

The Inquiry endorsed a number of programs including the Integrated Prison Regime, the Indigenous Medium Program and the use of work camps, by the Department of Justice (DOJ.) The Inquiry made a number of recommendations about the importance of therapeutic services for adult and juvenile offenders while in custody. Recommendations were made about the need for better referrals between units within DOJ and the employment and training of staff and volunteers. The Inquiry supports the shift in focus of DOJ from incarceration based interventions to non-custodial options, and notes the need to adequately resource these programs. The Inquiry has also commented on the role and functions of the Office of the Director of Public Prosecutions and of Crown Prosecutors.

The Inquiry found that non-attendance and truancy are the most significant factors affecting the education of Aboriginal students. The Inquiry acknowledges that the Department of Education (DOE) is making significant efforts to increase attendance by Aboriginal children and believes these efforts should continue and be extended. Recommendations were also made about the need for mandatory training for teachers to identify child abuse and the need to respond to children who have a range of needs but do not disclose child abuse. Inconsistencies between the content of current policies and training activities were noted. The Inquiry was advised of the difficulties of attracting staff to remote areas as well as risks to those staff within certain communities. A number of recommendations were made in relation to staffing. The Inquiry was consistently told of the importance of programs within schools to assist children to keep themselves safe and disclose abuse if it occurs. The Inquiry commends DOE on the integration of Aboriginal studies into the mainstream curriculum for all students.

The Inquiry noted recent changes to the role and function of the Department of Indigenous Affairs (DIA) recommended by the *Machinery of Government report*. The Inquiry has identified a need for the coordination of capacity building within Aboriginal communities, with a single agency allocated lead responsibility. The Inquiry suggests that it is appropriate for government to consider further the role of DIA in this regard.

A large number of coordinating activities were examined by the Inquiry. Many of these programs appeared to be effective however the Inquiry identified a need for formalised and simplified structures to be developed to allow for overall coordination. The Inquiry particularly notes that legislative and/or policy changes are necessary for the effective coordination of service provision to Aboriginal communities, particularly in relation to the sharing of confidential information.

The first Term of Reference expressly required the Inquiry to examine the issues raised by the Coroner's inquiry into the death of Susan Taylor in relation to the way that Government agencies dealt with the issues of violence and child sexual abuse at the SVNC.

The issues examined by the Inquiry included:

- The activities of a range of agencies involved in providing services to Susan, with the conclusion that there should be no finding adverse to any individual, but that there should be systemic attention given to the management of difficult and complex cases
- WAPS investigation subsequent to Susan's death was found to be unsatisfactory, in line with a WAPS Internal review
- The widespread misuse of substances in parts of the Perth metropolitan area and the urgent need to provide services which address this social problem
- Access to the SVNC, and the importance of the finalisation of a Memorandum of Understanding between the SVNC and relevant government agencies.

The issues identified by the Coroner and examined by the Inquiry have provided a valuable foundation for the broader ranging exploration of aspects of service delivery under the second and third Terms of Reference.

### Section four – The way forward

The Inquiry has made almost 200 recommendations and findings. The Inquiry believes it is imperative that an Implementation Body be established to oversight and direct the implementation of these recommendations.

This section recognises the complexity of the service systems responding to family violence and child abuse, the levels of family violence and child abuse and the other significant problems facing Aboriginal communities, and recommends independent mechanisms to oversee the systems that respond to family violence and child abuse. In particular, the Inquiry recommends the creation of a Children's Commissioner and Deputy Children's Commissioner (Aboriginal) in recognition of the vulnerability of children, particularly Aboriginal children. A Child Death Review Team, Legislative Impact Statements and further investigation of employment screening activities are recommended. In recognition of the importance of the Children's Court, recommendations are made in relation to aspects of the court's activities including the need for representation for parents appearing in the court, and the permanent appointment of a President.

The Inquiry recognises the efforts of all agencies to respond to family violence and child abuse in Aboriginal communities. Nevertheless, the Inquiry has identified that the current service system is not able to adequately address the escalating rates of family violence and child abuse. A community focused systemic response is articulated. This response focuses on the communities rather than the individual agencies which deliver those services. The framework that is presented builds on the previous work of other significant bodies. The important principles of this framework are:

- the allocation of resources using a model based on disadvantage and need rather than based on capacity to lobby and argue for funds
- the use of Local Action Groups (LAG)
- the integration of funding associated with primary and secondary services to allow for proper continuous integrated service delivery based on clear plans that can make a consistent and significant impact on family violence and child abuse
- the use of a community development approach, which uses successful strategies from work in developing countries, whilst acknowledging the centrality of local culture, traditions and structures
- the strategic role of the Indigenous Affairs Advisory Committee (IAAC) in providing direction and support
- the development of a 'one stop shop' or community centre that responds to the range of factors and problems that are linked to and result from family violence and child abuse. In rural and remote communities teleconferencing, video conferencing and other forms of electronic support should be provided so that particular expertise can be accessed through government agencies.

The Inquiry identified the need for awareness raising about Aboriginal family violence and child abuse and neglect. While a number of sound programs were identified, they were localised and did not respond to a need identified right throughout the state. The importance of Aboriginal peoples' involvement in the development and implementation of these programs was noted.

The Inquiry identified the need for a comprehensive integrated response to Aboriginal family violence and child abuse by addressing the underlying factors and current social problems which impact on these problems. The Inquiry found that there is a need for more therapeutic services and recommends that appropriate models be explored including the concept of 'Healing Centres'.

The particular needs of Aboriginal people in relation to service provision was explored. There needs to be sensitivity to ways of contacting Aboriginal people, the need to build trusting relationships, the need for culturally appropriate services, appropriate consultative mechanisms and structures of departments which best support service provision to Aboriginal communities. A range of staff support, training and retention activities were explored and recommendations made.

Funding processes for non-government agencies were explored and the need for simplified, integrated processes with less bureaucratic requirements was identified whilst acknowledging the importance of accountability.

The Inquiry explored mandatory reporting and recommends that there should be a requirement for certain health professionals to notify instances of sexually transmitted diseases in children under 13 years to DCD.

The Inquiry examined DNA testing and made the assessment that there were no limitations to DNA testing in Aboriginal communities.

## **Section 5 – Overview**

This section contains the full set of findings and recommendations and responds to the Terms of Reference including the additional matters set out in the Terms of Reference.

*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • Whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse claims mar image of campaigner' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## Introduction and overview

### SECTION 1

# SECTION

#### Chapter 1 *Inquiry methodology*



*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse of children in WA'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## **Inquiry methodology**

### **CHAPTER 1**

## **SECTION**

*This chapter outlines the approach taken by the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities.*



CHAPTER 1

*Introduction and Overview*

## 1. INTRODUCTION AND TERMS OF REFERENCE

### 1.1 Introduction

The *'Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities'* (Inquiry) was established by direction of the Honourable Mr Eric Ripper MLA, Acting Premier and Minister for Public Sector Management. The direction that established the Inquiry was made pursuant to section 11 of the *Public Sector Management Act 1994*<sup>1</sup> ('PSM Act') and given to Inquiry members under cover of letter dated 15 January 2002.

Any express Terms of Reference of an administrative inquiry must be interpreted against the background of the inquiry's enabling (or governing) legislation. The subject matter, text and purpose of that legislation may all be important in that process of interpretation.

The PSM Act is concerned with the management and administration of the Public Sector of Western Australia and the maintenance of the Public Service. Specifically, sections 11 to 14 and Schedule 3 of the PSM Act provide the legislative framework for the conduct of the Inquiry.

The Terms of Reference require the Inquiry to examine how the Public Sector of Western Australia is dealing with—or may in the future deal with—the critical issues of family violence and child abuse in Aboriginal communities.

The term 'Public Sector' is defined in section 3 of the PSM Act as including agencies, ministerial offices and some other specified organisations *'established under a written law'*. Some specific entities are excluded from the definition of 'Public Sector'; for example, courts and tribunals, universities, and certain entities whose primary function is commercial rather than of a public nature. Entities of that character are therefore not subject to powers or procedures enacted in the PSM Act unless otherwise stated in their governing legislation. In short, most government departments and instrumentalities form part of the Public Sector. The scope of the Inquiry will be further discussed throughout the report insofar as it is relevant.

### 1.2 Terms of Reference

#### 1.2.1 Focus of the Terms of Reference

In light of the Terms of Reference and the scheme of the PSM Act, the Inquiry is clear that its function is to focus on *'Response[s] by Government Agencies'*. The Inquiry's function does not include the pursuit of evidence of family violence and child abuse, let alone the making of findings of such conduct itself. Nor does the Inquiry's function encompass recommendations as to the laying of charges against alleged perpetrators, or the commencement of any other legal process.

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<sup>1</sup>All Acts referred to in this report are Western Australian Acts, unless otherwise indicated.



Whilst the Inquiry has explained its Terms of Reference thoroughly to those being consulted, from time to time comments have been made to the Inquiry that indicate a misunderstanding of the Terms of Reference. As stated in its *'Interim Report'* (Gordon et al. 2002), the Inquiry has reinforced the proper ambit of the Terms of Reference against their statutory foundation when any such misunderstanding has been perceived.

### **1.2.2 Key definitions**

The key terms: 'family violence', 'child sexual abuse', 'child abuse' and 'sexual abuse' used in the Inquiry's Terms of Reference have been subject to ongoing interpretation through relevant government agencies and other bodies.

Definitions of such terms can vary between different agencies, peak bodies, communities and individuals. Not only is this a significant issue for the Inquiry, it is also a significant issue for service providers. The Inquiry—mindful of these various definitions—has not confined itself to forming a view on any 'correct' definition of 'family violence' or 'child abuse' (see Appendices 1 to 4 for a range of definitions).

As noted in the Interim Report, the Inquiry proceeded on the basis that 'family violence' and 'child abuse' were to be broadly and liberally construed—in particular, to encompass intangible matters such as emotional or economic deprivation and significant denial of opportunity. Chapter 2 of this report explores the changing definitions of family violence and child abuse. In conducting its inquiries, the Inquiry has predominantly been presented with—and therefore considered—material concerning responses to the more publicly recognised forms of family violence and child abuse, such as violence within intimate relationships and physical, sexual emotional abuse, and neglect of children.

The Inquiry defined 'Aboriginal' as:- *pertaining to the original inhabitants of Australia and to their descendents and 'Person of Aboriginal descent' means any person living in Western Australia wholly or partly descended from the original inhabitants of Australia who claims to be an Aboriginal and who is accepted as such in the community in which he lives.*<sup>1</sup> (Aboriginal Affairs Planning Authority Act 1972: Pt 54)

This definition is adapted from the *Aboriginal Affairs Planning Act 1972*.

## **1.3 Interim Report**

The Inquiry delivered an *'Interim Report'* to the Premier on 26 April 2002, pursuant to the Terms of Reference. The *'Interim Report'* explained the processes and procedures of the Inquiry and canvassed some of the themes emerging from the research material and oral evidence led to that point. The *'Interim Report'* did not make any findings or recommendations. (Gordon et al. 2002)

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<sup>1</sup> *Aboriginal Affairs Planning Authority Act 1972*.

## 2. CONDUCT OF THE INQUIRY

### 2.1 General

The Inquiry is established and conducted under certain provisions of the PSM Act. Accordingly, the Terms of Reference must be examined against the background of the legislation.

Section 13 of the PSM Act is intrinsic to the processes and procedures of the Inquiry. This section provides, in part, that a special inquiry shall act on any matter at issue according to equity, good conscience and the substantial merits of the case without regard to the technicalities or legal forms. It is not bound by the rules of evidence, but may be informed on any such matter in such manner as the special inquiry considers appropriate.

The Terms of Reference expressly provide that *'the Inquiry is to consult widely, including with representatives of Aboriginal communities, youth, health services and related organisations'*. This, along with the content of section 13 of the PSM Act, has informed the manner in which the Inquiry has sought evidence and information.

This material has been received and obtained in seven key ways:

1. Written submissions from government, non-government agencies and individuals
2. Documents and information provided by government agencies pursuant to section 12 of the PSM Act
3. Consultations with Aboriginal communities
4. Consultations with and visits to government, non-government agencies, various facilities and individuals
5. Formal hearings before Inquiry members, involving the taking of evidence on oath
6. Collection and analysis of relevant research material
7. Material provided by government departments as part of final submissions and consultations.

### 2.2 Specific means of informing the Inquiry

#### 2.2.1 Advertisements in national, state and regional newspapers and radio discussions

The Inquiry placed advertisements in a range of national, state and regional newspapers to invite submissions. A copy of that advertisement is at Appendix 5. A list of newspapers where the advertisement was placed is at Appendix 6.

The Chairperson was also interviewed on a number of radio programs, which helped advertise the Inquiry and encouraged people to make submissions. A list of those radio stations appears at Appendix 7.

### **2.2.2 Written submissions**

A range of government and non-government agencies and individuals has provided written submissions to the Inquiry—both upon invitation and of their own initiative.

Confidentiality is discussed in greater detail below at sections 4.3 and 5.1 of this chapter. Importantly, in submissions where individuals and non-government agencies requested confidentiality, this has been maintained. The Inquiry received a number of written submissions where this was the case. The list of written submissions made to the Inquiry appears at Appendix 8; this list excludes written submissions made where the author expressly requested their submission be kept confidential.

Whilst the Inquiry attempted to consider all material provided, 30 June 2002 was chosen as a cut off date on receipt of submissions. As such, submissions received after that date may not have received the consideration and analysis that the Inquiry would have liked, and the Inquiry cannot guarantee that the views of those submissions are represented in this report.

### **2.2.3 Documents and information provided by government agencies**

Section 12 of the PSM Act provides for certain coercive powers for special inquiries. In particular, section 12(1)(b) empowers a special inquiry to, by notice in writing, require a person to produce to it any book, document or writing that is in the possession or under the control of the person.

The Inquiry issued state government agencies numerous notices to produce documentation under section 12(1)(b) of the PSM Act. Those government agencies provided what is, in most cases, a large volume of files and other documents to the Inquiry. The Inquiry also requested documents from bodies and individuals not subject to the power to coerce production of those documents. Generally, requests were well received and the body or individual concerned provided the information requested.

The Inquiry was, in most instances, significantly assisted by the relevant government agencies. In particular, the response provided to the Inquiry by allocated 'contact officers' within key departments when requests were made for documents or other assistance was most commendable.

## **2.3 Consultations with Aboriginal communities**

At the commencement of the Inquiry, a list of Aboriginal communities and organisations Appendix 9 was provided by the Department of Indigenous Affairs (DIA) and was used by the Inquiry as a basis for its consultation schedule. This list is used extensively by DIA and the Aboriginal and Torres Strait Islander Commission (ATSIC) in the course of those agencies' business.

### **2.3.1 Initial contact with Aboriginal communities**

The Aboriginal communities on the list referred to above at Appendix 9 formed the basis for a mail-out advising of the Inquiry's Terms of Reference, inviting submissions and attaching a questionnaire for them to return to the Inquiry.

### **2.3.2 Consultation with Aboriginal communities outside the Perth metropolitan area**

Over 40 town and Aboriginal communities were visited outside the metropolitan area, with surrounding Aboriginal groups and Aboriginal communities notified and invited to participate in meetings with Inquiry members. A list and map detailing the towns and Aboriginal communities visited appears at appendix 10 and 11, respectively.

The Inquiry developed a set of criteria which was used to determine the regional centres, towns and Aboriginal communities to be visited. These criteria provided a broad sample of different Aboriginal communities and allowed the Inquiry to consult with the largest number of communities possible in the time available.

As noted by the Inquiry in its Interim Report (Gordon et al. 2002: 8 s3.2.1), due to time restrictions, visits to Aboriginal communities have necessarily been brief. The Inquiry acknowledges that brief visits are not the best way of obtaining information from Aboriginal communities. It is also recognised that family violence and child abuse are difficult topic areas and communities—both Aboriginal and non-Aboriginal—have difficulty in discussing these matters freely (Gordon et al. 2002: 8 s3.2.1). There remains a concern that some Aboriginal community members may not have spoken freely because of a number of factors, including a fear of retribution.

### **2.3.3 Cultural considerations**

However, whilst the Inquiry was mindful of cultural barriers during the consultation process, it believes that this process fulfilled its purpose as required by the Terms of Reference. Further, the Inquiry was particularly encouraged to receive recommendations from the communities for 'practical solutions'—as required by the Terms of Reference—which have been considered in preparing the report.

The timeframe and logistical issues faced by the Inquiry have necessitated a consultation process that does not always fit with culturally appropriate ways of gathering and giving information. The Inquiry has taken considerable care to acknowledge and respond to cultural sensitivities, issues of gender and other related matters.

On occasions, cultural and other community responsibilities meant that some community members were unable to attend meetings with the Inquiry. Inquiry members met with a significant range of people in the various communities. Sometimes this involved only council members; in others it involved broad representation from community members, as well as government and non-government agencies providing services.

### **2.3.4 Summary**

The Inquiry has received a large volume of useful information during the course of consultations with Aboriginal communities. That information was analysed and comments sought from relevant government agencies, and now forms the basis for a significant part of this report.

## **2.4 Transcription of consultations**

Informal consultations with Aboriginal communities, government and non-government agency representatives and interested individuals were recorded either by tape or by hand. A formal application (made on 6 June 2002 by Counsel for the five government agencies legally represented) sought access to the substance of any relevant material arising from those consultations that may have adversely affect the represented agencies (Transcript of hearing of 6 June 2002). On 12 June 2002, the Inquiry ordered that the represented agencies be given access to the relevant material arising from the informal consultations. The 'material' provided was that which may have formed the basis of findings adverse to those represented agencies, or otherwise raised significant issues. The material, generally in the form of a summary of the essence of the informal consultations, was presented in a way so as not to identify complainants, or otherwise unnecessarily compromise the confidentiality of the consultations. (Gordon et al. 2002b)

## **2.5 Protocols concerning information provided to the Inquiry**

The Inquiry has received a large volume of information from various sources addressing the Terms of Reference. For example, 1600 submissions and other pieces of correspondence were received by the Inquiry<sup>2</sup>. The Inquiry was also mindful of the criticism voiced by Aboriginal communities that they are often over-consulted, with little follow-through by government agencies on actions requested. The Inquiry established protocols for dealing with the information it received. In its role, the Inquiry was limited to making recommendations to government pursuant to the Terms of Reference. Certain more specific issues raised by Aboriginal communities were—with permission from the individual or community concerned—passed on to relevant government agencies for further action. Aboriginal communities which requested information from the Inquiry were also provided with such information as soon as possible.

## **2.6 Consultations and visits to a range of government and non-government agencies, facilities and individuals**

The Inquiry conducted visits to a range of government and non-government agencies. Those visits were either at the Inquiry's initiation or the invitation of the relevant agency.

## **2.7 Website**

An Inquiry Website was established at [www.fvcainq.dpc.wa.gov.au](http://www.fvcainq.dpc.wa.gov.au) to provide information to the public through the Internet. The Website included copies of the Terms of Reference, 'Opening Addresses' by the Chairperson and Counsel Assisting, guidance for making submissions, the questionnaire sent to Aboriginal communities and agencies, and the Interim Report.

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<sup>2</sup> As at 16 July 2002.

### **3. FORMAL HEARINGS BEFORE THE INQUIRY**

#### **3.1 General**

The Inquiry conducted hearings in which Inquiry members heard oral evidence and received written material in the form of exhibits. Under section 12 and Schedule 3 to the PSM Act, the Inquiry had certain powers to compel the attendance of persons to give evidence. In most instances witnesses presented before the Inquiry upon the invitation of Counsel Assisting. In relatively few instances was it necessary for the power to compel attendance to be used.

The Inquiry heard evidence both in public and private (or 'in-camera') hearings, however the vast majority of hearings were open to the public. Any decision to take evidence in private took into account a variety of factors sourced in the nature of the proposed evidence and the overall public interest.

The format for taking evidence in formal hearings was inquisitorial rather than adversarial. Although the Inquiry observed certain formalities of a court setting and took evidence under oath, the examination of witnesses by Counsel Assisting was dissimilar to the taking of evidence in orthodox adversarial proceedings. Secondary and other indirect sources of evidence were often employed. Witnesses were freely encouraged to express personal opinions. Comments on reports and other documents were by no means confined to witnesses who had authored those reports. Overall, witnesses were encouraged to provide Inquiry members with the widest possible benefit of their insights and understanding.

Witnesses called to give evidence to the Inquiry were drawn from a variety of sources, but were predominantly from government agencies. A list of all witnesses who gave evidence appears at Appendix 12, excluding those witnesses who gave evidence in private.

#### **3.2 Selection of witnesses to appear before the Inquiry**

The complexity of the issues encompassed by the Terms of Reference necessitated a selective approach to the calling of oral evidence. Counsel Assisting made decisions as to the nature of the evidence to be formally led, and the identity of witnesses accordingly. Generally, Counsel Assisting sought to present a picture of aspects of governmental response to the issues of family violence and child abuse in Aboriginal communities that most efficiently and economically addressed the Terms of Reference in the time available.

#### **3.3 Representation of certain government agencies**

On 13 February 2002 an application was made by Ms Kate McDonald and Mr Michael Jenkin, both of the Crown Solicitor's Office of Western Australia, for leave to appear on behalf of the Commissioner of Health, the Commissioner of Police, the Director Generals of the Departments of Justice, Education and Community Development (Transcript of hearing of 13 February 2002). Such leave was granted to Ms McDonald and Mr Jenkin, who were then present for the vast majority of the formal hearings. On 26 June a further application was made by Ms McDonald, together with Mr Jenkin, to appear on behalf of the Director General of the Department of the Premier and Cabinet. Such further leave was duly granted. (Transcript of hearing of 26 June 2002)

### **3.4 Protection afforded to witnesses appearing before the Inquiry**

Clause 6(2) of Schedule 3 to the PSM Act provides that witnesses before a special inquiry under the Act have the same protection and are subject to the same liabilities as witnesses who appear in any civil or criminal proceeding or as a witness in any case tried in the Supreme Court.

## **4. OTHER MATTERS**

### **4.1 Examination of further cases**

The Inquiry received information about specific matters or 'cases' in two ways:

1. Pursuant to notices issued under section 12 of the PSM Act seeking documentation
2. Through contact initiated with Inquiry staff by victims, third person informants and during consultations with Aboriginal communities.

The Inquiry was of the view that some cases needed to be examined insofar as they shed light on the Terms of Reference by forming practical examples of government responses to complaints of family violence and child abuse. Of those brought to the attention of the Inquiry, 15–20 key cases were selected for further consideration. Nine were selected and reviewed by an independent expert, others were examined by the Inquiry staff and key themes developed. This is discussed in further detail in Chapter 18.

### **4.2 Reviews of relevant research**

The Inquiry was expressly required to consider current research into the prevalence, causes and solutions to Aboriginal family violence. The Inquiry was of the view that the Terms of Reference 2 and 3, to be fully and properly addressed, likewise required consideration of current research into those aspects of child abuse in Aboriginal communities.

The Inquiry commissioned reviews of research relevant to the Terms of Reference from the National Child Protection Clearinghouse and the University of Western Australia. The Department of Community Development (DCD) provided an overview of research findings on coordination. In addition, significant research findings and other Inquiry reports were examined by the Inquiry. The research commissioned from the National Child Protection Clearinghouse is attached as Appendix 13.

### **4.3 Confidentiality considerations**

The Inquiry is mindful that much of the material it received is highly sensitive and needed to be treated with a high level of confidentiality. In order to maintain the confidentiality of material received, the Inquiry:

- (a) obtained appropriate undertakings from all persons who had access to any material provided to the Inquiry during its course
- (b) put in place stringent records management policies and procedures to ensure material provided to the Inquiry was handled with the strictest confidentiality at all times

(c) clearly explained those processes to people considering giving information to the Inquiry.

On 8 March 2002, an application was made on behalf of Western Australian Newspapers Pty Ltd (WAN) and the Australian Broadcasting Commission (ABC) ('the Applicants') for access to all material received in the form of exhibits by the Inquiry during the course of hearings (Transcript of Hearing of 8 March 2002). The Applicants' position was, in essence, based on openness and an assertion that access to the exhibits was necessary for fair and open reporting of the hearings. The submission placed substantial weight upon a perceived public interest in the fair and accurate reporting of the affairs and workings of government.

After hearing submissions from the Applicants' Counsel, Counsel Assisting and Counsel for represented government agencies, the Inquiry deliberated and concluded that:

*In weighing up those matters, the committee is of the view that the balance firmly favours the non-disclosure of documents that have become exhibits. To release those documents to any party external to the Inquiry would compromise the confidentiality through which persons have availed themselves of the services of government agencies, perhaps irreparably so. It would also run counter to the format and method of the taking of oral evidence and the balance that has been struck in that regard ... (Gordon et al. 2002a)*

The Inquiry Members then made a direction under section 13(4) of the PSM Act that documents made an exhibit to the Inquiry were not to be provided or made available to any person beyond the Inquiry itself, its staff and Counsel representing the government agencies themselves. The management of documents in possession of the Inquiry, including exhibits, is discussed below at section 5.1.

## **4.4 Recurrent legal themes**

Certain legal themes and doctrines have recurred throughout the course of the Inquiry. Two of them warrant brief treatment.

### **4.4.1 Natural justice**

In the broadest sense, the rules of justice require that persons be afforded a fair and unbiased hearing before decisions are taken which affect them. What is often termed the '*hearing rule*' required a decision maker to hear a person before making a decision affecting the interests of that person. The so-called '*bias rule*' provides for disqualification of a decision maker where circumstances raise a doubt as to that decision maker's impartiality. (Aronson 2000: 299, 300)

These essential components of the doctrine serve to illustrate its concern with the process or manner of administrative decision making, rather than seeking to evaluate the merits—let alone the 'justice'—of a decision. 'Natural justice' is not a mechanism to review the conclusions or findings of a decision maker on the basis of any perceived 'natural' concepts of right or wrong.

'Procedural fairness' is often used as a synonym for 'natural justice'. The terms are used interchangeably in this report.



The principles of natural justice are applicable to administrative inquiries such as special inquiries under the PSM Act<sup>3</sup>. The content of those principles varies—at times considerably—with the nature of particular administrative inquiries and their governing legislation. It is well established, however, that a person or entity under inquiry is entitled to notice of any finding adverse to it, with a reasonable opportunity to be heard before that finding is confirmed<sup>4</sup>.

The Inquiry was at pains to ensure that natural justice, particularly in the last sense, was accorded to the government agencies under examination. To that end, lists of provisional findings with respect to the seven agencies<sup>5</sup> primarily under examination were served on those agencies in the period 9 July 2002 to 11 July 2002. Responses to those lists were conveyed both verbally and in writing, including through Closing Submissions.

#### 4.4.2 'Rights'

Individuals and government and non-government agencies have commonly used the term 'rights' in their submissions to the Inquiry. The term carries a variety of shades and nuances in meaning. The term 'rights' refers to the legal concept of 'civil rights', which are the rights or liberties of all individuals in Australia, including non-citizens. The Inquiry notes that there is no agreed statement of the subject matter of entitlements contained within the ambit of the concept of civil rights. (Halsbury 2002: 80-1)

'Rights' strictly so called are to be distinguished from freedoms. The latter concept denotes circumstances where laws are confined so as to create an immunity on the part of a citizen from being adversely affected by those laws. The implied freedoms of political communications protected by the Commonwealth Constitution are to be understood in that limited sense<sup>6</sup>. A true 'right', by contrast, is an entitlement that may be enforced by, for example, the commencement of legal proceedings to obtain a remedy in vindication of that right.

Further, some submissions referred to 'human rights' maybe defined as '*basic rights for each human being and inalienable*' (Halsbury 2002: 80-10). These 'human rights' may form part of Australian—and indeed WA law—where they have been specifically enacted. 'Human rights' also form part of international law, however the status of such laws within Australia, and WA, varies.

Finally, neither Australia, nor any of its states or territories, have a Bill of Rights, unlike many other western countries, such as the United States, Canada and New Zealand. Rather, certain 'rights' may be found, expressly or impliedly, in the Commonwealth Constitution, other legislation and the common law.

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<sup>3</sup> Mahon v Air New Zealand 12 [1984] AC 808

<sup>4</sup> Ainsworth v CJC [1992] 175 CLR 564

<sup>5</sup> Those agencies are Department of Community Development (DCD), Western Australian Police Service (WAPS), Department of Justice (DOJ), Department of Housing and Works (DHW), Department of Health (DOH), Department of Education (DOE) and Department of Indigenous Affairs (DIA). A separate list concerning matters of a 'cross government' nature was also prepared and served on the Crown Solicitors Office. In the case of DIA, a letter addressing certain themes and issues from these lists and noting the provisional findings was prepared and sent to that department's Director General on 12 July 2002.

<sup>6</sup> Lange v ABC [1997] 189 CLR 520 at 560

## **5. CESSATION OF INQUIRY**

At the conclusion of the Inquiry, the entity that is the 'Inquiry' will cease to exist. As such, all records, offices and fixtures shall be returned to the Department of the Premier and Cabinet.

### **5.1 Documentation – confidentiality and record keeping requirements**

The Inquiry's records are subject to the *State Records Act 2000*, which requires that a 'Record Keeping Plan' be created, registered and adhered to. Under the *State Records Act*, the Record Keeping Plan is a document that provides an accurate reflection of the records management program within the organisation. Generally the plan—for each individual agency—would include information about the organisation's record keeping systems, disposal arrangements, policies, practices and processes.

Documents in the possession of the Inquiry will be transferred to the Department of the Premier and Cabinet at the conclusion of the Inquiry. A retention and disposal schedule has been developed and is awaiting approval by the State Records Commissioners. Once approved, this Retention and Disposal Schedule (at Appendix 14) will authorise the retention and disposal of all records accumulated by the Inquiry.

### **5.2 Budget**

The Inquiry, at the outset, prepared a budget for the consideration of the Department of the Premier and Cabinet. As a result of this budgetary process, additional funding was made available to the Inquiry. It is anticipated that—when all accounts are finalised—the expenditure by the Inquiry will be within budget and within the initial funding allocation. A copy of the unaudited financial statement has been included at Appendix 15.

### **5.3 Fixtures and offices**

On 31 July 2002, members and staff will vacate the Inquiry office—located on the 11th floor, London House, 216 St Georges Terrace, Perth, WA. All fixtures will be removed and relocated to the Department of the Premier and Cabinet. The hearing room, located on the 9th floor, was decommissioned on the 25 July 2002, with all fixtures relocated to the Department of the Premier and Cabinet.

Further correspondence relevant to the Inquiry should be directed to:

Department of the Premier and Cabinet  
197 St George's Terrace  
Perth, WA 6000  
Telephone (08) 9222 9888

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Aronson, N (2000) *Judicial Review of Administrative Action*, Law Book Co.

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Whitmore, (1980) *Principles of Australian Administrative Law*, Law Book Co, 1980.

## LEGISLATION

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Public Sector Management Act 1994 ('PSM Act') (WA)

State Records Act 2000 (WA)

Freedom of Information Act 1992 (WA)

Aboriginal Affairs Planning Authority Act 1972 (WA)

*PSM Act see Public Sector Management Act*

## LEGAL CASES

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Mahon v Air New Zealand 12 (1984) AC 808

Ainsworth v CJC (1992) 175 CLR 564

Lange v ABC (1997) 189 CLR 520



*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • 'Abuse claims mar image of campaigner' The West Australian 22-23 December 2001 • 'Abuse claims mar image of campaigner' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

**Overview of family violence and child abuse, including causality and prevalence**

**SECTION 2**

**SECTION**

**Chapter 2**

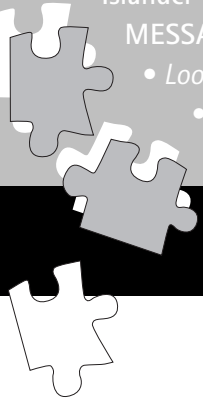
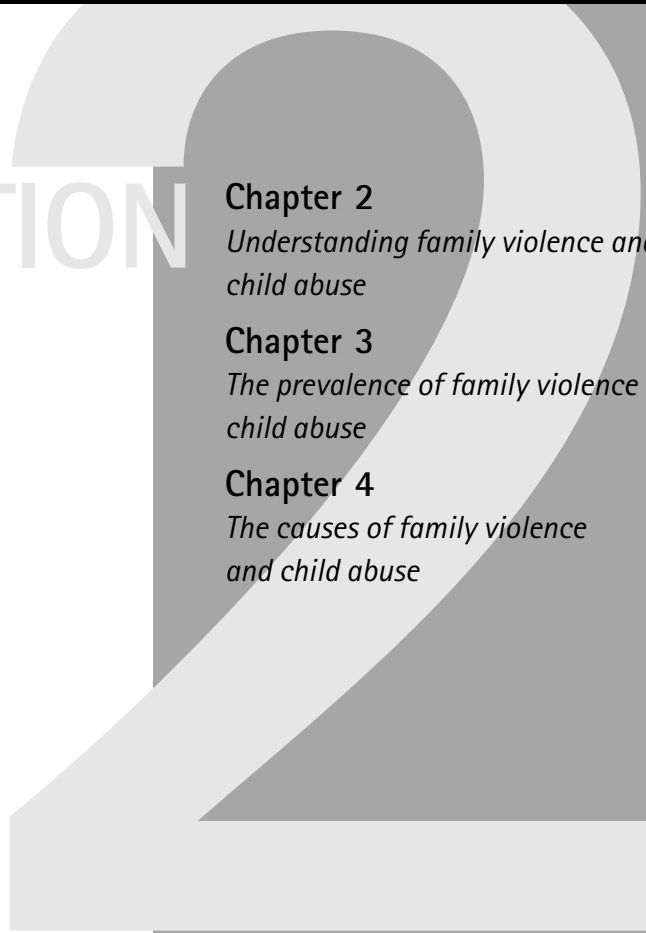
*Understanding family violence and child abuse*

**Chapter 3**

*The prevalence of family violence and child abuse*

**Chapter 4**

*The causes of family violence and child abuse*



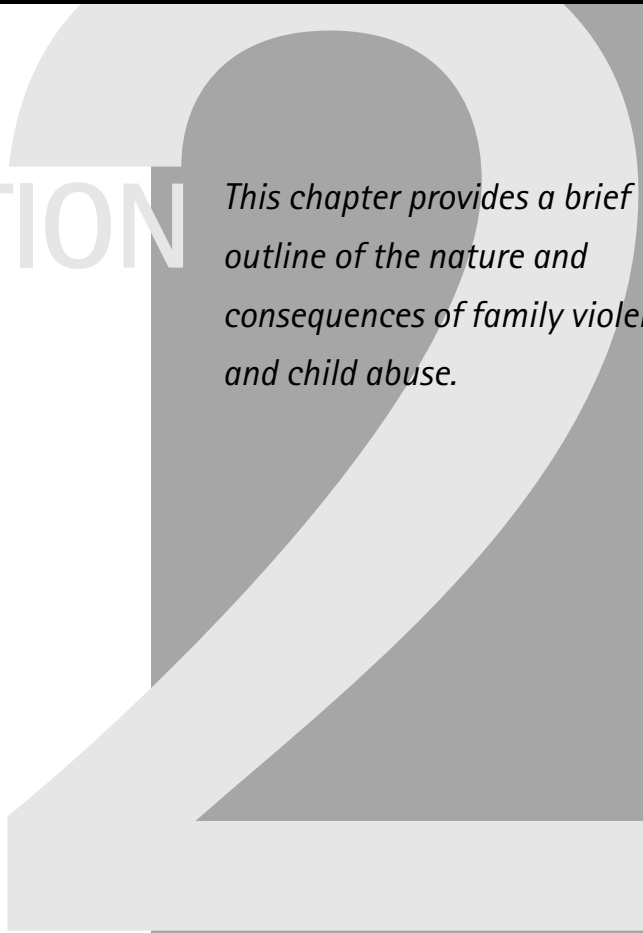
*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Power axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse claims mar image of campaigner'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## Understanding family violence and child abuse

### CHAPTER 2

# SECTION

*This chapter provides a brief outline of the nature and consequences of family violence and child abuse.*



CHAPTER 2

Understanding family violence and child abuse

## 1. UNDERSTANDING CHILD ABUSE

### 1.1 Definitions of child abuse

*... there are many legal and operational ... definition[s] of child abuse in Australia ... [I]ndeed, variations may occur depending on the context in which they are used. For instance, government departments may use different definitions from those used by community service professionals. (James 1994: 2)*

*There are different interpretations and definitions of what constitutes child abuse between government agencies. For example, the Family Court considers children witnessing domestic violence to be child abuse, whereas the Department of Community Development does not. The response that different Government agencies deem appropriate is dependent upon their definitions, therefore different agencies may respond to the same child in different ways. (NAPCAN WA (Inc) Submission 19 June 2002: 4)*

Different definitions of child abuse considered by the Inquiry are listed in Appendices 1 to 4.

Differences in definitions can create confusion. Differences in the conceptual understanding of the nature of child abuse and neglect lead to difficulties in working in a coordinated and holistic manner.

The rediscovery of abuse in the 1960s focused on serious physical abuse to infants. This resulted in a focus on a medical model of intervention and a diagnostic approach to whether abuse had happened or not. Injury to the child was investigated and led to a diagnosis of whether the injury was abuse, some form of accidental injury or a medical condition. Early work in child abuse relied on a concept of abuse that was incident-based. That is, a child had either clearly been abused or not been abused. (Kempe<sup>1</sup> et al. 1962, cited in Tomison 2000)

This understanding is implied in the refrain of many policy workers that *'it's better to build a fence at the top of a cliff rather than place an ambulance at the bottom'*. Indeed, this example was used in evidence to the Inquiry. This analogy gives an incorrect impression of the nature of child abuse. The idea that serious incidents of abuse happen out of the blue within normal, healthy, happy

families—whilst occasionally true—is rare and does nothing to further our understanding of the problems of the abuse of children.

Child protection agencies have developed complex labels to describe the problem of child abuse and neglect. Labels such as 'risk', 'risk factors', 'risk of abuse' and 'risk of harm' are all used—often without clarification of what is meant. (Tomison 1997)

### 1.2 Understanding risk

#### 1.2.1 Risk factors

There is a range of factors present in families where abuse and neglect has been identified that do not occur with the same frequency in families where abuse and neglect are not

<sup>1</sup> Kempe, a medical doctor, is attributed with the 'rediscovery' of child abuse in the 1960s.

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*Defining child sexual abuse is neither a simple nor value free task – as this is not a set of discrete behaviours but a complex social construct. Any definitions will be subject to exceptions and exclusions.*

(Telethon Institute for Child Health Research [TICHR]  
Submission 21 February 2002: 14)

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present. These factors include: poverty; unemployment; physical illness; stress resulting from racism; single-parent families; alcohol and substance abuse; poor or inadequate housing; lower educational levels; lack of support by family and community resulting in social isolation; parenting at an early age; little parent-child interaction within the first few days of birth; and a history of abuse and neglect in parents. It is important to note that these are factors which correlate with child abuse and, in some cases, may be causal but the relationship is not clear. It is also very important to note that while these risk factors may predispose children to abuse and neglect, it is not the case that families who face these factors of disadvantage will necessarily abuse their children. (US Department of Health and Human Services 2001)

### 1.2.2 Risk of harm

Early discussions of 'risk' focused on an outcome of abuse and neglect. The reassessment of abuse and neglect has led to the linking of 'risk' to 'harm' that might occur to the child. Risk of harm therefore focuses more directly on what is happening to that particular child within a family and community context. The harm that may result is likely to be incremental, and the factors that are harmful may well interact with each other.

The assessments that focus on identifying the level of risk would include a very broad range of factors and may include things like: leaving a young child unsupervised; failure to provide an adequate level of emotional warmth and nurturing for a child; or, consistent harsh physical punishment coupled with a negative and harsh attitude to the child. Environments that are seen to be most harmful to children include low emotional warmth combined with high criticism of the child.

The focus of this type of risk is not only upon what is done to the child, it also requires an understanding of what the child may be missing that is necessary for normal growth and development. It is also important to focus on the environment of the child, family and community. This is quite a different approach to one that focuses on whether the child has been deliberately assaulted by a caregiver. Sexual abuse is more incident focused. However it is also the case that certain environments and situations place children at greater risk of sexual abuse. (Department of Health UK [DoH UK] 1995)

*Most behaviour has to be seen in context before it can be thought of as maltreatment [abuse]. With the exception of some sexual abuse, it should also be clear that maltreatment is seldom an event, a single incident that requires action to protect the child. (DoH UK 1995: 14).*

Some legislative definitions—such as section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW)—now focus on risk of harm rather than abuse or neglect.





Department for Education and Employment, and the Home Office. This gave effect to the change in focus to addressing needs.

*A child shall be taken to be in need if –*

- a. he is unlikely to achieve or maintain or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority...*
- b. his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*
- c. he is disabled*

*And 'family' in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living. (The Children Act 1989 (UK) s17 (10), cited in DoH UK et al 2000: 6)*

This understanding of child abuse and neglect leads to a focus less on identification of instances of abuse. It requires a focus on the needs of the child, and how well those needs are being met, and the broad environment in which the child is growing up.

There has previously been a focus on the delineation between child protection and other services, such as family support. Using a needs framework, this delineation becomes less of an issue. Services should be supportive to the needs of children and families. The type of service provided should not be linked to a judgement about whether abuse has occurred or not.

The broad focus on children's needs raises enormous resource implications for governments who provide services to children and their families. Of the United Kingdom's 11 million children, it has been determined that over four million children have a need that is not met by standard services such as education and health (Aldgate & Statham 2001). However, this research also indicates that restricting services (commonly called '*gate-keeping*') occurs, presumably because of the inability of governments to meet assessed needs – either through direct service delivery or funded services. This needs-based model of service delivery requires a level of cooperation and integration of services that has proved difficult to implement.

In understanding child abuse, there has been a significant focus on United Kingdom research. Because that research has examined the broad implications and outcomes of child protection practice. Australia does not have a comparable body of research, and most states have used the United Kingdom material to review their own practices and approaches to child protection.

## **1.4 Consequences of child abuse**

There are many studies that review short and long term effects of child abuse. Of particular note are studies that outline how the developing brain changes in response to stress and trauma, particularly child abuse and neglect. The research finds that while later negative life events also have an impact, it is the pre-natal and first three years of life that have the greatest capacity to change the way the brain develops. (Perry 1996)

*The brains of traumatised children develop to be hypervigilant and focused on non-verbal cues, potentially related to threat. These children are in a persistent state of arousal and, therefore, experience persisting anxiety. (Perry 1996: 5)*

The effect of neglect is just as devastating:

*To develop normally, infants' brains need consistent, predictable, nurturing, safe and enriching environments (Perry et al. in preparation, cited in Perry 2000: 15) ... Repetitive, patterned, consistent experience allows the brain to create an internal representation of the external world. A child growing up in the midst of chaos and unpredictability will develop neural systems and functional capabilities that reflect this disorganization. (Perry 2000: 16)*

*Child abuse and neglect is [sic] responsible for costly long-term psychiatric disabilities, chronic medical problems, drug and substance abuse, learning problems, unemployability, risk of developing HIV and other serious social and health problems. (Streeck-Fischer & van der Kolk 2000: 915)*

The Telethon Institute for Child Health Research (TICHR) outlines the following impacts of child sexual abuse:

*Acknowledging ... methodological difficulties ... the deleterious effects of CSA [Child Sexual Assault] in childhood include –*

- *Sexualised behaviour and age-inappropriate levels of sexual knowledge*
- *Anxiety and depressive symptoms*
- *Development of suicidal thoughts*
- *School difficulties relating to academic performance, behaviour and peer relationships*
- *Behavioural problems – running away, offending*
- *Dissociative symptoms – amnesia, daydreaming, trances*
- *Increased impulsivity – hyperactivity, aggression*
- *Emotional distress – fear, somatic complaints, nightmares, bedwetting*
- *Lowered self esteem – 'damaged goods syndrome', sense of responsibility for the abuse, increased sense of vulnerability and futility*
- *Difficulties with identity formation*
- *Physical consequences – sexually transmitted diseases, HIV/AIDS, unwanted pregnancy and damage requiring medical attention or surgical repair*
- *Precipitation of psychotic symptoms/disorders in adolescence following an experience of sexual assault. (TICHR Submission 21 February 2002: Appendix 2)*

The institute also raises the following differences

*Male children tend toward more externalising [for example aggression] behaviours, while female children tend toward more internalising [for example anxiety] behaviours. (Gil 1998)*

*Confusion/anxiety over sexual identity (almost unique to boys). (TICHR Submission 21 February 2002: Appendix 2)*

Child sexual abuse also has an impact in adulthood, including:

*Sexual adjustment difficulties*

- *Reduced sexual self-esteem*
- *Disrupted sexual relationships*

- *Lower levels of satisfaction in sexual relationships*
- *Current sexual problems*
- *Tendency toward multiple sexual partners or avoidance of sexual relationships*
- *Higher rates of prostitution in women*
- *Sexual re-victimisation.*

*Difficulties in intimate relationships*

- *Insecure and disorganised attachments*
- *Poor perceived quality of communication with partner particularly on a more intimate level*
- *Increased rates of relationship breakdown*
- *Increased likelihood of separation and divorce*
- *Attributions to partner of lack of concern and tendencies toward over-controlling, intrusive and emotionally detached behaviour.*
- *Disruptive interpersonal relationships.*

*Self-esteem*

- *Increased expectation of pessimism and fatalism*
- *Sense of helplessness and self-hatred. (TICHR Submission 21 February 2002: Appendix 2)*

Mental health difficulties are also raised

*Increased levels of depressive symptoms, anxiety symptoms, chronic emotional distress, substance-abuse disorders, eating disorders, personality disorders and posttraumatic stress disorder, suicidal behaviour, self-mutilation, borderline personality disorder (particularly in women), dissociative disorders, disorders of somatization, chronic pelvic pain.*

*Research indicates that a history of CSA increases risk of developing a psychiatric disorder by 2-4 times that of the non-abused population. The risk for development of depressive disorders and self-damaging and suicidal behaviours is highest (Mullen et al. 2000). Victims of CSA have higher rates of subsequent suicidal and parasuicidal behaviour than those who are not victims of CSA. Women who have been sexually abused are also known to engage in more medically serious parasuicidal behaviour (Linehan 19##). (TICHR Submission 21 February 2002: Appendix 2)*

*Further difficulties include*

- *Lower status economic roles*
- *Partners who were in lower socio-economic groups*
- *Decline in socio-economic status – possibly related to a failure of self-esteem or agency and suggestive of wide ranging disruption of function.*

...

- *Increased risks of exposure to domestic violence and rape*
- *Having had multiple medical or surgical procedures*
- *Greater risks of teenage pregnancy, sexually transmitted diseases in adolescence. (TICHR Submission 21 February 2002: Appendix 2)*

The Coroner, in his inquest into the death of Susan Taylor, described sexual abuse as having a 'devastating' effect on young people. (Hope 2001)

Financial costs are difficult to estimate. A South Australian study concluded that child abuse and neglect cost the state \$354.92 million in one financial year.

These figures are considered conservative by McGurk and Hazel and included three areas:

- \$41.41m for responding to known cases of child abuse and neglect
- \$10.18m for providing services even though the instances were not reported
- \$303.33m for costs resulting from child abuse such as disability or injury. (McGurk and Hazel 1998, cited in Partnerships Against Domestic Violence 1999)

Research indicates the direct cost of child abuse in the United States is over \$24 billion, and the indirect cost is over \$94 billion. (Fromm 2001)

## 1.5 Conclusions and implications for the Inquiry

The understanding of child abuse and neglect has moved from one that focuses on incidents of abuse to a focus on the environment of the child and family, and recognises that harm occurs through the ongoing stress and trauma of a harmful environment or the damaging effects of a neglectful chaotic environment.

The implication of a move to a broad needs-based framework has resource implications. It requires departments to focus less on particular incidents and more on the overall functioning of the child and family. It requires a high level of interagency focus and functioning, with shared responsibility for the protection and wellbeing of children.

The need to respond effectively and to prevent child abuse and neglect is imperative. This is necessary from a human rights perspective, but also because it is less costly to intervene early, address the effects of abuse and, wherever possible, prevent abuse and neglect from happening.

## 2 UNDERSTANDING FAMILY VIOLENCE

### 2.1 Definitions of family and domestic violence

The Partnerships Against Domestic Violence (PADV)—an initiative of the Commonwealth, states and territories—defines domestic and family violence as follows:

*Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women in a relationship or after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. Many forms of domestic violence are against the law.*

*For many indigenous people the term family violence is preferred as it encompasses all forms of violence in intimate, family and other relationships of mutual obligation and support.*

(PADV 1998: 1)

Different definitions of family and domestic violence considered by the Inquiry are in Appendices 1 to 4.

## 2.2 Theories of family and domestic violence

Definitions of family and domestic violence are complex and also differ between government agencies. The Domestic Violence Council of WA has recently embarked on community consultation in an attempt to develop a definition. This is an indication of the relevance of this issue to service response, particularly to collaborative and coordinated responses. (NAPCAN WA (Inc) Submission 19 June 2002: 4)

The early recognition and understanding of what was then called 'domestic violence' focused on physical abuse and almost invariably centred on a woman as the victim, with the perpetrator her male partner. Early responses came from feminists who were responsible for the establishment of refuges for women escaping violent relationships. The first refuge was established by women squatting in two derelict houses in Sydney. This radical beginning shaped the early understanding of, and responses to, domestic violence. (Laing 2000)

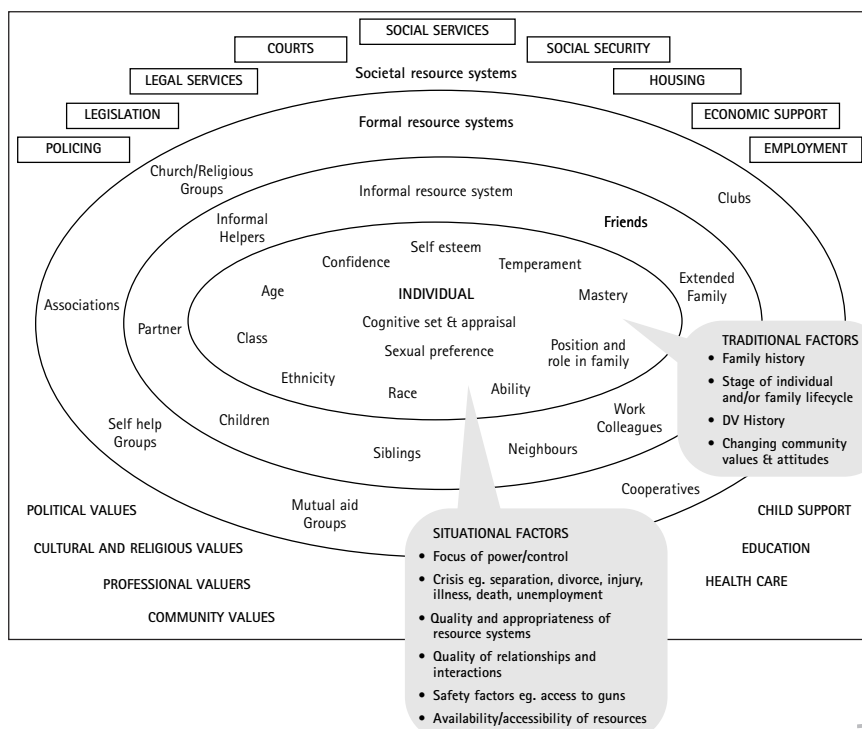
Early theories grappled with the problem from a feminist perspective. Blame was focussed on the more dominant positions of men in society. The individual pathology theory suggested that violent men generally had some kind of psychological problem.

These early theories failed to account for the fact that the majority of men were not abusive and that increasingly women in same sex relationships were victims of violence. Also, most men who abuse do not have a psychological disorder and, apart from their violent actions towards their spouse, are in other ways unremarkable. (Domestic Violence Prevention Unit 2000)

Early simplistic theories of family or domestic violence have been overtaken by theories that explore the multiplicity of factors related to violence within close relationships.

Bagshaw (1998), cited in Bagshaw et al (2000), takes a more holistic view and demonstrates in diagrammatic form, the range of factors to consider in examining people who are in situations of domestic violence.

Diagram 2.2: Factors to consider in assessing the needs of men, women and young people in domestic violence

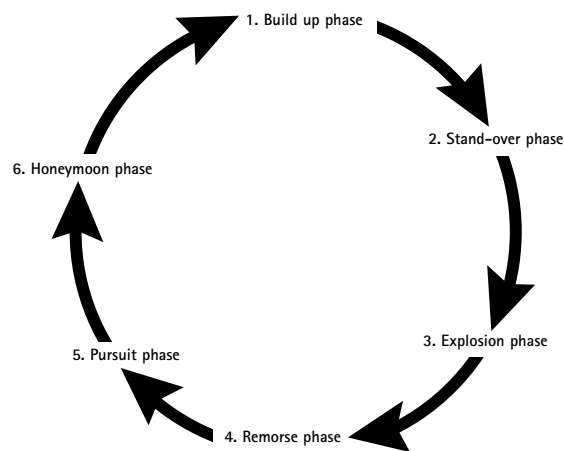


This emphasises that family and domestic violence (like many societal problems) have a range of factors involved, and that simple frameworks are often not helpful in understanding this complexity. Therefore, solutions or responses to family and domestic violence need to involve a range of factors. Responses also need to take into account the overall context within which the abuse is occurring. This broader understanding of family and domestic violence has also prompted calls for more treatment programs for perpetrators.

### 2.2.1 The 'Cycle of Violence'

What has proved consistently useful in practice is an understanding of the '*Cycle of Violence*' within violent relationships.

**Diagram 2.3** The '*Cycle of Violence*'



Source: Women's Issues and Social Empowerment (WISE 1998):

- 1. Build-up phase:** A range of stressors leads to the build-up of tension in the perpetrator. These stressors can be external (such as work) or internal (such as thinking patterns). Non-violent individuals have ways of releasing this tension, but in situations of domestic violence, the perpetrator becomes more aggressive.
- 2. Stand-over phase:** An assault occurs and the victim is often blamed.
- 3. Explosion phase:** The perpetrator expresses remorse, but usually does not accept responsibility for the action.
- 4. Remorse phase:** The perpetrator tries to win back the affection of the victim by giving gifts, being loving and making promises.
- 5. Pursuit phase:** If the victim does not return, there can be revenge and further violence and it is during this phase that most murders occur in domestic violence relationships. The perpetrator may also threaten harm to themselves or others to get the victim back, either physically or emotionally.
- 6. Honeymoon phase:** If the victim returns, there may be an intense relationship in which the violence is denied and the victim believes that the perpetrator has changed. Unless the underlying problems are addressed, the cycle will continue. (WISE 1998)

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*... when a member of a family group causes injury to another person in the group, whether by beating, homicide, spousal or other form of rape, self-mutilation or suicide, verbal or emotional abuse, financial abuse, extreme jealousy, humiliation, or deprivation of liberty of another member of the group which damages their prospects of safe and happy personal development and threatens their life or well-being.*  
(Western Australian Indigenous Child Care Agencies Council Submission 17 April 2002: 2)

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*I would prefer to see family/domestic violence called 'Violence against women'. 'Family Violence' makes it sound nice!*  
(Aboriginal community member)

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*There should be something in the Aboriginal family violence definition that refers to all the cultural and spiritual 'wrong way' stuff that impacts on Aboriginal family violence.*  
(Aboriginal service provider)

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There has been a reluctance to look at any role that the victim might play in an abusive situation. This reluctance arose from early responses to domestic violence that blamed the victim—indeed in many therapeutic groups men commence by blaming the woman and her behaviour, such as nagging, not keeping the house tidy or not having dinner ready. (Bagshaw et al. 2000)

It is important that the understanding of family and domestic violence is sufficiently broad to take into account the need for a range of responses to these problems. Responses that are based on narrow ideology or unwavering philosophical positions are not only unhelpful, but may not respond to the individual needs and perspectives of the victims of violence.

### 2.3 Aboriginal family violence

In the mainstream community, the term 'domestic violence' has commonly been used. Most research findings suggest Aboriginal people prefer the term '*family violence*' (Bagshaw et al. 2000). The use of the term '*family violence*' allows a focus on the broader experience of violence within extended families, as indicated in many of the definitions in Appendices 1 to 4. A wide range of behaviours—including suicide, self inflicted injury, child abuse, put down about culture and identity and a negation of the cultural and spiritual sense of self—have been included.

While this has broadened the understanding of domestic violence to include a range of community and societal factors in general, the focus in mainstream communities is on violence between intimate sexual partners, with a focus on that relationship. Aboriginal family violence is seen within the context of violence generally in Indigenous communities and the multi-faceted range of causal factors that will be explored in Chapter 4. Until recently there has not been a particular focus on the views and needs of Aboriginal victims of family and domestic violence. (Bagshaw et al. 2000)

The different views of Aboriginal communities of the terms '*domestic violence*' and '*family violence*' has been an issue for the Inquiry. During the consultations a number of Aboriginal women said that they preferred the term '*domestic violence*' because they believed the violence in those intimate relationships should be seen as separate from (although not necessarily unrelated to) the violence that occurs in communities—including violence between family groups or between men within that community. However the literature is generally not supportive of this view. (Blagg 2000)



## 2.4 Consequences of family violence

Despite the range of views on definitions and causality, there is agreement that the effects of domestic and family violence are devastating. Submissions to the Inquiry and research papers spell out the effects.

*In addition to child and adult homicides, family violence contributes to a broad array of fatal and nonfatal injuries and medical and psychiatric disorders each year. In addition, family violence has been associated with numerous social problems, including teenage pregnancy, runaway and homeless youth, alcoholism and substance abuse, and crime and delinquency. (National Research Council 1998: 1)*

*Long term effects include:*

- *anxiety*
- *chronic depression*
- *chronic pain*
- *death*
- *dehydration*
- *dissociative states*
- *drug and alcohol dependence*
- *eating disorders*
- *emotional 'over-reactions' to stimuli*
- *general emotional numbing*
- *health problems*
- *malnutrition*
- *panic attacks*
- *poor adherence(sic) to medical recommendations*
- *poverty*
- *repeated self-injury*
- *self neglect*
- *sexual dysfunction*
- *sleep disorders*
- *somatization disorders*
- *strained family relationships*
- *suicide attempts*
- *an inability to adequately respond to the needs of their children. (Newton 2001: 1)*

The WA Action Plan on Family and Domestic Violence states:

*The cost, in both financial and human terms is incalculable. Attempts to quantify the cost in dollar terms have not been successful for a number of reasons, including the absence of reliable data and under-reporting. Nevertheless there is clearly a heavy financial burden borne by government and ultimately society as a whole as a result of the direct and indirect effect of family and domestic violence. (Family and Domestic Violence Taskforce Western Australia 1995: 5)*

### 2.4.1 Consequences of family violence on children

There has been an increasing focus on the damaging impact of children living with family violence. Adverse impacts include

- aggressive behaviour
- anxiety
- symptoms of depression
- low self-esteem
- disobedience
- lying
- destroying things
- emotional distress
- complaints of illness, pains, somatic complaints. (Irwin and Wilkinson 1997, cited in PADV 1999)

Other impacts include regression in toileting and language, poor school performance including truancy, and seeking revenge, feelings of shame and guilt, overly shy and compliant behaviour, and a sense of despair and hopelessness. (Domestic Violence Prevention Unit 2000)

There may be difficulty in attachments and bonding between mother and infant. Toddlers may be extremely shy, bite other children and become clingy. Adolescents may develop serious problems, including violent delinquency, and may copy the aggressive behaviour by assaulting their mother or other family members. Children living with family violence also miss out on having significant development needs met. These needs include a safe and supportive environment. (PADV 1999a)

## 2.5 Conclusions and implications for the Inquiry

The diversity of perspectives on family and domestic violence cause difficulties in service provision. Within the Aboriginal community there is no agreement on approaches or whether Aboriginal family violence is the same '*phenomenon*' as domestic violence in the wider community.

As with child abuse, there has been increasing emphasis on the broader context of family violence and a range of theoretical approaches. In particular, family violence within the Aboriginal community increasingly includes child abuse, particularly child sexual abuse.

A broader perspective on family violence requires an enhanced inter-agency, multidisciplinary focus to respond to family violence at all levels. The consequences of not responding effectively to family violence—including preventing the violence—are serious and long term. Governments and society, as well as individual victims, will pay the price for a failure to act decisively.

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## LEGISLATION

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

The Children Act 1989 (UK)



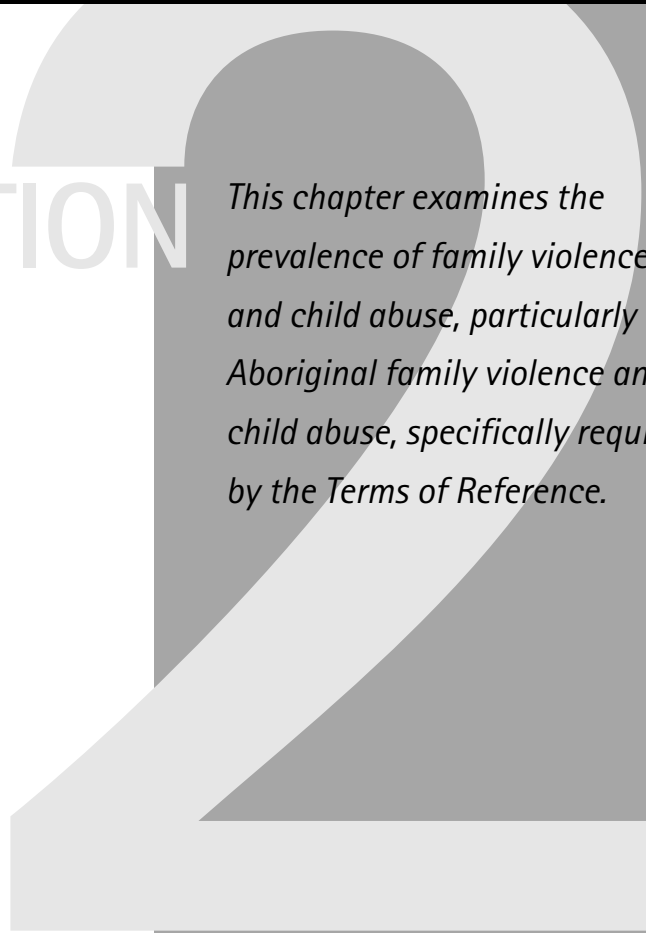
*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *Violence in Indigenous Communities Taxed* • *The Weekend Australian 22-23 December 2001* • *'Abuse claims mar image of campaigner'* *The West Australian 1 November 2001* • *WESTERN AUSTRALIAN MAGAZINE* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## The prevalence of family violence and child abuse

### CHAPTER 3

# SECTION

*This chapter examines the prevalence of family violence and child abuse, particularly Aboriginal family violence and child abuse, specifically required by the Terms of Reference.*



CHAPTER 3

The Prevalence of Family Violence and Child Abuse

1. CHILD ABUSE

1.1 Australian Institute of Health and Welfare data

Data on child abuse in Australia is provided by the Australian Institute of Health and Welfare (AIHW). State and territory community service departments provide data each financial year, with 2000-01 the most current (AIHW 2002). This data is not a good indicator of prevalence but provides a useful comparison of notifications<sup>1</sup> or reports that came to the attention of statutory child protection agencies in each state and territory and their responses to them.

Chart 3.1: Number of notifications by type of action, state and territory (2000-01)<sup>2 3 4 5 6 7 8</sup>

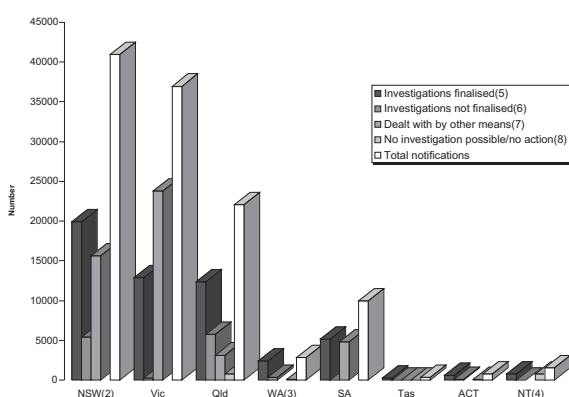
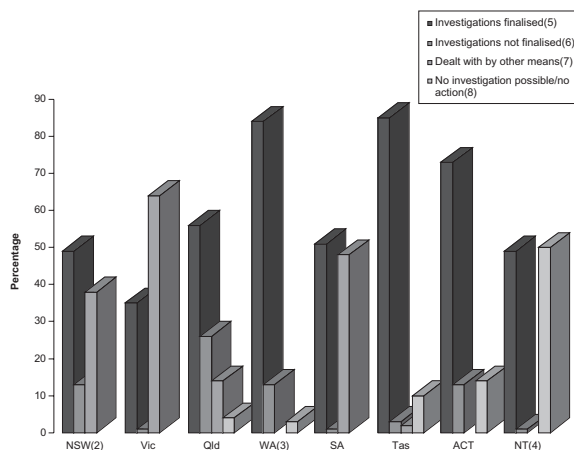


Chart 3.2: Percentage of notifications by type of action, state and territory (2000-01)<sup>2 3 4 5 6 7 8</sup>



Source: Charts created from data sourced in AIHW (2002: 12).

According to data in charts 3.1 and 3.2, and leaving aside the smaller states and territories, Western Australia (WA) has a high rate of finalisation of investigations and none dealt with by other means.

<sup>1</sup> 'Child protection notification': Child protection notifications consist of reports made to an authorised department by persons or other bodies making allegations of child abuse or neglect, child maltreatment or harm to a child. Notifications should not include reports regarding wider concerns about children or families which are classified as child concern reports. (AIHW 2002: 67)

<sup>2</sup> NSW data relates to all notifications in that state where the primary reported issue involved harm/injury or risk.

<sup>3</sup> Notifications 'investigated' in Western Australia included 40 cases where it was not known whether there was an investigation, as data had not been recorded.

<sup>4</sup> In the Northern Territory, notifications dealt with by other means could not be separately identified and were included in the category 'No investigation possible/no action'.

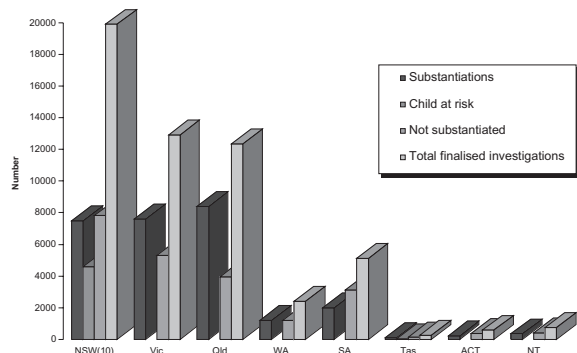
<sup>5</sup> An investigation is classified as finalised where it was completed and an outcome recorded by 31 August 2001.

<sup>6</sup> 'Investigation not finalised' is an investigation that was begun but not completed and an outcome recorded by 31 August 2001.

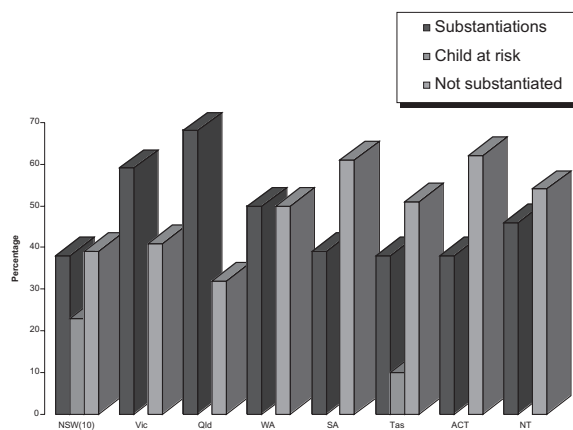
<sup>7</sup> Includes notifications that were responded to by means other than an investigation, such as referral to police, referral to family services or provision of advice.

<sup>8</sup> Includes notifications where there were grounds for an investigation or insufficient information was available to undertake an investigation.

**Chart 3.3: Number of outcomes of finalised investigations<sup>9</sup> by state and territory (2000-01)<sup>10</sup>**



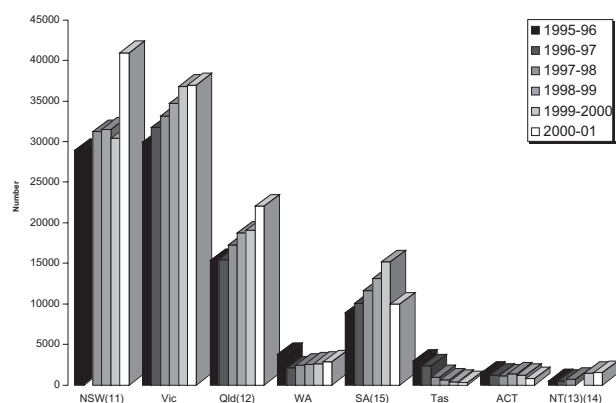
**Chart 3.4: Percentage of outcomes of finalised investigations by state and territory (2000-01)<sup>10</sup>**



Source: Charts created from data sourced in AIHW (2002: 13).

According to charts 3.3 and 3.4, WA has a reasonably low level of substantiation compared to the other larger states.

**Chart 3.5: Number of notifications by state and territory (1995-96 to 2000-01)<sup>11 12 13 14 15</sup>**



Source: Chart created from data sourced in AIHW (2002: 13).

Chart 3.5 indicates that the number of notifications for WA remained relatively low.

<sup>9</sup> 'Investigations': An investigation is the process whereby the community services department obtains more detailed information about a child who is the subject of a notification and makes an assessment about the harm or degree of harm to the child and their protective needs. An investigation includes the interviewing or sighting of the subject child where it is practicable to do so. (AIHW 2002: 67)

<sup>10</sup> Data in New South Wales' category 'Child at risk' refers to investigations where it was determined that no actual harm occurred but carer/family issues were involved.

<sup>11</sup> Data for the 1996-97 financial year were not available from New South Wales.

<sup>12</sup> Data for Queensland refer to the calendar year 1996, rather than the financial year.

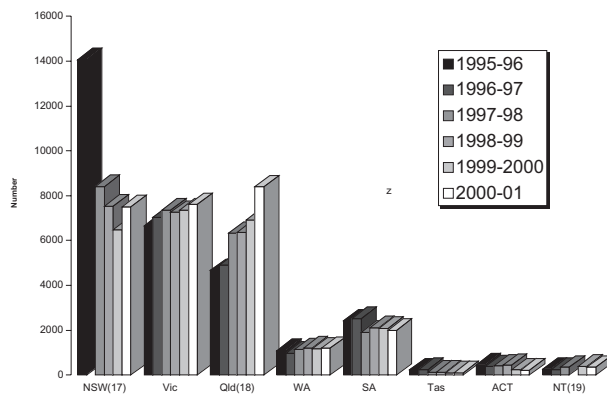
<sup>13</sup> Data for 1998-99 financial year were not available for the Northern Territory.

<sup>14</sup> The number of notifications in 1999-00 in the Northern Territory was higher than in previous years due to the introduction of a new information system that enabled improved reporting of all reports received.

<sup>15</sup> In 2000-01 the classification of notifications in South Australia was changed to exclude reports that did not meet the criteria of reasonable suspicion of child abuse or neglect.



Chart 3.6: Number of substantiations<sup>16</sup> by state and territory (1995-96 to 2000-01)<sup>17 18 19</sup>



Source: Chart created from data sourced in AIHW (2002: 14).

Data provided in chart 3.6 indicates WA's substantiation rate has largely stayed the same over the last six years.

Most researchers agree that abuse reported to child protection agencies throughout Australia is only a very small percentage of what actually occurs. Dorothy Scott summarises the difficulties as follows:

*Two major sources are used to estimate the magnitude of child abuse: prevalence and incidence data. Prevalence refers to the actual extent of a problem in the community at a point in time. Incidence refers to the reported number of cases over a specified period. These two concepts are often confused even in official sources such as the Australian Institute of Health and Welfare (Angus & Woodward 1995: 12). The confusion of the two concepts can lead to assumptions that the marked increase in the incidence of child abuse in Australia in recent years reflects an increase in the prevalence of abuse. (Scott 2000: 122)*

### 1.1.1 Prevalence of child sexual abuse

The Queensland Crime Commission and the Queensland Police service undertook 'Project AXIS' to examine child sexual abuse in Queensland. An overview of the prevalence studies outlined in their report is useful.

In the review of research in the AXIS study, the vastly different figures for prevalence of child sexual abuse arose for the following reasons:

- The type of people surveyed. For example, many prevalence studies rely on university students who are not typical of the population
- Whether some people who have particular experiences are more willing to report
- The way of collecting data (in person, by telephone)
- The range of actions that are defined as child sexual abuse
- The age used to define childhood
- The accuracy of peoples' memories and how willing people are to disclose their experiences.

<sup>16</sup> 'Substantiation': A substantiation in the national data collection is a child protection notification made to relevant authorities during the year ended 30 June 2001, which was investigated and the investigation was finalised by 31 August 2001, and it was concluded that there was reasonable cause to believe that the child had been, was being or was likely to be abused or neglected or otherwise harmed. (AIHW 2002: 67)

<sup>17</sup> Data for the 1996-97 financial year were not available for New South Wales.

<sup>18</sup> Data for Queensland refer to the calendar year 1996, rather than the financial year 1996-97.

<sup>19</sup> Data for the 1998-99 financial year were not available from the Northern Territory.

The following table from the *Project AXIS, Child sexual abuse in Queensland: The Nature and Extent Report* (Queensland Crime Commission & Queensland Police Service 2000), indicates the difficulties in making clear statements about prevalence.

**Table 3.1: Studies that aim to gauge the prevalence of child sexual abuse in the population**

Study	Country	Definition of child sexual abuse	Sample characteristics and response rate (where reported)	% Reporting abuse	
				Female	Male
Finkelhor 1979	USA	Sexual contact, exhibitionism or sexual overtures relating to children prior to age 17 involving a much older person	Students in social science classes in 6 New England schools (530 females, 266 males) – 68%	19	9
Russell 1983	USA	Exploitative or unwanted sexual experiences of children prior to age 18	Women residents of San Francisco (930 females) – 50%	38	-
Finkelhor 1984	USA	Sexual events prior to age 16	Representative households with children aged 6 to 14 years (334 females, 187 males) – 74%	15	6
Kercher & McShane 1984	USA	Sexual exploitation of children	Random sample of Texas residents who have a driver's licence (593 females 461 males) – 53%	11	3
Sedney & Brooks 1984	USA	Contact and non-contact sexual experiences as a child	Volunteers through social science course and through campus advertisements (301 females)	16	-
Baker & Duncan 1985	UK	Involvement of child in activity sexually stimulating to perpetrator prior to age 16	Representative national sample of persons 15 years and older (808 females, 745 males) – 87%		
Timnick 1985	USA	attempted or completed contact; taking nude photos; exhibitionism prior to 18 years	Random national telephone survey (1,252 females, 1,374 males)	27	16
Bagley & Ramsay 1986	Canada	At least manual assault on child's genital area prior to age 18	Stratified sample of western city (377 females) – 94%	22	-
Fromuth 1986	USA	Sexual events prior to age 17	College psychology students at Auburn University (482 females)	22	-
Siegel et al. 1987	USA	Pressured or forced to have sexual contact prior to age 16	Stratified sample of two Los Angeles mental health catchment areas (1647 females, 1480 males) – 68%	7	4
Briere & Runtz 1988	Canada	Sexual contact prior to age 15	College students (278 females)	15	-
Mullen et al. 1988	NZ	Genital contact prior to age 13	Random sample of five parliamentary constituencies (314 females) – 90%	10	-
Goldman & Goldman 1988	Aust	Sexual events prior to age 16	Social science students from 10 tertiary institutions in Victoria (603 females, 388 males) – about 90%	28	9
Fleming 1997	Aust	Unwanted sexual experiences with an adult prior to age 16 that involved some genital contact	Random sample of Australian females selected from the electoral roll (710 females) – 66%	20	-
Goldman & Padayachi 1997	Aust	Unwanted sexual acts prior to age 17	Social science students at the University of Queensland (287 females, 140 males)	45	19

Source: Leventhal (1990: with additions); cited in Queensland Crime Commission & Queensland Police Service (2000: 21-22).

An important consideration in studies of prevalence is the recognised under-reporting.

*'International studies reveal a similar pattern to Australia ... that is the rate of child sexual abuse is much higher than is generally detected or recorded in official statistics.'* (Queensland Crime Commission & Queensland Police Service 2000: 23)

## 1.2 Child abuse of Aboriginal children

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*Verbal reports from community members that there are many instances of child abuse, particularly incest. One issue is that public housing is not well maintained and there is inadequate security so many children have been molested in the night from outside intruders* (response on behalf of an Aboriginal community).

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Statistics reveal that Aboriginal (and Torres Strait Islander) children are significantly over-represented in the protection and care system of all states and territories (AIHW 2002). This trend has been evident each year since the first collation in 1990.

However, it must be noted that the AIHW statistics only deal with cases of child abuse reported to authorities, and are an underestimate of the incidence of child abuse across the nation.

Robertson identifies a

*... flaw in the current statistics regarding child abuse or child sexual abuse, due to the (perceived) lack of response when cases are reported. Many Aboriginal women believe that 'it is no use reporting because they don't believe you anyway.'* (Robertson 2000: 100)

In evidence to the Inquiry, the Western Australian Police Service (WAPS) suggest that there is reluctance within the Aboriginal community to report suspected child abuse. (WAPS Initial Submission 8 March 2002)

It has been suggested that incidents of sexual and physical abuse of Aboriginal children are often not being reported to authorities *'... due to lack of assistance from police or fear of reprisals, or shame'* (Robertson 2000: 101). There are several other factors which lead to the under-reporting of child abuse in Aboriginal communities, and this includes the fact that many communities are located in rural or remote areas of Australia where surveillance and contact with child health or welfare professionals is at a minimum. There has also been concern that government agencies have been reluctant to intervene in Aboriginal communities for fear of reprisals from the community and the media, and therefore *'relied upon cultural politics to justify inability to intervene.'* (Robertson 2000: 91).

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*They are covered up a lot due to protectiveness and shame. There is not much awareness that it is actually illegal and wrong!* (Aboriginal community member)

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Further, the Queensland Women's Taskforce found anecdotal evidence to suggest *... that sexual abuse of young males is increasing, and remains largely unreported, because of the hidden nature of male to male sexual attacks and the shame that is often expressed by victims.* (Robertson 2000: xv)

Overall then, with regard to child sexual abuse, it has been found that *'whether by coercion or rape, the incidence of sexual abuse of minors [is] indicated to be far more frequent than is commonly acknowledged.'* (Robertson 2000: 182).

The *'Violence in Indigenous Communities'* report also reviews studies that emphasise neglect, physical abuse and child neglect, paedophilia and rape of infants. The report indicates that sexual assault on very small children appeared to be increasing in a number of communities. 'Marginal malnutrition' was also raised as a significant problem in some communities. (Memmott et al. 2001)

### **1.2.1 Australian trends in the abuse of Aboriginal children**

Since 1996-97, the rate of Indigenous and Torres Strait Islander children where abuse has been substantiated has increased in all states except Tasmania and the ACT. In all states, cases involving Aboriginal children are more likely to be substantiated than for cases involving other children. The total number of Aboriginal and Torres Strait Islander children subject to substantiations in Australia for the 2000-01 period was 3004. Aboriginal and Torres Strait Islander children comprise 2.7 per cent of children in Australia; yet constitute 20 per cent of those placed in out-of-home care (Cuneen & Libesman 2000). It has also been suggested that the rate of sexual abuse of young Aboriginal girls in the Juvenile Justice system is around 80 per cent. (Atkinson 1990)

### **1.2.2 Western Australian trends in the abuse of Aboriginal children**

In WA during the period 2000-01, Aboriginal children were 7.6 times more likely to be the subject of substantiated child abuse cases than children from other cultural backgrounds. The total number of Aboriginal children on care and protection orders in WA is 355 (Aboriginal children in WA are seven times more likely than other children to be on care and protection orders). Aboriginal children were more likely to have been the subject of a substantiation for neglect than other children. (AIHW 2002)

At the time of the AIHW report, there were 456 Aboriginal children in out of home care, with 79 per cent being placed with an Indigenous family or relative and 21 per cent (97 children) being placed with neither an Indigenous family or a relative (a key facet of the Aboriginal Child Placement Principle).

### **1.2.3 Western Australian sexual abuse of Aboriginal children**

In evidence to the Inquiry WAPS opinion was offered that only 10 to 15 per cent of sexual assaults are the subject of complaints. The evidence was that even fewer Aboriginal people who were subject to sexual assault were likely to make a complaint.

*Evidence from a number of witnesses indicated that sexual abuse of young Aboriginal women is taking place throughout Western Australia on a very regular basis and is very rarely reported. (Hope 2001: 29)*

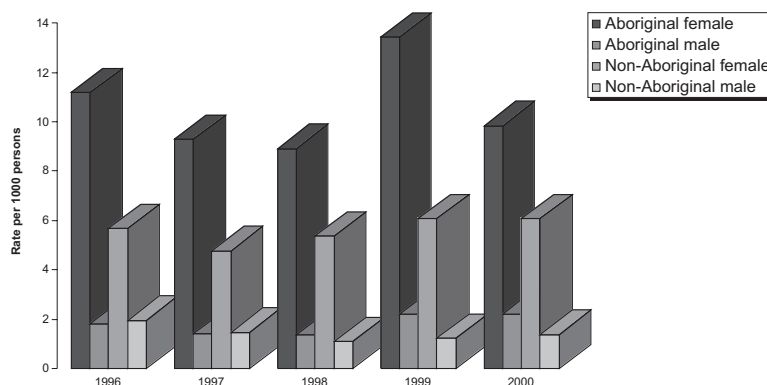
Ferrante and Fernandez from the Crime Research Centre conducted an overview of statistics from the Western Australian Criminal Justice System for the state's Department of Health (DOH). The report, *'Sex offences against children'* (Ferrante & Fernandez: 2002), was produced in April 2002.

WA conducts crime and safety surveys. The latest survey—published in 2001—estimates the annual prevalence rate of sexual abuse was six per 1000 adult females, and that only a little over 30 per cent of those were reported to WAPS. However this refers to respondents 18 years or over (Australian Bureau of Statistics 2001, cited in Ferrante & Fernandez 2002). It is likely the rate of reporting of child sexual abuse is much less, given a range of factors including:

- o Difficulties with language, for example the child may be quite young
- o Fear of the consequences of 'telling', which may include threats made by the offender
- o Embarrassment and shame and a sense that they are 'responsible'
- o Failure to understand that the behaviour is in fact abusive and unacceptable
- o The relative powerlessness of children. (Queensland Crime Commission & Queensland Police Service 2000)

In a recent Queensland study, 55 per cent of the 400 women surveyed had an unwanted sexual experience before they were 16 years old and only 33 per cent had told anyone prior to telling the researcher. Only 3.5 per cent of the victims had complained to police. (French & Dunne 1988, cited in Ferrante & Fernandez 2002)

**Chart 3.7: Child sex offences recorded by police by year, victim sex and Indigenous status, 1996–2000**



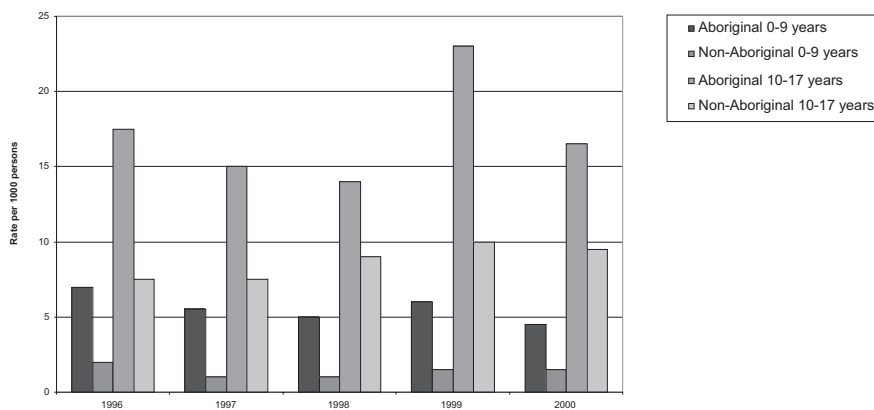
Source: Data sourced from Ferrante & Fernandez (2002: 5)

Data in chart 3.7 indicate clearly the higher rate of victimization of Aboriginal females in particular.

The rate of offending against Aboriginal girls is much higher than for either non-Aboriginal girls or Aboriginal or non-Aboriginal boys.

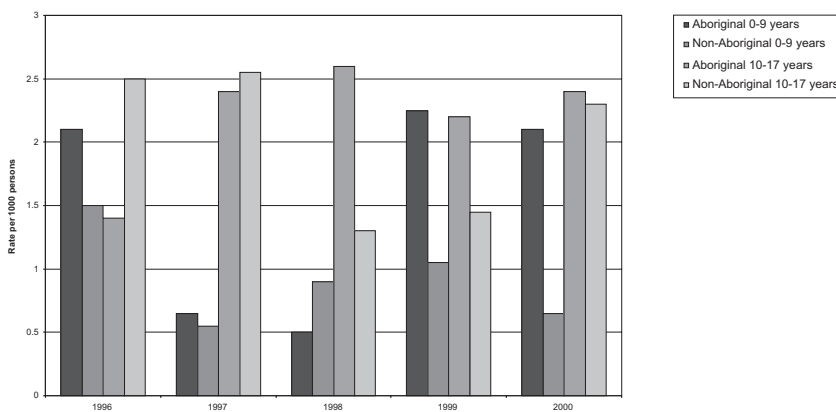
Aboriginal girls aged between 10 and 17 years are the most likely group to be victimised compared to younger children or non-Aboriginal girls in the same age group. However, Aboriginal girls aged from zero to nine are much more likely to be victims than non-Aboriginal girls in the same age group.

Chart 3.8: Child sex offences against girls, by victim age and Indigenous status, 1996–2000



Source: Data sourced from Ferrante & Fernandez (2002: 6)

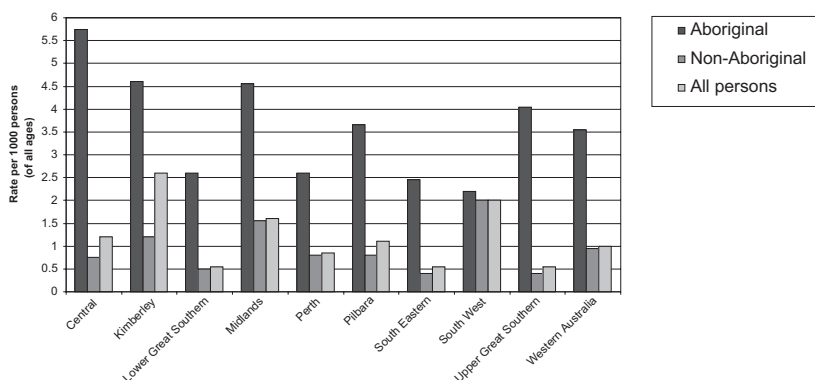
Chart 3.9: Child sex offences against boys, by victim age and Indigenous status, 1996–2000



Source: Data sourced from Ferrante & Fernandez (2002: 6)

Data from chart 3.9 indicate there is greater variability over the years in victimisation of Aboriginal and non-Aboriginal boys.

Chart 3.10: Rates of reported sex offences by Indigenous status of victim and ABS Statistical Division, 2000

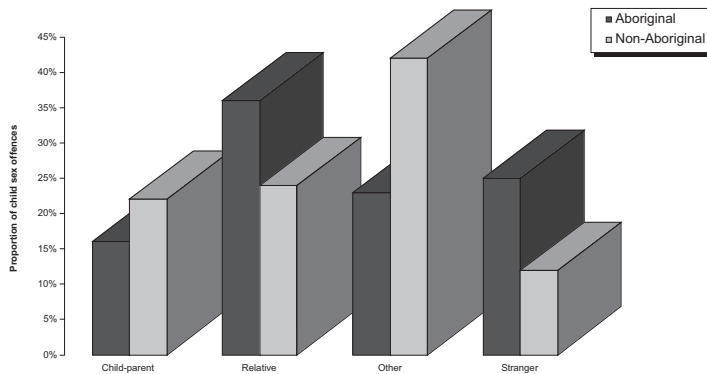


Source: Ferrante & Fernandez (2002: 8)

Data in Chart 3.10 indicate some areas have much higher rates of reported child sexual abuse. In particular, the 'Central' statistical division has a very high rate—more than twice that of the Perth district.

The higher incidence of abuse of Aboriginal children in some areas (for example 'Central' and 'Midlands') coincides with the higher Aboriginal populations.

**Chart 3.11: Relationship between the victim and the offender of reported child sex offences by Indigenous status of victim, 1996–2000**



Source: Ferrante & Fernandez (2002: 10)

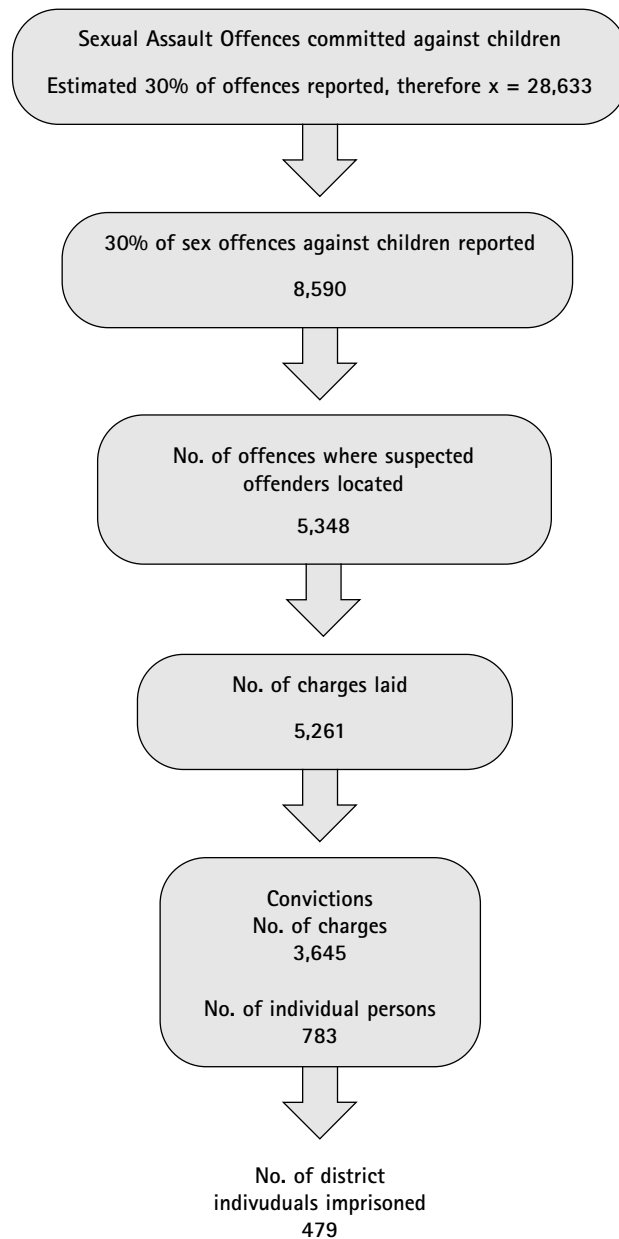
Chart 3.11 indicates that for Aboriginal children, a relative other than the parent is the most common offender, whereas for non-Aboriginal children it is someone known to the child but not a parent or relative. For Aboriginal children, parents are less likely to be offenders than the parents of non-Aboriginal children.

The difficulties with data collection are made clear in the Ferrante and Fernandez report.

*The lack of integration between computer systems in the Western Australian criminal justice system also hampered our attempt to track offenders and map the progression of child sex offences through the system. Without such integration, it was not possible to report on the speed with which such cases flow through the system, nor the extent of attrition of such cases along the way. Therefore, we could not provide a satisfactory answer to the question of just how many (reported) child sex offenders end up in prison for their crimes. (Ferrante & Fernandez 2002: 32)*

Concerns are often expressed about the outcomes of charges laid for child sexual abuse and the difficulties in obtaining convictions. During the period 1996–2000, for child sex charges laid against Aboriginal people there was a 72.3 per cent conviction rate; for charges laid against non-Aboriginal people there was a 66.7 per cent conviction rate; and for charges laid against offenders of unknown Indigenous status there was a 64.5 per cent conviction rate. Overall, for matters that come before the courts, there is little more than a two-third's chance of obtaining a guilty verdict. When this is seen in conjunction with the reporting of child sexual assault—which is estimated to be 30 per cent for adult victims and is likely to be less than 30 per cent for child victims—and the fact that many complaints to police do not end up in court, then it becomes clear that the justice system is not able to play a major role in responding to Aboriginal child sexual abuse.

Diagram 3.1: Progression of child sex offences and offenders through the state's criminal justice system



Source: Ferrante & Fernandez (2002: 29)

*What became apparent during the course of preparing this report was the scarcity of information about the 'true' level of child sexual victimization in the community, not only in terms of the prevalence of child sexual victimization, but also in the incidence of victimization. Inevitably, this places much greater reliance on alternative data sources, in this case on data derived from official administrative sources such as police recorded crime data and related criminal justice records. However, as we found, these data collections are also limited. If our knowledge and policies are to be based on what is known about child sexual offences (that is, based on reported offences and reported offenders) then some of the information gaps and technological deficiencies identified throughout this report need be improved. (Ferrante & Fernandez 2002: 32)*



The Ferrante and Fernandez research also indicates that national surveys do not—and do not intend to—ask questions about the sexual assault of children.

**1. The Inquiry recommends that data on child sexual abuse be collected by government agencies using a methodology that allows for aggregation and illustrates pathways through the justice and child protection systems.**

**2. The Inquiry recommends that the state petition the Commonwealth Government to include older children (13–17 years) in the surveys of sexual assault to obtain prevalence data.**

### 1.3 Conclusion

Child abuse and child sexual abuse are under-reported. The reported statistics on Aboriginal children indicate that they are much more likely to suffer abuse than non-Aboriginal children. In particular, the rate of child sexual abuse of Aboriginal children is significantly greater than non-Aboriginal children. The rates of abuse of Aboriginal children must be viewed with alarm.

## 2. FAMILY VIOLENCE

### 2.1 Prevalence of family and domestic violence

Partnerships Against Domestic Violence's 'Fact Sheet' indicates that *'Domestic violence is widespread and complex'* (Partnerships Against Domestic Violence n.d: 1). A 1996 survey by the Australian Bureau of Statistics found that 23 per cent of women who had ever been married or in a de facto relationship experienced violence in that relationship. (Partnerships Against Domestic Violence n.d.). Almost half (42 per cent) of those women who had been pregnant during the relationship had experienced violence during the pregnancy. It is important to note that of those women who experienced violence from their partner in the last 20 years, 80 per cent had not sought help from services at all. Only five per cent experiencing violence from a current partner reported the last incident to police. (Partnerships Against Domestic Violence n.d.)

The Western Australian Domestic Violence Taskforce (1986), the Taking Action Statement (1992) and the Family and Domestic Violence Taskforce (1995) (cited in The Family and Domestic Violence Taskforce 1995) all indicate that *'In Western Australia, thousands of people, mainly women, live in fear of the next violent outburst by their husband or partner.'* (Family and Domestic Violence Taskforce 1995: 9)

In the United States, self-report surveys have indicated annual rates of domestic violence from 12 per 1000 (relating to rape) to 116 per 1000 (for any acts of violence). (National Research Council 1998)

### 2.2 Aboriginal family violence

Accurate statistics about the incidence of family violence in Aboriginal communities are scarce (Bolger 1991). Although statistics available are imperfect,

*... they are sufficient to demonstrate (that) the disproportionate occurrence of ... violence in Indigenous communities and among Indigenous people is disproportionately high in comparison to the rates of the same types of violence in the Australian population as a whole. (Memmott, et al 2001: 6)*

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*No one is safe. This leaves the elderly, the children and all other members in a state of fear and their daily security is threatened. (Aboriginal Community member)*

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*Problems are escalating and creating concern and fear in all communities. (Aboriginal community member)*

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*Domestic Violence has been an ongoing problem in Aboriginal communities and stems from their lost identity and lack of respect within our society. Therefore there now exists rampant alcoholism, domestic violence, unemployment, poverty, child abuse and mental illness. These need to be addressed for the people to survive. (Aboriginal Community member).*

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O'Donoghue illustrates the extent of the problem of family violence, noting that many Indigenous children are growing up in communities where violence has become 'a normal and ordinary part of life' (O'Donoghue 2001: 15)

Ferrante and colleagues (1996) suggest that Aboriginal women living in rural and remote areas are one and a half times more likely to be a victim of domestic violence than those living in metropolitan areas, and 45 times more likely to be a victim of domestic violence than the non-Aboriginal population.

While there are few figures available from WA, data from the NT indicates that there are around 6000 incidents of assault on Aboriginal women in that territory per year, approximately one-third of the NT's Aboriginal female population. Weapons are reported to be used in around 50-60 per cent of Aboriginal attacks between spouses. (Memmott et al. 2001)

There would appear to be a clear need for more extensive and consistent assessment of the nature and extent of violence in Aboriginal communities. Memmott and colleagues refer to researchers who suggest that there is too much focus on 'studying the incidence of domestic violence' and that they should 'concentrate on qualitative methods of inquiry'. (Memmott et al. 2001: 9)

A review of literature on Aboriginal violence in the 'Violence in Indigenous Communities' report (Memmott et al. 2001) showed

*... that the incidence of violence in Indigenous communities and among Indigenous people is disproportionately high in comparison to the rates of the same types of violence in the Australian population as a whole (and) it is apparent that rates of violence are increasing, and the types of violence are worsening in some Indigenous communities and regions. (Memmott et al. 2001: 6)*

The Violence in Indigenous Communities report supports that violence is under-reported, particularly rape and assault of women. It is also suggested that certain types of violence, such as group rape, have been occurring only recently—that is in the last five to 10 years in many communities. Hazelhurst indicates that the Aboriginal homicide rate in Aboriginal communities is 10 times that of the national average. (Hazelhurst 1994, cited in Memmott et al. 2001)

Duff states that Aboriginal women died from domestic violence at a rate 10 times that of non-Aboriginal women (Duff 1994, cited in Memmott et al. 2001). Martin found that homicide was more a risk for Aboriginal people who lived in remote communities. (Martin 1992, cited in Memmott et al. 2001)

Some deaths that might be best described as unlawful killings may also be under-reported. The *'Violence in Indigenous Communities'* report states:

*'Another issue pertaining to Indigenous homicide is that the official statistics often exclude certain types of homicide, in particular the deaths of women following long-term spouse violence. In many of these cases the immediate cause of death may be attributed to other factors, for example renal or liver failure, but this obscures a history of long-term violent abuse culminating in death from multiple causes. Bolger (1991: p69) details one such case of a woman who was assaulted and violently abused, often in conjunction with alcohol use, over a period of at least five years, during which she was hospitalised seven times, the last being when she died. Her cause of death included renal failure and hepatitis but no physical or other violence was listed. Other reports highlighting similar case studies of prolonged violent spousal abuse causing death include Atkinson (1990a, 1990b), Brady (1990) Bolger (1991: 25-37, 69). (Memmott et al. 2001: 39)*

*'Aboriginal men, women and children are hurting. In some communities, both urban and remote, the nature, severity and extent of violence is such that it is beyond the understanding of those it affects the most. Women cannot see any options but to accept the violence, for it is their own kin involved. The future looks bleak for many of these women, and in talking to them it is clear they feel a sense of real powerlessness and helplessness and shame.'* (Atkinson 1990b: 13-14; cited in Memmott et al. 2001: 52)

Jackie Huggins indicates that Aboriginal women and children are 45 times more likely than other Australians to be the victims of domestic violence and are over eight times more likely to be the victims of homicide. (Huggins 2002)

## **2.3 Conclusion**

The true prevalence of Aboriginal family violence is unknown. What is known is that the violence is endemic and presents an extremely troubling picture of the situation in many Aboriginal communities.

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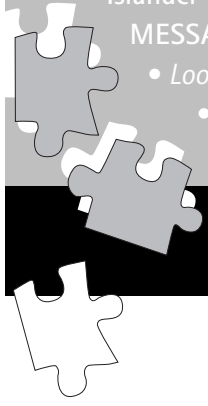
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**Overview of family violence and child abuse, including causality and prevalence**



**SECTION 2**

**SECTION**

**Chapter 2**

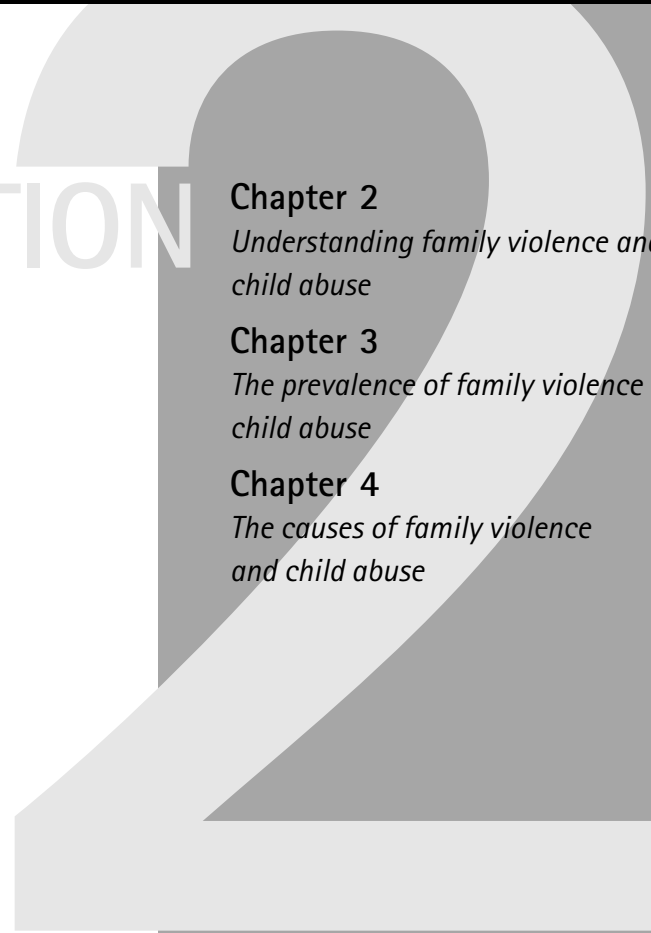
*Understanding family violence and child abuse*

**Chapter 3**

*The prevalence of family violence and child abuse*

**Chapter 4**

*The causes of family violence and child abuse*



*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • *HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999* • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • *VIOLENCE IN INDIGENOUS COMMUNITIES* • *'Abuse claims mar image of campaigner'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • *THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH* • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## The causes of family violence and child abuse

### CHAPTER 4

## SECTION 4

*This chapter examines factors that have been linked to family violence and child abuse, particularly Aboriginal family violence and child abuse.*

*The Terms of Reference required the Inquiry to examine the causes of Aboriginal family violence.*



## 1. CHILD ABUSE

*The impulse to seek causes is innate in the soul of man. And the human intellect, with no inkling of the immense variety and complexity of circumstances conditioning a phenomenon ... snatches at the first and most easily understood approximation and says here is the cause.* (Tolstoy, cited in Gallagher 2001: 75)

### 1.1 The causes of child abuse

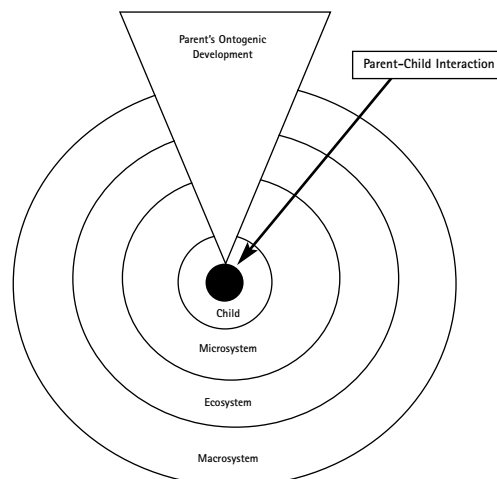
Since Kempe documented and published the '*battered child syndrome*' (Kempe et al. 1962), a large body of research has been produced on the causes of child maltreatment. Initially, most of the approaches focused on identification of single factors (Browne 1988). These factors include mental illness or pathology in the abuse; sociological factors including social isolation, overcrowding and poor housing and unemployment; and characteristics of the child that might provoke abuse. (Browne 1988, National Research Council 1993)

However, in the 1970s it was recognised that no single factor could account for child maltreatment. Researchers then began to investigate the interactions of parent, child and environmental factors. The increased recognition of the role of ecological or situational factors gradually led to the development of '*interactive models, which emphasise the importance of the sociocultural context of child maltreatment*'. (National Research Council 1993: 107)

The ecological model is now the most commonly accepted model of child abuse based on the ecological understanding of child development, developed by Bronfenbrenner (1979) and Garbarino (1985), (Belsky 1980, 1993) (Garbarino & Collins 1999); cited in Sidebotham (2001):

*The basis of an ecological model is that child maltreatment is multiply determined by forces at work in the individual, in the family and in the community and culture, and that these determinants are nested within one another.* (Sidebotham 2001: 103)

Figure 4.1: An ecological' model of child abuse



Source: Sidebotham (2001: 104).



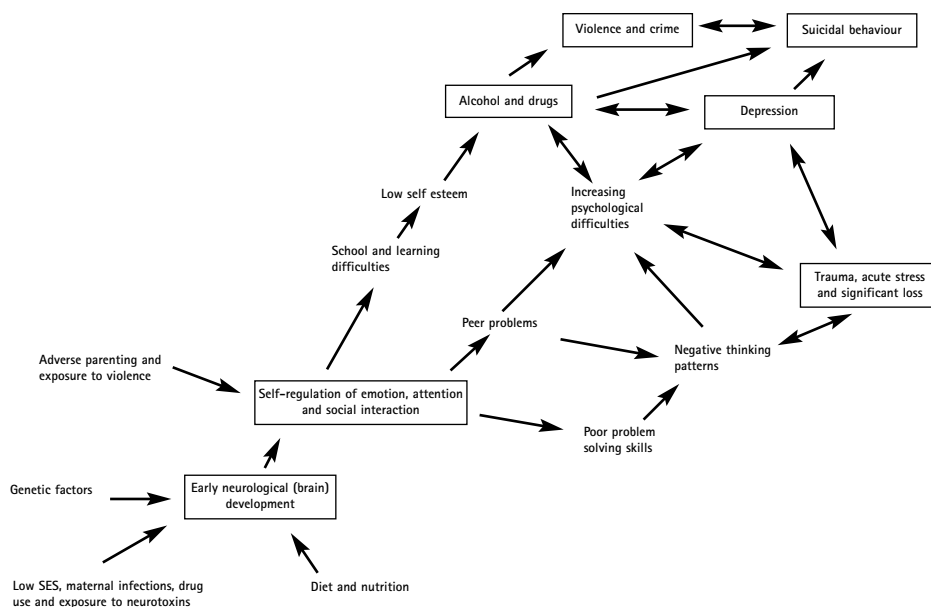
Table 4.1: Factors in an ecological framework

Ontogenic development <sup>2</sup>	Mircosystem <sup>3</sup>	Exosystem <sup>4</sup>	Macrosystem <sup>5</sup>
The background and development of the parents/carers	The child's immediate family and household context	The larger social systems within which the family is embedded	Overriding cultural beliefs and values
Parental age	Ethnicity	Social class	Nature and role of the family
Education	Child's health, behaviour, temperament	Housing and amenities	Attitudes to and perceptions of children
Social background	Disability	Income	Responsibilities in parenting
History of child abuse	Marital relationship	Social network	Violence
Other childhood experiences	Domestic violence	Social support	
Personality	Siblings	School and pre-school opportunities	
Psychiatric history	Parenting attitudes and practice		
Substance abuse			

\* This list is not intended to be exhaustive, but merely to give examples and show how different factors may fit within an ecological model. It is important to note that some factors may operate in more than one level.

Source: Sidebotham (2001: 104).

### Influences on and causes of family violence and child abuse



Source: Aboriginal Suicide Prevention Steering Committee (2001)

<sup>1</sup> 'Ecological model': A paradigm which sees abuse as being multiply determined by forces at work in the individual, in the family and in the community and culture, these determinants being nested within one another.  
<sup>2</sup> Ontogenic background The background and development of the parents/carers.  
<sup>3</sup> Microsystem The child's immediate family and household context. This involves not just the physical and material characteristics of the immediate setting, but also the interactions between different family members.  
<sup>4</sup> Exosystem The larger social systems within which the family is embedded. These settings do not immediately involve the developing child as an active participant, but nevertheless have an impact on that child.  
<sup>5</sup> Macrosystem The overriding cultural beliefs and values in a society or section of society.

Social interactionist models such as the ecological model emphasise the importance of viewing child abuse and neglect within the context of the child, family, their local community and society. From this perspective, maltreatment may result from complex constellations of factors whose influence may increase or decrease over different developmental and historical periods. (Holden et al. 1992; cited in National Research Council 1993)

## **2. FAMILY VIOLENCE**

A rigorous understanding of causality in mainstream domestic violence has been hampered by a focus on philosophical positions that are not always supported by research.

*[A] continuing problem fa[c]ing the development of adequate policy has been the tendency for limited or even unexplained sources about domestic violence to assume unwarranted degrees of certainty. (Crime Research Centre 1995, cited in Family and Domestic Violence Taskforce, 1995: 8)*

The National Committee on Violence review of the literature suggests the following factors are causally related to violent behaviour generally:

- Child development and the influence of family, with negative factors including observing violence, suffering rejection, the use of physical punishment and threats by parents, and the experience of abuse or neglect
- Cultural factors, including normalising violence and seeing it as a way to get an outcome
- Poverty and inequality of income
- Cultural disintegration – feelings of alienation or marginalisation
- A poor physical environment
- Gender inequality
- Personality factors, including impulsiveness and a lack of empathy
- Substance abuse
- Early experiences which appear to change the biology of the person
- Some forms of mental illness, such as paranoid schizophrenia
- Violence in the media
- Associating with violent individuals. (National Committee on Violence 1990)

The following table was provided by the Telethon Institute for Child Health Research (TICHR).

**Table 2: Risk factors potentially influencing the development of sexual aggression and violence**

Individual Factors	Family/social Factors	School Context	Life Events and Situations	Community and Cultural Factors
- Prenatal brain damage	- having a teenage mother	- bullying	- physical, sexual and emotional abuse	- socio-economic disadvantage
- prematurity	- having a single parent	- peer rejection	- school transitions	- social or cultural discrimination
- birth injury	- absence of father in childhood	- poor attachment to school	- divorce and family breakup	- isolation
- low birth weight, birth complications	- large family size	- inadequate behaviour management	- death of family member	- neighbourhood violence and crime
- physical and intellectual disability conditions	- antisocial role models (in childhood)	- deviant peer group	- physical illness/impairment	- population density & housing
- poor health in infancy	- family violence and disharmony	- school failure	- unemployment, homelessness, transport, shopping,	- lack of support services including recreational facilities
- insecure attachment in infant/child	- marital discord in parents		- incarceration	
- low intelligence	- poor supervision and monitoring of child		poverty/economic insecurity	
- difficult temperament	- low parental involvement in child's activities		- job insecurity	
- chronic illness	- neglect in childhood		- unsatisfactory workplace relationships	
- poor social skills	- long-term parental unemployment		- workplace accident/injury	
- low self-esteem	- criminality in parent		- caring for someone with an illness/disability	
- alienation	- parental substance misuse		- living in nursing home or aged care hostel	
- hyperactivity in child	- parental mental disorder		- war or natural disasters	
- impulsivity	- harsh or inconsistent discipline style			
	- social isolation			
	- experiencing rejection			
	- lack of warmth and affection			

Source: TICHR Submission 8 July 2002: Appendix 4.

### 3. THE CAUSES OF FAMILY VIOLENCE AND CHILD ABUSE IN ABORIGINAL COMMUNITIES

While there exist a number of different theories on the causes of family violence and child abuse in Indigenous communities, the commonly held position is that violence is caused by a multitude of factors. *'The overwhelming evidence supports the position that the various forms of Indigenous violence have multiple originating causes'* (Memmott et al. 2001: 11). This view is supported by the majority of commentators from the 1980s onwards.

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*As well as differing definitions, there are differing understandings of 'why' child abuse occurs which also impacts on response. Key philosophical perspectives of the causes of family violence and child abuse include issues of power and control, oppression, poverty, drugs and alcohol, social isolation, and limited parenting/relationship skills. These differing philosophies are fundamental to practice and impact significantly on the way in which agencies intervene. Agencies often fail to understand the multifaceted nature of child abuse and family violence; therefore interventions tend to focus on limited aspects of family circumstances and are therefore restricted in their efficiency and effectiveness. These understandings of child abuse and family violence are further impacted by widespread racism, institutional abuse and ignorance of the complexity of Aboriginal communities within the government agencies. (NAPCAN WA Submission 19 June 2002: 4)*

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The National Aboriginal Health Strategy Working Party reports that domestic (or family) violence, which they say is frequently associated with alcohol consumption, cannot be attributed to any one cause. *'Domestic violence has its roots in institutionalisation, incarceration, loss of role, loss of parental and role models, low self esteem, and alienation'*. (National Aboriginal Health Strategy Working Party 1989: 8.17.2)

Atkinson—an Indigenous commentator—lists some of the contributing factors to family violence in Indigenous communities as being: poverty; unemployment; substandard or inadequate housing; limited access to societal resources and services; loss of identity and self esteem; abusive styles of conflict resolution; sexual jealousy; imbalance and inequity within male and female roles, responsibilities, status and contribution to family life; neglect of family responsibilities; lack of respect within families; emotionally damaged family members; neglect or abuse of children; suicide; and alcohol abuse. (Atkinson 1996)

Mow sees violence in Aboriginal communities resulting from oppression and dispossession, the enforcement of protection and assimilationist policies (up until the 1970s) which fragmented many Aboriginal families, as well as poverty and alcohol. Mow also notes that cultural factors relating to 'shame' interfere with the recognition of the problem itself, and help seeking behaviour. (Mow 1992)

Blagg undertook a meta-analysis of the literature on violence in Indigenous communities and listed the following multi-causal factors for high rates of violence:

- *marginalisation and dispossession;*
- *loss of land and traditional culture;*
- *breakdown of community kinship systems and Aboriginal law;*
- *entrenched poverty;*
- *racism;*
- *alcohol and drug abuse;*
- *the effects of institutionalisation and removal policies; and*

- *the 'redundancy' of the traditional Aboriginal male role and status, compensated for by an aggressive assertion of male rights over women [and] children.* (Blagg 1999, cited in Blagg 2000: 5-6)

Memmott and colleagues suggest that the causes of violence are best considered in three contributing categories. These are:

- precipitating causes (one or more events triggering a violent episode)
- situational factors (such as combinations of alcohol abuse, unemployment, and welfare dependency)
- underlying factors (historical circumstances). (Memmott et al. 2001)

It should be noted that various causal factors may be given different emphasis by different authors and commentators. Similar factors may also be described in a number of varying ways, and the factors are not discrete but are inter-related, often with multi-directional causes and effects.

### 3.1 Underlying factors of family violence and child abuse

#### 3.1.1 Trauma and violence in the last two centuries

A number of prominent Aboriginal spokespersons believe that current dysfunctional behaviour that occurs within Aboriginal communities is grounded in unresolved grief associated with multiple layers of trauma, which has spanned many generations. The dysfunctional behaviour includes violence and child sexual abuse. (Atkinson 1994, Pearson 2000 & Robertson 2000, cited in TICHR Submission 8 July 2002)

*'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report'* states that many Aboriginal people are suffering from post-traumatic stress disorder. (Robertson 2000) To survive over the years, many Aboriginal people have had to suppress and/or deny their feelings of distress and despair. This pain has become internalised within the family, expressing itself in destructive behaviours such as family violence, alcohol and drug abuse and suicide (Atkinson 1994). This enacting of trauma is a form of *'coping mechanism'* (Robertson 2000: 31).

Pearson draws attention to the fact that this trauma is not just seen as an issue for individuals and families—it is seen in the context of communities, as *'the community is traumatised'* (Pearson 2000: 33). These traumas almost exclusively relate to the impact on Aboriginal communities of dominant white communities throughout the history of white settlement of Australia. Pearson sums up the traumas as relating to *'the process of dispossession and the operation of racism throughout history'*. (Pearson 2000: 33) *'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report'* states that this trauma relates to Aboriginal people suffering from *'genocide, enslavement, cultural violence and racism'* (Robertson 2000: 25). The report states that many Indigenous people have suffered *'profound violations in their childhood'* (Robertson 2000: 31). *'Indigenous people have endured decades of oppression and neglect. The massacres and inhumane treatment of their families remain fresh in their minds. Many members of contemporary*

*Indigenous Communities can still remember the policies that isolated them from the broader community, that exempted them from associating with family and kin, that forcibly removed them as children and subjected them to treatment that breached even the most basic human rights.* (Robertson 2000: xiii)

Atkinson believes that the traumas relate to:

- a failure to adequately grieve for family deaths and injury from introduced diseases
- starvation because of economic (land) dispossession
- the experience of physical and sexual brutality
- covert structural violence including forced removal of people to reserves, institutions, stations and homes as 'domestics'. (Atkinson 1994)

### *3.1.1 (a) Physical and sexual assaults*

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*Learned behaviour e.g. Perpetrator abused as a child.* (Worker in remote town)

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There is some evidence that Aboriginal family violence is a learned behaviour *'It was learned by Aboriginal people from the initial aggression of white occupation, and has since been transferred through the fabric of Aboriginal society over several generations of exposure to male dominated colonial and paternalistic administrations.* (Hazelhurst 1994: 21-22)

Hazelhurst asserts that *'children who learn self abusive and family abusive behaviours from their parents' generation will apply it quite early in their own lives.'* (Hazelhurst 1994: 25)

The recent Queensland Fitzgerald Report states that the 1901 amendments to the *Aboriginals Protection and Restriction of Opium Act 1897* (Qld) addressed continuing sexual abuse of girls and women, including the practice of taking women from place to place like chattels and tying them up to prevent escape. The amendment required that permits be obtained for employment of all females and decreed that sexual assault was now an offence *'if medical proof showed the girl to be pre-puberty'* (Fitzgerald 2001: 11). Thus, by implication, permitting the sexual abuse of girls who had reached puberty.

### **3.1.2 The stolen generations**

Particular mention needs to be made of the large-scale removal of Aboriginal children from their families as a major contributor to the experience of trauma. The release of the *'Bringing Them Home'* report in 1997 and, more recently, the work of Read have focused attention on the multiple layers of trauma experienced by the *'stolen generations'* and how it impacted on the parenting skills of those stolen children as adults. (Read 1999, Human Rights and Equal Opportunity Commission [HREOC] 1997)

Read notes that whilst there exist some positive stories of the stolen children becoming leaders and role models for their Aboriginal communities, the majority of the stories reveal stolen children growing into traumatised adults. These are adults who have died prematurely, who have beaten their spouses or children, who may have abandoned their

own children and who have been unable to maintain constructive lives (Read 1999). Expert testimony to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families argues that the

*... early loss of a mother or prolonged separation from her before the age of 11 is conducive to subsequent depression, choice of an inappropriate partner, and difficulties in parenting the next generation. Antisocial activity, violence, depression and suicide have also been suggested as likely results of the severe disruption to affectional bonds. (HREOC 1997: 181)*

The removal of children is thus presented as a direct contributing factor for the increased levels of violence within Indigenous families. (Read 1999)

Research undertaken by Vinson and colleagues is relevant. They have shown that communities facing similar issues and with similar levels of social problems (communities were matched on a number of different variables, such as size, social disadvantage) may produce differences in the prevalence of child abuse. The variation appears to be due to differences in the quality of the occupants' social relationships or 'connectedness'. The researchers found that those communities identified as having less social connectedness (fewer and weaker social relationships with others) as having higher levels of child abuse (Vinson et al. 1996, cited in Tomison & Wise 1999). Thus, the break-up of families and loss of extended family and support networks (kinship groups) as has occurred to many Aboriginal families, would appear to directly contribute to child abuse in the present communities.

### **3.1.3 Issues of governance in Aboriginal communities**

The multiple and interwoven factors which are linked to family violence and child abuse required the Inquiry to explore a range of factors that might not immediately come to mind in exploring family violence and child abuse in Aboriginal communities.

Jackie Huggins in a paper entitled *'Family Violence in Indigenous Communities – A case of the systemic Failure of Good Governance'* outlines the links between the social problems of violence and poor governance.

*'We are currently trying to deal with family violence and child abuse against a background of historically poor governance at the local level; complex inter-governmental arrangements that have ensured this issue remains handled by a body (Ministerial Council on Aboriginal and Torres Strait Islanders [MCATSIA]) that has a low pecking order compared to other Ministerial Councils; and in the context of clear evidence that the problems are getting worse, not better. (Huggins 2002:4)*

Jonas stresses the importance of good governance and the development of community capacity in Aboriginal communities. (Jonas 2002). The need for Aboriginal communities to engage with the wider country as well as focussing on capacity building within communities is stressed!

*To be truly effective, capacity building needs to be seen as a particular form of cross-cultural education, in which Aboriginal people's enhanced capacity to achieve self-*

*determination through their own institutions provides an important bridgehead to engagement with the institutions of the wider society'. (Martin 2002: 6)*

This theme of difficulties of engagement between Aboriginal communities and mainstream institutions will be discussed more fully as the Inquiry examines the services provided by government agencies.

Research from the United States provides some answers to the issues of governance and development. In particular, Harvard research found the following were important factors.

**a. Self-rule**

Outsiders need to move to resource roles and allow Indigenous people to become primary decision makers.

**b. Governance**

There needs to be stability in the rules on which governance is based. These rules cannot change with the whims of government or changes in senior bureaucrats. There has to be fair and effective ways of solving disputes, and appropriate decision making structures.

**c. Cultural match**

There must be a 'match' between the governing institutions and the communities' concepts of how power and authority should be used.

**d. Strategic thinking**

Communities need to take a long-term view rather than 'quick fix' solutions.

**e. Leadership**

Leaders who see a future, communicate that vision and put the communities needs before their own can make a real difference. (Cornell 2002)

*The Importance of Indigenous Governance and its Relationship to Social and Economic Development* defines governance as '*the art of steering societies and organisations*' and states that good governance leads to enhanced social, cultural and economic conditions. It describes the four attributes of good governance as:

*legitimacy – the way structures of governance are created, leaders chosen, and the extent of constituents' confidence and support*

*power – the acknowledged legal capacity and authority to make and exercise laws, resolve disputes, and carry on public administration*

*resources – the economic, cultural, social and natural resources, and information technology needed for its establishment and implementation*

*accountability – the extent to which those in power must justify, substantiate and make known their action and decisions* (The Importance of Indigenous Governance and its Relationship to Social and Economic Development n.d: 2)

The report '*Revisiting the Old in Revitalising the new: Capacity Building in Western Australia's Aboriginal Communities*' stresses the importance of building the capacity of communities. The economic and social disadvantage in many communities has resulted in



difficulties in self-management. Yet this report, along with other research, sees self-management as critical to addressing the range of disadvantage in Aboriginal communities.

*'The low capacity leads to a lack of social cohesion, an inability to preserve infrastructure quality and to fully utilise government services. In an environment where funds are limited, the lack of managerial competence may result in reduced success in attaining funding. This will result in further deterioration of the community. Building increased community capacity is the most promising means to break this cycle and improve community conditions. (North Australian Research Unit 2000: 4)*

## 3.2 Social disadvantage

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*Poverty and unemployment, economic, health and social disadvantage 'Misplacement, feelings of disempowerment through unemployment, lack of financial security, low self esteem, lack of education, women's changing role in a patriarchal society. (Aboriginal community member)*

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*Memmott describes this pattern in communities as 'dysfunctional community syndrome. (Memmott et al. 2001). It would appear from the descriptions available of many Indigenous communities, that they suffer from a 'toxic environment', which together with geographical and social isolation, is associated with the break-up of families (Garbarino & Abramowitz 1992). 'One issue is that public housing is not well maintained and there is inadequate security so many children have been molested in the night from outside intruders.'<sup>1</sup> (Worker in remote town)*

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Tomison and Wise draw attention to the fact that considerable research has shown the association between stressful, negative community conditions, and maladaptive coping behaviour and social dysfunction. Some communities have been labelled 'toxic environments', because they are 'plagued by various social ills' such as high unemployment, high crime rates, poor transport facilities and poor access to professional services. (Tomison & Wise 1999)

Using data obtained as part of the 1996 Census, Edwards and Madden have recently published a report on the health and welfare of Aboriginal people<sup>6</sup>. The authors reveal that Aboriginal people are disadvantaged across a range of socioeconomic factors. These included '*lower incomes than the non-Indigenous population, higher rates of unemployment, poorer educational outcomes and lower rates of home ownership*' (Edwards & Madden 2001: 2). Aboriginal people are more likely to be in improvised dwellings (sheds, humpies, tents and park benches), be in overcrowded living conditions and live in houses in high need of repair, than non-Aboriginal people (Edwards & Madden 2001). The report states that inadequate and poorly maintained infrastructure, particularly water and sewerage systems, '*are major issues*' and '*potentially major causes of ill health*' for Indigenous communities, particularly those in remote and rural areas of Australia. (Edwards & Madden 2001: 24, 29)

Robertson reports that there is an association between violence in Aboriginal communities and high unemployment, poor health, low educational attainment and poverty, however, a more detailed understanding of this association is needed. (Robertson 2000) It would appear that there might often be intervening variables. For example, the presence of domestic violence may cause children to roam the streets and makes them more vulnerable to sexual abuse, especially in areas with high alcohol consumption. Further, female

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<sup>6</sup> A Western Australian Aboriginal Child Health Survey has been undertaken by the Institute for Child Health Research in WA. However, these findings will not be available until early 2003 (Howell, personal communication).

heads of households often care for large numbers of children (which may in itself be due to family violence) and are forced to live in derelict houses that cannot be adequately locked to prevent external intruders entering the house and assaulting residents (children or adults).

The high levels of poverty, unemployment, homelessness and ill health found in Aboriginal communities, of themselves, make Aboriginal and Torres Strait Islander families more susceptible to becoming involved with both child protection and juvenile justice services. (Cuneen & Libesman 2000)

### 3.2.2 Aboriginal mental health

McLennon and Madden report that there is *'very little information ... available about the mental health of Indigenous people'* (McLennon & Madden 1999: 103)

They report that in Western Australia the rate of deaths from mental disorders is four times that which would be expected, given the population. There is also over representation of Aboriginal people in statistics on self-inflicted injury and suicide. (McLennon & Madden 1999)

*A review of mental illness and other psychological problems of Aboriginal people states throughout all these studies, and identified in the reports of Aboriginal people themselves, separations (especially through the taking away of children and its ongoing effects), trauma, grief, loss of culture, and ongoing effects of poverty, discrimination and racism are central.* (Raphael & Swan 1997: 15, cited in McLennon & Madden 1999: 104)

### 3.2.3 Passive welfare

In the past three years, a number of people, most notably Noel Pearson, have focused attention on the issue of 'passive welfare' as a cause of many of the problems affecting Aboriginal communities. Pearson believes that passive welfare has undermined Aboriginal law, traditional values and relationships. He describes passive welfare as being the *'assistance to needy citizens who may never repay via their taxes what they have received, and of whom nothing further will be required or expected'* (Pearson 2000: 11)

He says

*... passive welfare is an irrational, 'gammon' economic relationship, where transactions between the provider and the recipient are not based on reciprocity [a respected cultural value]. The principle in this relationship is 'money for nothing' or 'help for nothing'. Essentially it is charity.* (Pearson 2000: 21)

Pearson explains that

*... our dispossession is the ultimate cause of our passive welfare dependency. Upon our dispossession the traditional economy of our ancestors was ruptured and we were engulfed by the new economic order, in which our official and actual place until 1967 was in the underclass: quasi-slaves, workers in fact but not in status.* (Pearson 2000: 13)

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No role and nothing for men to do, men's role have been replaced and there are limited employment opportunities. (Aboriginal worker)

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He believes that welfare is a mentality that is *'internalised and perpetuated by recipients who see themselves as victimised or incapable and in need of assistance without reciprocation'*. (Pearson 2000: 21)

Welfare dependency is also viewed as a problem in *'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report'* which states that because of a breakdown of traditional social support and the lack of infrastructure and real employment, people, particularly in rural and remote communities have become almost totally reliant on welfare (Robertson 2000). Compounding the problem, health, family and welfare agencies are not able to meet the increasing demands for these services. (Robertson 2000)

### 3.2.4 Racism

The link between racism and family violence is mentioned in the literature, but the association is not usually clarified. It is likely that racism attacks self-esteem and personal well-being, thus leading to a break-down in social order and a community's sense of worth and thus contributing to family violence. Pearson argues:

*'(M)ake no mistake, racism is a terrible burden. It attacks the spirit. It attacks self esteem and the soul in ways that those who are not subjected to it would have not an inkling of understanding about. Racism is a major handicap - it results in Aboriginal people not recognising opportunities when they arise, in not being able to seize opportunities when they arise, in not being able to hold on to opportunities when they have them . . . Australians concerned about the position of Aboriginal people in this country should not underestimate the decisive role that racism plays in the wellbeing of Aboriginal individuals and society. (Pearson 2000: 34)*

### 3.2.5 Portrayal of images of violence and sexuality

There has been little research on the impact on children of viewing sexual material – both normal and pornographic, and the research is still indeterminate about the impact on children of viewing of violent material (Stanley 2001). Even less is known on the impact of viewing this material by young males living in isolated and depressed circumstances in remote Australia (Atkinson 1990a). However, first hand experience reported by some commentators suggests that the viewing of offensive material in Aboriginal communities is a factor contributing to sexual violence. This issue is likely to be more problematical with the increase in use of the Internet in outback Australia. Hazelhurst states that

*over a 15–20 year period community workers have observed changing patterns of physical behaviour and sexual offending among Aboriginal men and boys which, they are convinced, have been induced by exposure to violent images in the media. This 'new scourge' in remote communities has been attributed by local people to the introduction of a diet of macho and violent television programs and, more recently, of violent and pornographic videos available through local distributors and inter-state mail order outlets. (Hazelhurst 1994: 26–27)*

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Unlimited supplies of 'blue' movies without appropriate education.

*(W)omen are being forced by their partners to provide the money, then, she is forced to purchase the drugs and the blue movie because of the shame factor. He does not want to be seen buying drugs and purchasing 'blue movies'. If she refuses to provide the money, purchase the drugs and the movie she is flogged. Children witness the conflict and the flogging. If Mum decides to take drugs with dad, the children often witness the sexual exploits of the parents. Or, the children are locked out of the house whilst Mum and dad carry on inside the house. According to Drug and Alcohol counsellors [sic] these practices are the norm, counsellors [sic] are witnessing these cases more and more frequently.*

*The influx of 'blue' movies into communities has not meant that there are measures that ensure underage children are not being exposed to the movies. In fact, the 'blue' movies are left around and all children are getting access to the movies. This in turn is introducing unprotected children to wrong relationship messages, wrong love messages and unhealthy sexual relationship messages. These practices are engaging and entrenching children in anti-community and family values and norms. The guardians for indigenous community and family values and norms are disappearing or have completely vanished. (Aboriginal worker)*

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Atkinson (1990) reports that Aboriginal women say violence and sexual abuse has increased since pornography entered communities. Sometimes offensive videos, brought in by white men as forms of entertainment, are the only understanding Aboriginal young men have of mainstream culture (Atkinson 1990). Hazelhurst further reports that women complain that they have been asked to participate in viewings of offensive material and to imitate sexual acts that are offensive and distressing to them. *'Assaults on young children, infants, and animals by young males, sometimes roving in gangs, escalate after shipments of pornographic videos.'* (Hazelhurst 1994: 27)

Hazelhurst makes the comment (which also has some resonance to the trading of sly grog in many remote Aboriginal communities) that *... to unscrupulous interests, Aboriginal society is 'a sitting duck.' ... (in) one northern Queensland community I visited it was the non-Aboriginal owner of the community garage who ordered in this material from Canberra, and rehired these to Aboriginal men at a considerable profit. It was the Aboriginal women who were asked to perform the acts that were seen on these videos, or the young children who were assaulted by highly excited teenagers after a viewing. Without proper authority to set up their own controls these communities are a vulnerable and ready made market for the worst of what western society has to offer.* (Hazelhurst 1994: 28).

Cripps (Stanley et al. 2002) says this latter comment is particularly pertinent to the capacity of Aboriginal people to implement such controls to stop pornography within their communities if they do not have sovereignty and the power to determine, implement and control local public policy. Even if it were possible for the Aboriginal community to ban their members from owning or renting such material with the threat of some type of punishment, they are likely to have greater difficulty in enforcing this within the non-Aboriginal population in their area who are responsible for pushing such material.

Cripps also comments that the portrayal of Aboriginal family violence in the media also serves to silence the community as it stereotypes violence in Aboriginal communities as being 'normal' and/or part of the 'culture' (Stanley et al. 2002). Many Aboriginal people will choose not to report on the grounds that they are protecting their 'own' from the wider society. This is supported by a comment made by Daphne Naden reported in ABC News Online during the debates on family violence in June and July 2001. *'To suggest, as some people have, that Aboriginal people, particularly Aboriginal men, do not care about the protection of women and children is deeply hurtful and blatantly false.'* (Naden 2001: ABC News Online).

### 3.2.6 Community silence and denial

Community silence and denial within the Aboriginal community would appear to impact on why many children get abused by the one perpetrator and why the abuse is allowed to continue. Melva Kennedy, an Aboriginal woman working in the education of the Aboriginal community on issues of child sexual assault and the effects of domestic violence on children, states that

*[A]s long as the veil of silence and denial remains over this area, the opportunities for children to suffer without help remain as well as services available to the rest of Australian society will not be adapted and made accessible for Aboriginal communities. (Kennedy 1991: 16)*

*... discussing family matters with an outsider, even one wishing to help, might be almost impossible because of shame. Also, approaching someone of the opposite sex on matters that are thought to be the business of one's own sex can be too shameful to contemplate . . . Shame is compounded in Aboriginal-white relations by expectations of rejection, by unfamiliarity with procedures and personnel, and by loyalty to one's own vis-a-vis the dominant society. Put in a nutshell, given Aboriginal experience of white institutions and authority agents, it is scarcely surprising that, ultimately, some women appear to find a violent spouse less threatening than the agencies from which they might seek relief. (Tonkinson 1985: 299, cited in Mow 1992)*

## 3.3 Drug, alcohol and substance abuse

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*The biggest single cause was 100% 'GROG!' (Remote Area Nurse)*

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The literature commonly makes an association between alcohol consumption and drug abuse, and violence in Aboriginal communities. In a survey of alcohol consumption in Australia, fewer adult Aboriginal people reported using alcohol in the previous week, than did non-Aboriginal Australians (Edwards & Madden 2001, reporting Australian Bureau of Statistics data for 1995). However, the survey excluded people living in remote areas. Of those who reported drinking, twice as many Aboriginal Australian males were drinking at what was judged to be a high-risk level, than non-Aboriginal males.

*'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report'* found that the

*... women spoke strongly about alcohol as a major cause of violence. It was seen as influencing all aspects of their lives and creating chaos even for those who didn't drink. (Robertson 2000: xxiii)*

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*Alcohol caus[es] people to lose control and inhibitions. (Worker in remote town)*

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Atkinson believes that family violence is compounded and sometimes precipitated by alcohol misuse. (Atkinson 1991) Bolger reports that *'excessive consumption of alcohol is often seen as the cause of many social problems in Aboriginal communities today'*, although she notes that there are conflicting views about the part played by alcohol in the incidence of violence. (Bolger 1991) Fitzgerald draws attention to the problem of foetal alcohol syndrome in Aboriginal communities. The Cape York Justice Study notes that

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*In the Nyoongar community family violence often occurs ... [w]here there is substance abuse in the household.*

(Aboriginal agency)

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*... the available evidence indicates clear links between alcohol consumption, violence and injury, although the relationship is complex and not necessarily one of simple causality. Injury patterns are clearly related to the cycle of Community Development Employment Project (CDEP) and Social Security payments, with high rates on paydays and the day following, and marked declines when canteens<sup>7</sup> are closed. (Fitzgerald 2001: 13)*

The complexities of the association between violence and alcohol consumption are noted by other writers. Hunter and Atkinson say it is not acceptable to only blame alcohol as the reason for the violence in Aboriginal communities (Hunter 1990, Atkinson 1991). Bolger believes that a considerable amount of violence is not connected with alcohol, particularly in the case of Aboriginal women. She outlines some of the complexities of the association between family violence and alcohol abuse. Bolger notes that it is not known how many men who drink do not assault their wives and it is believed by some that men drink so that they will have an excuse for beating their wives (Bolger 1991). This perspective is supported by Robertson who says that in some situations alcohol may facilitate or incite violence by providing a socially acceptable excuse for the negative behaviour (Robertson 2000). Alcohol is sometimes seen as a disinhibitor, allowing people to do things they would not normally do when sober. Alcohol may boost the morale of a man with low self-esteem and give him a sense of power (Bolger 1991). Bolger states that

*... some people argue that there are cultural expectations as to the behaviour of a person under the influence of alcohol and that in some cases aggression is the expected mode of behaviour. (Bolger 1991: 45)*

The use of alcohol and drugs as a way of coping with past traumas of 'colonisation and dispossession' (Robertson 2000: xii) is a point made by many commentators. However, substance abuse is, in turn, creating its own trauma in communities, such that there is now a link between substance abuse, growing violence, and the current '*dysfunction and despair*' in Indigenous communities. (Robertson 2000: 30)

### **3.3.1 Alcohol abuse**

#### *3.3.1(a) Historical issues*

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*Family violence towards women and children flourish when substance abuse and excessive alcohol consumption coexist in any community. (Save the Children Submission 1 February 2002)*

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There has been a contradictory and confusing attitude by governments to Indigenous alcohol consumption (Robertson 2000).

Alcohol was introduced as a reward on missions—'*it facilitated the breakdown of Indigenous culture and deterioration into violence and abuse*' (Robertson 2000: 28). In addition, alcohol was used in the past as a currency in lieu of wages by some employees (Robertson 2000). Further, Kahn and colleagues draw attention to the use of alcohol as a means of exploiting Aborigines as a bribe for sex and entertainment, and using intoxication and subsequently impaired personal faculties as a means of manipulating Aboriginals people. (Kahn et al. 1990)

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<sup>7</sup> Canteens serve a similar function as hotels in Indigenous communities – a place to buy and drink alcohol.

### 3.3.1 (b) *Learned behaviour*

Hunter makes the connection between the greater access to alcohol in the 1970s and an increase in Aboriginal violence, particularly increases in female homicide, suicide and self-mutilation in the 1980s. He notes that the children and young people who currently engage in self-destructive behaviour are the children of that generation who were young adults at the time of rapid change in the 1970s. They are the first generation to have grown up in environments with normative heavy drinking. (Hunter 1990a) As Robertson notes *'having been socialised into a culture of alcohol, substance abuse, violence and anarchy, the crimes committed by some offenders reflect those witnessed or experienced as a child'*. (Robertson 2000: 31)

### 3.3.1 (c) *Alcohol use and traditional culture*

Pearson identifies alcohol as corrupting some of the most basic laws and customs in Aboriginal communities, in particular the traditional obligations of sharing resources.

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*More recently, it appears that the inhaling of solvents (paints, petroleum) has become widespread in some Aboriginal communities. However, there is little information available on drug use within the Aboriginal community. A recent study by the National Drug Research Institute and the Nyoongar Alcohol and Substance Abuse Service in WA, has found that drug injecting in Aboriginal communities has doubled since 1994, although no actual rates are given (Watts 2002). This problem was largely found to be associated with young, urban-based Aborigines and associated with the use of cannabis and alcohol.' Access to drugs, alcohol, gambling and substance abuse ... is a major contributing factor in most if not all situations of the ongoing violence and sex abuse.' (Submission from a Council)*

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For example the traditional obligation to share food obtained from a hunting trip has been turned into an obligation to share alcohol. Fellow drinkers will challenge Aboriginal identity in order to establish obligation to contribute money to buy grog: *'Come on, don't be flash! We not white fellas! You-me black people.'* (Pearson 2000: 17)

Pearson explains that there exists a drinking circle in which *'social and cultural relationships between the drinkers are expressed, reinforced and reiterated whilst people are engaged in drinking'* (Pearson 2000: 17). Everyone is obliged to share the money and the grog. Outside of the drinking circle are the women, children and non-drinkers who are required to provide the most basic resources (food) for all within the community, including the drinkers. However, when women and children are the least powerful, and where the drinker is the head of the household, all the money that comes in to the house goes into the buying of alcohol. It then becomes the responsibility of the old people (mainly women) to keep the community fed. Other obligations and relationships are ignored or abused by those addicted to alcohol. Pearson then queries why the obligations to children are given lower priority than the *'so called obligations'* to cousins and uncles for drinking. (Pearson 2000: 18-19)

While substance abuse presents many problems in its own right, it also prevents communities from addressing the issue of child abuse. (Save the Children Submission 11 April 2002)

Many submissions to the Inquiry made a link between drugs, alcohol and substance abuse including glue, paint and petrol, and the family violence and child abuse in Aboriginal communities.

Substance abuse plays a role in causing other problems, including psychological difficulties, depression, suicidal behaviour, violence and crime. Substance misuse also results from many of those problems. Substance misuse in pregnancy affects early brain development that increases susceptibility to alcohol and drug use in adulthood (Aboriginal Suicide Prevention Steering Committee 2001). Substance misuse is therefore part of a cycle of violence and trauma.

### 3.3.2 Gambling

Many communities raised the issue informally at the end of meetings. Aboriginal members and staff of the Inquiry indicated that they were aware of the detrimental effects of gambling, particularly in relation to family violence and child abuse. The loss of income

resulting from gambling led to food not being purchased, children were often neglected while parents gambled which also left them more vulnerable to sexual abuse. Men became angry with their partners who spent time gambling which then led to violence. The Inquiry is mindful that this does not provide an excuse for violence, but it is a factor and needs to be considered:

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*There is little available research on the relationship between gambling and family violence and child abuse in Aboriginal communities. 'Very big gambling problem.'* (Submission from a remote Aboriginal community)

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*No one wants to know about the high level of social gambling in Aboriginal society which can deprive children of a stable home with food and preparation for attending school or becoming involved in sporting or recreational activities away from the environment that can encourage such [child] abuse.* (Submission from a council)

## 4. CULTURAL ISSUES – FACTS AND FALLACIES

### 4.1 Introduction

*'Aboriginal Law and Culture do not sanction child abuse. It is an abuse of our custom to make claims that is otherwise.'* (Submission from ATSIC – Kullari Regional Council 10 April 2002: 3)

Anecdotal and direct evidence have been consistently provided to the Inquiry indicating a widespread perception that violence and sexual abuse were an integral part of Aboriginal Customary Law.

During community consultations, the Inquiry was advised that men charged with family violence and child abuse had argued that customary law sanctioned their actions. While no criminal cases were identified that supported this claim in WA during an appeal in the NT, it was argued that customary law sanctioned the assault. (Ashley v Materna 1997)<sup>7</sup>

This inferred sanctioning of violence led to the Inquiry seeking an independent review of literature to determine the extent if at all, customary law sanctioned family violence and child abuse. The Centre for Anthropological Research, University of Western Australia was commissioned to undertake the review and was asked to determine: *'The extent to which conduct amounting to Family Violence and Child Abuse in Aboriginal communities can be said to be traditionally sanctioned'*<sup>8</sup>. The authors indicated:

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<sup>7</sup> Ashley v Materna [1997] NTSC 101

<sup>8</sup> This was the specific request made to the Centre for Anthropological Research, University of Western Australia.



*'Our review of the anthropological literature reveals examples of what, on the face of it, might be taken as instances of family violence or child abuse. But the literature also shows that such actions are invariably within the sphere of traditional practice, ritual or the operation of customary law. We have found little material, which suggests that violence or abuse per se are condoned, or took place with impunity, outside traditionally regulated contexts. (Apted & Robinson 2002: 2)*

## 4.2 Child abuse

Considerable anecdotal emphasis has also been placed on *'promised marriages'* as providing sanction to men to be able to have sexual relations with young girls. While traditional promised marriages did involve the providing of young girls it was complex and the expression *'promise marriage'* refers to the betrothal of young girls (sometimes as young as 6-18 months old). (Armstrong [1836] 1979: 195; Hamilton 1974: 30; Kaberry 1939: 79; Meggitt 1962: 266; Roth 1984: 3). These marriages are not to be simply read as the *'simple domestic arrangement between two people, but involve the character of male accomplishment, and negotiation between a man and his prospective wife's relatives.'* (Merlan 1988: 44, cited in Apted and Robinson 2002)

Young girls were not expected to take up all their duties upon being handed over. They initially entered a phase of preparation. The belief behind sending the girl to stay with her betrothed, even temporarily, is to cement the man's rights to marriage with the girl, as well as familiarising the girl with the man and his country (Kaberry 1939: 96). Full sexual intercourse, according to Kaberry, was not allowed until after puberty. (Kaberry 1939: 94)

## 4.3 Family violence

The extent that family violence occurs in traditional societies appears to be no different to any other societies in the world. Tonkinson states that

*... domestic conflict invokes a male-female hierarchy, which is only a temporary rather than a permanent fixture (Tonkinson 1991: 140). Kaberry emphasises the co-operative nature of men's and women's roles, suggesting that the loss of a wife meant the loss of not only a sexual partner, but a provider, so it is in the men's best interests to ensure harmonious relations. (Kaberry 1939: 36, 38)*

Where a woman is regularly mistreated she may seek assistance from her father and brothers to talk to her husband to make him stop (Bell 1980: 254; Goodale 1971: 100, cited in Apted and Robinson 2002). If he continues the abuse, the woman is able to leave and return to her family and will not be pressured to return. She also has the choice whether to return and leave if the abuse resumes. Blagg found that in the Pilbara and Kimberley, shaming was used to stop abuse of women. (Blagg 2000)

Helen Cattalini takes the view that instances of domestic violence are increasing and that WA Aboriginal women wish to address the issue. She indicates that recent literature has dismissed the notion *'that traditional Aboriginal culture is based on a power structure of men over women'* and that this has come about as a result of interference in traditional lifestyles. (Cattalini 1992: 30, cited in Apted & Robinson 2002)

Contemporary violence is essentially unstructured in form and becoming firmly entrenched as the norm in behavioural standards for Aboriginal communities (Payne 1990). Atkinson posits that rape and violence are not cultural norms, but have increasingly become so as a result of the exposure of Aboriginal men to certain aspects of mainstream culture, such as violent videos and pornography. She argues that complacency to the calls of help from Aboriginal women who experience sexual assault and violence in their communities by mainstream (white) Australia is due to the view that violence is a part of Aboriginal culture. This is despite the fact that so many Aboriginal women wish to halt the violence and attacks are indicative of the undesirability and inappropriateness of such activities. (Atkinson 1990)

#### **4.4 Conclusion**

Acts of violence that are beyond the bounds of customary violence, include '*child abuse and rape, spousal violence, gang rape, suicide and psychological violence*.' (Memmott et al. 2001: 25)

Meggitt notes that there is a duty to protect one's spouse and children from the attacks of another. He adds that the angriest Walbiri men he had encountered were those whose spouses and/or children had been injured at the hands of another. (Meggitt 1962: 95)

The material consulted by the review suggests instances of customary sanctioned violence were isolated instances of punishment governed by strict rules and regulations. Society was regulated through principles and values that determined everyone's cultural and social responsibilities and breaching those responsibilities attracted punishment. (Robertson 2000)

The role of sanctioned violence was to ensure social cohesion and relative harmony, but as Tonkinson notes, the threat of violence or abuse was often enough to act as a deterrent to anti-social behaviour (Tonkinson 1991). '*Fighting behaviour was controlled by elders and senior adults, and was carried out accordingly to social rules in response to specified offences*.' (Memmott et al. 2000: 2-3)

The evidence from the sources shows that Aboriginal communities do not condone contemporary expressions of non-customary violence and abuse. These acts do not have any precedence in traditional law or customs, but white lawyers and police have tended to debate whether this is the case. Many of these acts appear to be alcohol related, and as such are not given acceptance as 'normal' or 'desirable' behaviour within Aboriginal families and communities. (Apted & Robinson 2000)

Memmott and colleagues make a similar point, stating that Aboriginal women are noting an increase in the number of rapes and sexual assault, as well as an increase in the intensity of them (Memmott et al. 2001: 40). The contexts of these assaults are far from being '*traditional forms of punishment*'; they involve situational factors, such as alcoholism and lack of education. (Memmott et al. 2001)

Payne states that Aboriginal women in the NT say they are subjected to three kinds of law: traditional law, white man's law, and 'bullshit law' (Payne 1990). The latter refers to the skewing of traditional law as a justification for unacceptable behaviour, such as rape of women, and the

spending of family income on alcohol for kin. Payne posited that the newest form of law, 'bullshit law', is related to the imposition of Australian-European law on traditional law.

The loss and destruction of culture has contributed to the current crisis in which many Aboriginal people find themselves. (Robertson 2000)

*A breakdown in traditional forms of consequence has in some instances led to indiscriminant management of conflict, based on family alignments and resulting in the escalation of conflicts.* (TICHR Submission 8 July 2002: 11)

## 5. INDIGENOUS COMMUNITIES – THE OVERSEAS EXPERIENCE

Available literature suggests that the experience of white colonisation on Indigenous communities in Canada and the United States has many characteristics similar to the experience of Australian Aborigines. North American communities also suffered a policy of removal of the Indigenous population's children from their homes in order to assimilate the children into the non-Indigenous population (Hill 2000, Lynch 2001). Similarly, the consequences of this policy are now viewed in terms of being '*tragic*', '*devastating*' and '*destructive of American Indian life today*'. (Lynch 2001: 504)

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*Drugs, alcohol, trans-generational trauma, grief and loss, unemployment, ignorance [cause the violence].* (Youth Suicide Prevention Worker)

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Loss of, and identity confusion has also been a problem for many other Indigenous peoples (Lynch 2001). For example, a child may identify with white culture, but that same culture may subject the child to racial discrimination due to the child's Aboriginal background. Further, Hill (2000) states that there continues to be high rates of children's removal on child protection grounds (four times higher than the wider community).

Finally, despite anecdotal evidence of some aboriginal (First Nation) communities in Canada overcoming significant social dysfunction and enhancing the health and wellbeing of children and families, this has not yet become the dominant pattern (Hill 2000).

## 6. CONCLUSION

Family violence and child abuse in Aboriginal communities arise from multiple factors within individuals, families and communities. Historical issues and current social disadvantage underpin many of the causal factors. Many of the factors such as alcohol abuse are causal yet also result from the further violence and abuse.

Responding to the multiplicity of causal factors will require a comprehensive strategy by government.

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Wayne Ashley v Robert Bruce Materna [1997] NTSC 101 (21 August 1997)



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**Service developments  
 in response to family  
 violence and child  
 abuse**

**CHAPTER 5**

**SECTION 3**

*This chapter describes significant developments in the delivery of service to family violence and child abuse. These developments provide a background for the description of services in Section 3.*





**CHAPTER 5**

*Service Developments in response to family violence and child abuse*



## **1. CHILD PROTECTION – THE RESPONSE TO CHILDREN WHO HAVE BEEN ABUSED, NEGLECTED OR ARE AT RISK**

### **1.1 Issues in current service delivery**

Recent newspaper reports have suggested there is a crisis in the delivery of child protection services in Australia.

*It is a choice that no one should have to make: which abused child to help and which to ignore. Yet Australia's front-line child protection workers must make that call every day.*  
(Legge 2002: 19)

Child protection services have grown to include a range of concerns about children and families which would not have been previously included as allegations of child abuse and neglect. The result is that families who may require some financial assistance, housing services or experience ill health in a caregiver, may all come to the attention of the statutory child protection agency. These families clearly have needs but it is questionable whether the statutory child protection system is best placed to respond. (Little 1995; Tomison 1996).

A significant problem with the inclusion of general family difficulties within a statutory child protection response is the investigative approach taken. This is often referred to as 'forensically driven' and the approach fits within a legal framework. However, with the inclusion of a wider range of families within the child protection system, applications for court orders are not required for the majority of those families. In fact this action is taken for a very small proportion of families for whom reports of abuse are made.

One consequence of this 'forensic' or legalistic approach was to

*...cast child protection services as the 'expert' and to alienate essential community professionals from a partnership approach to the prevention, support and protection of children.* (Armytage et al. 1998: 2)

While agencies are aware of the need to move from a primarily investigative approach to one that also included a focus on prevention and support activities, it has proved difficult to do so. The media response to deaths of children highlighting 'failures' or 'mistakes' has created a climate whereby the focus on identifying 'at risk' children became dominant (Goddard & Liddell 1993; Goddard & Liddell 1995; Scott 1995; Loane 1997). The tension between the need to avoid 'getting it wrong' and the recognition of the importance of focusing on prevention and support has created ongoing tension within the child protection system.

The previously discussed '*Messages from Research*' (Department of Health UK 1989) (Chapter 2) have been instrumental in reshaping many of the systems of service delivery in Australia (Tomison 1996; Aldgate & Statham 2001). These alternative models reflect different ways of responding to those identified issues.

## 1.2 Australian responses to current issues in service delivery

The first response has been to take a broader focus on the assessment of the child and family, particularly focussing on need. The New South Wales *Children and Young Persons (Care and Protection) Act 1998* (NSW) contains a range of provisions which focus broadly on needs and have as an underpinning philosophy the assessment and support of the child and family. Queensland also has begun to focus on harms and the needs of the child and family. (Elliott 1998)

Secondly, the use of formal and structured risk assessment tools either at the point of notification or at the point of further assessment have been implemented. These have been based on risk assessment tools used in many American states. South Australia was the first state to formally implement these tools in Australia. (Department of Family and Community Services (SA) 1997).

Thirdly, so called 'differential' responses to reports of child abuse have been implemented. This 'differential' response or 'streaming' means that the response that is made to the report or notification of abuse is dependent on the level of risk implied in the initial information given to the statutory child protection agency. The Department of Human Services in Victoria (DHS) is one agency using this model. (Department of Human Services Victoria 1997)

In 1995 Western Australia (WA) introduced two ways of responding to what were previously treated as child protection notifications. These are 'Child Concern Reports' (CCR) and 'Child Maltreatment Allegations' (CMA). The CMA was to receive a full investigative response while the CCR was to receive an assessment that would be voluntary. All reports or allegations were to receive a full assessment and support services provided if they were required. However, Tomison states that resources were inadequate to cope with the demand, and suggests that families falling into the CCR 'stream' are no more likely to receive support services than they would be had they been '*investigated in the standard manner*'. (Tomison 1999)

Thorpe and Bilson report on a model of 'streaming' in the United Kingdom. Again there was difficulty in moving from an investigative focus to a broad assessment of need. The provision of support services were again inadequate (Thorpe and Bilson 1998). This study highlights the importance of an adequately resourced system if there is to be a system that responds to assessed need.

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*Existing services might be better coordinated so there is a one-stop-shop where families can be provided with the help across all the areas of need.*  
(WA Indigenous Child Care Agencies Council)

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WA's Department of Community Development (DCD) supports this focus on assessment of needs and notes that service delivery should not be dependent on clear and specific allegations of harm. (DCD Final Submission, 26 June 2002)

The models recognise the need for effective collaboration between child protection services and other agencies in order to more effectively assess family needs. The models are also based on the understanding that a range of services are available to meet the identified needs, and prevent (further) harm to the child.

With adequate resources, agencies are able to intervene early, reduce risk and prevent harm (Tomison 1996; Tomison 1999; Armytage et al. 1998). The UK experience is that, without adequate resources, workers do not focus on needs. Rather, they remain focussed on identifying abuse and neglect and not providing services unless the child meets the criteria of 'abused'. (Aldgate & Statham 2001)

### 1.3 The challenge of integrating family support and child protection

The findings from the United Kingdom Department of Health (UK DoH) studies (discussed in Chapter 2) outline the following problems with the family support approach in the United Kingdom.

- Absence of a common assessment framework
- An urgent need for the development of a common, interagency language that provides a broad definition of what 'safeguarding children' means (the research identified a lack of clear understanding regarding the definitions of 'significant harm' and key terminologies)
- A failure to adequately assess the risk of harm in a proportion of cases, resulting in the minimisation of abusive concerns and a failure to adequately protect
- A failure to provide adequate access to family support services by those in need (relates to both resource and threshold issues). (Aldgate and Statham 2001)

Parton too, noted that:

*...in effect the central philosophy and principles of The Children Act<sup>1</sup> [1989] have not been fully developed in day-to-day policy and practice. Not only are the family support aspirations and sections of the Act being implemented partially and not prioritised, but the child protection system is overloaded and not coping with the increased demands made of it.*  
(Parton 1997: 3)

For a needs based system to be effective, it is critical that resources are available to support families, and thorough interdisciplinary and interagency case planning processes are put in place.

The focus on support services is not to suggest this is all that families require. Intervention with families who demonstrate serious dysfunction requires long term and intensive therapeutic services. Other services, such as the provision of advice, may also be required. (Colclough et al. 1999, cited in Tomison and Stanley 2001)

### 1.4 The relationship between state child protection services and other service providers

A further theme is the working relationships between statutory child protection agencies and other service providers—government and non-government—who may be delivering services to families where children are at risk.

A broader understanding of causality was outlined in Chapter 3. The strong need for interagency approaches to both intervention and prevention results from this broader understanding.

Effective responses by child protection services therefore require:

- A strong interagency approach
- A focus on strengths as well as risks
- An approach that is supportive of families, yet identifies and responds to the risks faced by the child

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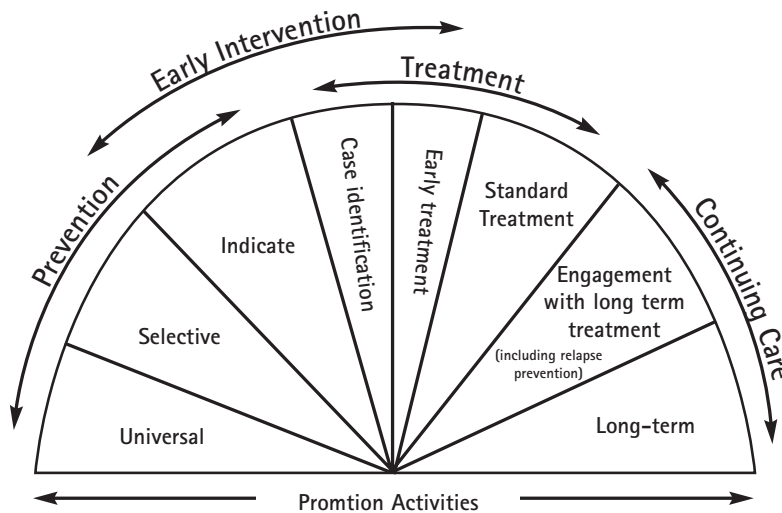
<sup>1</sup> The Children Act implemented a needs based assessment framework

- Intervention at all levels of the problem rather than a focus on the individual family
- Intervention across the spectrum of risk, from community awareness raising to court based interventions when children have been abused.

## 1.5 Models and Frameworks

The following model is proposed by the Telethon Child Health Research Institute:

Diagram 5.1: A systematic prevention approach



Source: Telethon Child Health Research Institute Submission 8 July 2002: 16

*For changes to identification and assessment to have meaning for children and their families, there must be changes in the conceptualisation of the roles of child protection and the wider child welfare and family support systems. Focusing on minor adjustments to the 'intervention pendulum' without adequate resourcing of the system will significantly reduce any possible benefits for children and families identified by the system, particularly those with generic welfare concerns. The 'system' needs to be conceptualised as a prevention-protection 'continuum of action', where—regardless of the level of protective concerns—children and families receive some form of support to alleviate their concerns. The threshold is then less important than ensuring the protection of children within a process of family support, of true child-centred family-focused work.*

*Such a framework will only result if governments and senior departmental managements adequately recognise the importance of preventing social ills—particularly child maltreatment and the social and economic costs that can be saved. Under such an approach, identification and assessment—while important—truly no longer drive the child protection system, but maintain an important position in a model where remedying dysfunction is given primacy. Although it is unlikely this framework will be adopted in the short-term, it is proposed that the 'continuum of action' be retained as a benchmark against which future restructuring and innovation in practice are measured. (Tomison 1998, cited in Tomison and Stanley 2001).*

DCD supports the development of this wider perspective and outlines an intervention framework covering

- Community Capacity Building
- Children's Welfare Needs and Family Capacity Building
- Child Protection (DCD Final Submission 26 June 2002)

DCD makes the point that treatment and other services responding to risk must be balanced with prevention activities and capacity building. (DCD Final Submission 26 June 2002)

The above proposals put to the Inquiry represent current directions in understanding service delivery. Labels such as 'continuum of service provision', 'population health responses', 'a holistic response' and 'a balance of prevention, support and intervention' all reflect the need to reconceptualise child protection. In a more holistic framework, statutory child protection is one small part (although a very important part) of the service delivery system. This understanding requires a shift in approach by government and non-government service providers to share responsibility for the protection and support of children within a clear case planning and coordination framework.

## **2. ABORIGINAL CHILDREN AND THE CHILD PROTECTION SYSTEM**

If the Child Protection System has difficulties responding to mainstream communities and families, then the difficulties in responding to remote Aboriginal communities and families are many times greater.

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*There are too many conflicts and the Indigenous issues are not being addressed adequately. (Worker in Aboriginal service)*

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### **2.1 The legacy of the past**

Tomison and Stanley note that the legacy of past mistakes by protective services are also causing child protection staff and/or departments to become fearful of taking action when a child is at risk of harm. There appears to be a fear of the communities' reactions and confusion about what action (or inaction) is in the best interests of Aboriginal children. (Tomison & Stanley 2001a)

This conclusion is supported by a recent statewide review of out of home care services for Aboriginal children and young people in Victoria. The review identified a practice of minimising involvement by statutory child protection services in Victoria in cases where intervention was or is required to avoid significant harm to Aboriginal children. (Practice Leadership Unit 2000, cited in Tomison & Stanley 2001a)

### **2.2 Need for a new model**

Tomison and Stanley report on Cunneen and Libesman, who argue for a radical change in the delivery of child protection services to Aboriginal people. Aboriginal organisations who provided submissions to the 'Bringing Them Home' inquiry were universal in their belief that current services by child protection agencies were ineffective in responding to Aboriginal children and families. In particular they note the 'individualising' and 'pathologising' of the problem maybe

appropriate to white culture but is inappropriate in Aboriginal culture. They indicate that the attempts to make services culturally relevant tend to be tokenistic and that decision making remains with non-Aboriginal workers. (Cunneen & Libesman 2000, cited in Tomison & Stanley 2001a)

In support of this, community consultations by the Inquiry, as well as information from Aboriginal staff, indicated that the views of Aboriginal workers were not always taken into account.

There have been consistent calls for transferring responsibility and control for Aboriginal child welfare back to the Aboriginal community. This view is often linked to the belief that mainstream services have 'failed' to both stem the widespread abuse and stop the over-representation of children in the care system with its echoes of past removal policies. (Sweeney 1995, cited in Tomison & Stanley 2001a)

Some provinces in Canada have reviewed their child protection system. Child and Family Services in Manitoba, in full consultation with indigenous Canadians, developed a comprehensive plan to restructure the delivery of child and family services to indigenous Canadians. In 2001, agreement was reached to change the system of governance and provide services through four authorities, three of which were controlled and run by indigenous people and served indigenous people. *'Under the new system, [a]boriginal children and families will receive child and family services from [a]boriginal agencies, no matter where they live in Manitoba.'* (Child & Family Services in Manitoba 2001:5)

Sweeney also makes the recommendation that there should be a holistic approach by government in relation to Aboriginal children that coordinates all areas of child welfare, including the services of child protection, adoption, juvenile justice, custody and education. He argues for a broader approach that examines issues such as:

- The need to reduce the number of Aboriginal children removed from their families
- The need to ensure cultural factors are considered in all decision making stages
- The need for children who have been removed from their family to have the maximum possible contact with the community
- The need for communities to have involvement in all post-removal decisions. (Sweeney 1995, cited in Tomison & Stanley 2001)

## 2.3 Self-determination

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[need to] *acknowledge the Aborigine identity so that we can stand side by side not beneath other Australians.*  
(Anonymous)

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Throughout its consultations, the Inquiry has been told – both by Aboriginal people and others – of the strong desire for Aboriginal people to have control over their communities and what happens to them. The concept of 'self-determination' is one that is spoken of often. However, Litwin argues that there has never been clarification, or a practical understanding developed, of what 'self-determination' means in practice. In addition, she argues that there are such serious power imbalances that Aboriginal communities experience considerable difficulties in making bureaucracies responsive to Aboriginal needs. She goes on to say that a

small number of Aboriginal employees are unlikely to have a significant impact on departmental policy and practice. She also raises the difficulties for workers in welfare systems which have caused many of the significant problems that exist within Aboriginal communities today. (Litwin 1997)

## **2.4 Secretariat of the National Aboriginal and Islander Child Care**

In the Proposed Plan of Action for the Prevention of Child Abuse and Neglect in Aboriginal Communities created by the Secretariat of the National Aboriginal and Islander Child Care (SNAICC), a number of approaches and/or components were outlined. (SNAICC 1996)

SNAICC notes that to effectively address the multi-faceted dysfunction and problems plaguing Aboriginal communities, there is a need to develop and support Aboriginal welfare and support services operating within the communities (for example Aboriginal Infant Welfare Services). It advocates establishing a community-controlled Aboriginal children and family resource centre to gather information and develop training and education resources. The proposal plan that identifies the importance of a strong training program for Aboriginal people already working as volunteers or community-based professionals, and the need to identify services already having a positive impact with the communities are clearly identified. The need for adequate funding and the expansion of these successful programs is identified.

With regard to service development and delivery, including statutory child protection roles, SNAICC recommends the use of inclusive or participative processes, including the development of 'Elder Councils' that can make a contribution to policy making, resource provision, program development and service delivery. The National Child Protection Clearinghouse adds a precautionary note:

*There is anecdotal evidence that some elder groups or councils are part of the reason why Indigenous communities are having little success in creating less violent, more positive communities, with male elders hindering prevention initiatives because of their own involvement in violence. (Stanley et al. 2002)*

## **2.5 Conclusions**

Past government actions continue to have an impact on current service delivery. Arguments have been put forward that Aboriginal people should have direct control of service delivery. While overseas models of indigenous service delivery offer possibilities, cultural differences need to be examined before those models are implemented. The development of a framework which reflects a continuum of service delivery is imperative for addressing the protective and other needs of children.

## **3. FAMILY VIOLENCE**

Just as the 1980s and 1990s saw governments take action both legislatively and administratively to respond to child protection, those decades also saw the move of family and domestic violence from a private matter to the public sphere, and governments in Australia took action accordingly.

Refuges for women and children escaping domestic violence were the first and most significant response to violence against women. The inadequacy of a response that allowed men to 'suffer no consequences' became evident, and the criminal justice system was increasingly used to deal with domestic violence. The focus was on making the criminal law more responsive to what are now seen as criminal assaults rather than private matters between people in a relationship. The criminal justice system became increasingly involved in punishment and deterrence of perpetrators; with mandated treatment and restraining orders that offered protection for victims with sanctions if the orders were breached (Fagan 1996). Changes included expanded police powers to enter premises and respond to complaints of violence, the changing of bail legislation to take account of victim needs and a change in expectation within the police service and the criminal courts that these were serious matters and that victims deserved the protection of the law. A range of 'restraining orders' with different names in different jurisdictions afforded further protection to women and reduced the standard of proof to the balance of probabilities. (Laing 2000)

Over the last two decades, many of these responses have been enhanced—for example, stalking became an offence and domestic violence legislation covered same-sex couples.

The Commonwealth Government has concerned itself increasingly with the issues of domestic and family violence. There has been a focus on surveying attitudes and changing attitudes through community education campaigns both independently and in consultation with the states. The most recent, 'Partnerships against Domestic Violence' (PADV)—which is a collaborative effort between the Commonwealth and state and territory governments—is reviewing and examining current policies, practices and understandings of domestic violence (Laing 2000).

These changes in Australia parallel similar processes in other western countries. However

*... research and evaluation [on the effect of the criminal justice system] have generated weak or inconsistent evidence or deterrent effects on either repeat victimization or repeat offending.*

(Fagan 1996: 1)

*... theories of violence have not been integrated with theories of domestic violence, and research and evaluation designs thus far have been weak.* (Fagan 1996: 2)

In addition, there are significant concerns about the effectiveness of treatment programs for offenders. (Fagan 1996)

### **3.1 Conclusion**

Three major response strategies have been used to respond to partner violence. The 'escape' routes of womens refuges, the criminalisation of violence towards partners, including the use of restraining orders, and the use of therapeutic programs for victims and offenders. Research is still inconclusive about the outcomes of these strategies.



## 4. ABORIGINAL FAMILY VIOLENCE

Despite Aboriginal family violence being a focus of the 'PADV' program, it is only recently that programs have addressed the particular needs of Aboriginal women who are victims of violence and their over-representation in statistics.

Harry Blagg's report on *Crisis Intervention in Aboriginal Family Violence* outlines some of the challenges in government agency responses:

*Aboriginal women are also suspicious of involvement with justice and welfare agencies. They see aspects of the system – particularly prisons – as an aspect of the violence cycle which de-socialises, brutalises and de-skills their menfolk (Blagg 1999). There is a profound mistrust of social work agencies who may take the children away from a violent home, and there is still considerable suspicion of police involvement in domestic disputes. (Blagg 2000: 7)*

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*Set up 'safe houses' on communities. (Anonymous)*

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Therefore the role of government agencies in responding to complaints of family violence needs to be examined within the context of historical service delivery by government agencies, and the range of problems previously outlined that are facing Aboriginal communities. In particular, there is widespread dissent about the role of the criminal justice system and its appropriateness in Aboriginal communities. This widespread concern lessens the effectiveness of the criminal justice system. This system also has difficulty in dealing with situations where women need to remain in communities because their family, kin and significant attachments to both people and land are there. The capacity to move and become anonymous is much less an option for Aboriginal women than for non-Aboriginal women. (Family and Domestic Violence Taskforce 1995)

In addition, the use of refuges to escape from domestic violence and then move on to independence is also often not seen as appropriate in Aboriginal communities. Women are much more likely to use refuges for immediate safety, particularly while men are intoxicated or enraged over a particular issue. They tend not to use the refuges with a view to moving on and permanently separating from the men. In both the literature and consultations undertaken by the Inquiry, this point was forcefully made. Women very much wanted a place to be safe while the men were 'out of control' (Community consultation).

The traditional view of using government intervention (including legal intervention) to override the power imbalances between the perpetrator and victims of violence is not necessarily embraced by Aboriginal people—particularly Aboriginal women.

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*More emphasis on prevention, intervention and education in the community. (Aboriginal Community)*

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*Another related problem is the tendency of government agencies to see service delivery as a problem that may be resolved by expanding the skills, expertise and resources of government agencies.*

*The women's gathering offered an alternative scenario where 'community infrastructure (sic) such as Aboriginal women's groups' are given resources to deal with the problem. (Aboriginal Women's Task Force & the Aboriginal Justice Council 1995: 2, cited in Blagg 2000:11).*

A full understanding of Aboriginal family violence is hampered by a lack of focus on the problem until very recently (PADV 2001). This has resulted in priority being given to a focus on responding to the very high incidents of family violence in Aboriginal communities as a first priority. A focus on activities to prevent family violence is only beginning. Aboriginal women, however, are actively aware of the need to address the problem holistically. Aboriginal women have embraced the concept of a 'healing approach'. (Family and Domestic Violence Taskforce 1995)

*Safety and support for the victims of violence are important elements to addressing family violence, however, without looking at the community where the violence occurred; the perpetrator(s); and the intrinsic factors that contributed to the violence any approach will fail to work effectively. (Family and Domestic Violence Taskforce 1995: 46)*

## 4.1 Conclusion

The standard responses of a physical refuge as a short-term response and the implementation of the law to assist victims of domestic violence—whilst important to Aboriginal people as options—are not regarded as the main or even necessarily the most effective way of responding to family violence.

## 5. GOVERNMENT AGENCY SERVICE DELIVERY

The public sector in Australia has undergone significant reform over the last 20 years (Dunphy and Griffiths 1998). Christine Bellamy says that reform of the Public Sector in the 1980s was directed at the *internal* processes of government. There was focus on organisational restructuring and making the organisation as efficient as possible. However, there was not always a focus on the clients who received the public sector services. In Bellamy's view the apparent separation of government agencies from the clients they serve has led to mistrust and cynicism towards these agencies. (Bellamy 1998)

*'Our growing disdain for government is a legitimate and worrisome threat to democracy itself.' (Peters 1993: 10)*

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*There are a whole series of government and non-government groups on the ground however, they are highly uncoordinated, fragmented, under resourced, and do not have specific outcomes that are meaningful to Indigenous people.*  
(Worker in Aboriginal agency)

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More recent analyses of public sector service delivery have focused less on individual agencies and more on systemic issues.

The concept of breaking down 'silos' (separate and independent agencies) and looking at more integrated service delivery by government has been coined 'joined-up government' and popularised through the UK's Blair Government. There is to be a focus on breaking down the boundaries of departments, presenting a united face to customers or clients, for example 'one-stop shops', and a requirement that policy and government strategists consider problems in a more holistic way.

The WA Government has recently reviewed the way public sector services are delivered from a structural perspective (Hicks 2001).

*The limitation of current government policies and systems in meeting the needs of people has been consistently identified. The fragmentation of responsibility for service provision among a variety of agencies is a particular problem. In addition, the narrowness of each agency's service response and service access in providing for only one area of people's needs (housing, income, education, health, justice, etc) makes it difficult to address the needs of people with more than one significant need. Few services have the capacity to support and respond to people experiencing multiple and complex problems. (Penter et al 2001: 10)*

DCD acknowledges the critical importance of *'health, education, employment, housing and strengthened community capacity, together with greater responsibility of Aboriginal and Torres Strait Islander communities for their own community services.'* (DCD Final Submission, 26 June 2002: 2)

A significant issue for the Inquiry is how well structures and processes allow a holistic response to the problems of family violence and child abuse in Aboriginal communities.

## **5.1 Benchmarks**

There is a need for agreed benchmarks to be established in relation to services for Aboriginal people. A framework for Indigenous performance indicators has been developed by the Ministerial Council on Aboriginal and Torres Strait Islanders Affairs [MCATSIA]. An Indigenous working group has been formed with WA's representative being Petrice Judge (Assistant Director General, Federal and Constitutional Affairs, in the Ministry of Premier and Cabinet, WA).

The key task of this working group

*is to identify indicators of relevance to all governments and indigenous stakeholders, and which can demonstrate the impact of programme and policy interventions. (Policy Officer [Federal Affairs Department] email, Report on Government Services – Key Indicators of Indigenous Disadvantages, 3 July 2002)*

Of relevance to the Inquiry are the following six areas:

- Early child development and growth
- Early school engagement and performance
- Breaking the cycle of alcohol abuse and ending tobacco use
- Functional resilient families and communities
- Building on the strength of Indigenous culture and communities
- Functioning community infrastructure (MCATSIA n.d., *Proposal for Whole-of-Government Indicators Addressing Indigenous Disadvantage*, DPC Final Submission, 17 June 2002)

An important outcome of these types of indicators is the necessity for governments to collaborate. The importance of this framework is endorsed by DCD. (DCD Final Submission 26 June 2002)

## 6. CONCLUSIONS

This chapter has reviewed the movement in family violence and child protection practice. The need to respond in more holistic, integrated ways has risen from a more complete understanding of the nature of family violence and child abuse.

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*Services that do exist for Domestic Violence should work co-operatively rather than in isolation. (Worker in remote town)*

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Whilst family support approaches have value, there are concerns that risks to children are not being adequately addressed.

The significant changes to government services in the 1990s have implications for service delivery.

There are still major unresolved issues about the best ways to address family violence and child abuse in Aboriginal communities. Historical service delivery by government agencies has resulted in a climate of mistrust by communities and uncertainty from government agencies.

The need for an overarching framework to respond to the problems of family violence and child abuse is evident. Strategies which cover the spectrum of service delivery and which involve Aboriginal community members in determining the design, priority and direction of services must be implemented.

The following chapters outline the current activities of government agencies in responding to family violence and child abuse.

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Children and Young Persons (Care and Protection) Act 1988 (NSW)

The Children Act 1989 (UK)



*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse campaigner'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## Health services

## CHAPTER 6

# SECTION

*This chapter provides an overview of health services provided in response to family violence and child abuse to Aboriginal people.*

# 3







## 1. OVERVIEW OF SERVICE PROVIDERS

### 1.1 Department of Health

#### 1.1.1 Broad intent and mission statement

The Department of Health's (DOH) mission as the principal health authority is to promote, protect and restore the health of Western Australians. DOH and its various related agencies are part of the Government of Western Australia, and works in partnership with Commonwealth-funded services, the private and not-for-profit sectors, local governments and a wide range of community-based organisations.

DOH, currently headed by the Director General for Health, is responsible to the Minister for Health for the effective and efficient management of public sector health services in Western Australia (WA).

The core functions of DOH are:

- *Providing support and advice to the Minister for Health*
- *Developing, implementing and evaluating whole of system health policy and legislation consistent with Government policy*
- *Acquiring, allocating and developing resources so that health outcomes of the population are improved*
- *Researching, identifying, promoting and evaluating whole of industry innovations, development opportunities and programs aimed at enhancing the effectiveness of all facets of the industry*
- *Coordination and compliance with policy and statutory obligations within the Department of Health's area of responsibility.* (DOH Initial Submission 19 April 2002: 2)

#### 1.1.2 Structure and management

Since 1993, the model of purchasing health services from providers has been introduced to replace the practice of funding health services on a historical cost basis. This approach, which has continued to evolve over the decade, enabled the DOH to contract services from a range of service providers, both government and non-government, to provide services as determined by the DOH's understanding of the health goals and status of the community.

It is currently in the process of implementing the Health Administrative Committee Review (HARC) report recently endorsed by Cabinet, which has implications for the delivery of health services throughout WA. The implementation of the HARC report was described 'as the most significant cultural change in West Australian health reforms since 1927.' (Transcript of Evidence by Michael Jackson 16 May 2002: 1190) The report highlighted that, prior to HARC, there was some recognition of the importance of public health and

preventative programs, mental health, aged care and rehabilitation services, but acute health services received the most attention from the public and within the system. The Review Committee *'was especially concerned that there should be an understanding in the community, as well as the health system, about the importance of community and public health activity.'* (HARC Committee 2001: 5) Consequently one of the recommendations of the HARC report was to refocus on population health activities.

Some of the major outcomes recommended by the report included:

- A single, unified health system working to a common vision, allowing for leadership, accountability and transparency
- Simplified structures throughout the health system and within central administration
- Consultation processes to address non-metropolitan structures
- A continuing, bipartisan community debate on expectations about and priorities for health services

(HARC Committee 2001: 8)

### **1.1.3 Staff, budget and office locations**

WA's sparse population, vast distances and diverse climatic conditions present significant challenges to the way services are delivered. DOH was described as a *'very complex organisation with a \$2.3billion budget and 33,000 employees statewide.'* (Transcript of Evidence by Michael Jackson 16 May 2002: 1187).

DOH's central office is located at 189 Royal Street, East Perth, with 26 government-operated health services located throughout the rural and metropolitan areas of the state. Most of these health services are comprised of hospitals, public and community health units, aged care and mental health services.

### **1.1.4 Legislation**

DOH operates under Section 35 of the *Public Sector Management Act 1994* and also administers 43 Acts and 104 sets of subsidiary legislation. Of relevance to the Inquiry are:

- Alcohol and Drug Authority Act
- Co-opted Medical and Dental Service for the Northern Portion of the State Act
- Health Act
- Hospitals and Health Services Act
- Mental Health Act
- Nurses Act
- Western Australian Bush Nursing Trust Act
- Western Australian Bush Nursing Trust Amendment Act

## **1.2 Aboriginal community controlled health services**

In addition to the wide range of health care services provided, DOH also funds various high priority projects that are aimed at improving the health of Aboriginal families, disease prevention in

Aboriginal people, environmental health in Aboriginal communities, nutrition and substance abuse. Other services are targeted at improving the provision of health and medical services in remote Aboriginal communities. These services are generally delivered by a growing network of Aboriginal community controlled health services (ACCHOs) and other community organisations, better known as Aboriginal Medical Services (AMS). There are currently over 20 ACCHOs throughout WA.

Derbarl Yerrigan Health Service (DYHS), for example, is a metropolitan-based ACCHO that receives funding from the Commonwealth Government, DOH and various other sources to provide health and community care services to Aboriginal people. One of the programs that it provides (through funding from DOH) is a disability support service for Aboriginal people with a psychiatric disability in the metropolitan area. Similarly, the other ACCHOs or AMSs throughout WA receive operational funding from the Commonwealth government and program or specific project funding from DOH, and, to a lesser extent from other state government agencies and from the private sector.

### **1.3 Disability Services Commission**

The Disability Services Commission (DSC) was established in 1993 under the *Disability Services Act 1993*, which is currently under review. While disability services cannot strictly be considered a health service, the services and support provided is intended to maintain the well-being of individuals with disabilities.

The Commission has statutory responsibility for policy and program development and the planning of services in all areas that affect the rights and needs of people with disability in WA.

DSC estimates that its services are accessed by approximately 20,000 West Australians under the age of 65 years who need help or supervision in the normal tasks associated with daily living due to a profound or severe disability. DSC indicated that around 686 of its clients identify themselves as being Aboriginal.

Key services provided, or initiatives introduced, by DSC to assist Aboriginal people with disabilities and their families include

- Employment of Aboriginal Local Area Coordinator staff to investigate and pilot best practice models for people living with disabilities in the rural and remote areas based on Northern Territory and Queensland models.
- One-off and recurrent funding for Aboriginal communities to support carers such as an arts program to develop ways to deliver culturally sensitive carer services for some Western Desert communities and the East Kimberley Family Support Association to develop pictorial posters, pamphlets and a newsletter to raise awareness of the range of services available to assist Indigenous carers.

While DSC has a statutory obligation to report cases of suspected child abuse or neglect, it does not have a mandate to investigate. Agencies funded by DSC to provide services to the target population are also required to report to the commission of any physical, mental, sexual abuse, neglect or death of its clients. The commission also has a reciprocal agreement, which is currently

under review, with the Department for Community Development (DCD) to report concerns and allegations of abuse or neglect of children.

The commission has developed a Care and Protection Policy, which is an operational procedures document that assist its staff in dealing with situations where a person with a disability may be at risk of emotional, financial, physical or sexual abuse and neglect.

The commission is currently developing a policy and funding framework to support the commission in improving its service provision to Aboriginal people with disabilities, with the participation of key community-based groups, consumers and government agencies through the Access for Indigenous People Steering Committee.

**3. The Inquiry endorses Disability Services Commission's initiative in developing a policy and funding framework with the involvement of key community-based groups, consumers and government agencies through the 'Access for Indigenous People Steering Committee' to improve its service provision to Aboriginal people with disabilities.**

## 1.4 Divisions of General Practice

Divisions of General Practice are established throughout WA with funding from the Commonwealth Department of Health and Aged Care. The Kimberley Division of General Practice (KDGP), one of 14 such divisions, has provided a written submission to the Inquiry.

KDGP is an incorporated body, with membership consisting predominantly of general practitioners. The aim of this division is to provide support to the local medical workforce with services and resources that complement general practice.

In 2000, KDGP established a support service specifically for adult survivors of sexual abuse with Commonwealth funding after it was identified that most other agencies in the region only provide support and protection services to child victims of sexual abuse. KDGP subsequently designed and planned a 'support service' and sought tenders for a contract to provide the following services:

- Support services to both affected individuals and the primary contact practitioners dealing with sexual abuse/assault at the local level
- Training for primary contact practitioners who report feeling overwhelmed and underskilled in dealing with disclosures
- Development of protocols to enable victims of sexual abuse/assault to be provided with support and assistance in a safe manner when referral between professional personnel and /or services is required.

At the time of writing to the Inquiry, the division was in the process of awarding this contract of service to the successful tenderer.

## 2. SERVICE PROVISION BY DEPARTMENT OF HEALTH

### 2.1 General service

DOH acknowledges that the complexity of the issues, and the underlying causal factors, surrounding family violence and child abuse in Aboriginal communities requires a comprehensive joint interagency response.

DOH also acknowledges that until quite recently, community and public health units responsible for providing early intervention, support and targeted responses to address family violence and child abuse

*...were integrated under their local health service which up until that point had been focussed on the provision of hospital services ... (and that it was) a facility-focused system of funding and delivery with the efforts of the Department focused almost entirely on activities within health service facilities as distinct from the health of communities and populations.*

(DOH Supplementary Submission 26 June 2002: 1)

In its previous and current structure, tertiary responses are provided by the Princess Margaret Hospital's Child Protection Unit (PMH CPU) and the Sexual Assault Referral Centre (SARC) to victims of domestic violence and child abuse. According to DOH,

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*... a recognition in countries such as Canada ... UK, that unless we concentrate and give due emphasis to ... the public health / population health issues, then we won't address the health needs of the community.* (Transcript of Evidence by Michael Jackson [Executive Director DOH] 16 May 2002: 1190)

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*... health service providers have responsibility for the provision of immediate treatment for victims of sexual abuse and DOH provides access to a 24-hour crisis telephone service from the Sexual Assault and Referral Centre (SARC) based at King Edward Memorial Hospital in Perth.* (DOH Supplementary Submission 27 June 2002: 6)

DOH provided a number of submissions describing its role and responsibilities in addressing family violence and child abuse in WA. All government health care providers follow procedures put in place by the department that are based around a process of identification, information gathering, consultation, assessment and planning, consideration of the safety of the child and other children in the family, discussion with parents, documentation, action and the maintenance of confidentiality.

Michael Jackson, Executive Director of Population Health Division gave evidence regarding the new direction DOH is undertaking and the implications that has on the delivery of health services in WA. The information Mr Jackson provided supplemented the information provided in DOH's first submission, which gave an overview of DOH that particularly noted the recent HARC review of the whole of the health system, '(because) *there was a need for fundamental change in the way health was managed ... we weren't making the improvements that were needed to be made.*' (Transcript of Evidence by Michael Jackson 16 May 2002: 1190). The review emphasised the importance of the role and responsibilities of the Population Health Division. The Population Health budget has been specifically identified for preventive public health efforts and community and child health services.

The Population Health Division, previously known as the Public Health Division, aims '*to address the underlying causes of ill-health.*' (HARC Committee 2001: 28) by developing preventative strategies for the health of a whole population. The Population Health Division is comprised of a number of branches delivering services with a preventative focus. In DOH's Initial Submission, information about the Office of Aboriginal Health (OAH) (see 2.1.1), Community and Child Health Branch (CCHB) (see 2.1.2) and the Communicable Disease Control Branch (CDCB) (see 2.1.3) was provided as they were considered by the department as relevant to the Inquiry.

Mr Jackson further stated that other areas of relevance in the same division were the Environmental Health Branch and Health Promotion Branch. The Environmental Health Branch plays a crucial role in ensuring that environmental health conditions are adequate in communities while the Health Promotion Branch conducts awareness-raising campaigns of public health messages, for example, the Quit Campaign. Both Branches have strong links with OAH to ensure that services are appropriately targeted to Aboriginal people.

Regional and remote health service delivery, an integral part of service delivery by DOH, will also be discussed in 2.1.4.

### **2.1.1 Office of Aboriginal Health**

The Office of Aboriginal Health (OAH) mission is to work in partnership with Aboriginal communities and health service providers to ensure that ATSI people receive culturally appropriate health care. OAH's work is underpinned by a set of principles, including the consideration of a holistic perspective, involvement of Aboriginal people at all levels of health care provision, provision of choice and culturally-appropriate and accessible services.

*The OAH has a budget of \$20m that is targeted towards purchasing gap closing, primary health, prevention and promotion, diagnosis and treatment and continuing care ... The majority of these services are provided by the Aboriginal Community Controlled sector (see 1.2 of this Chapter) in partnership with local health services. (DOH Supplementary Submission 27 June 2002: 11)*

OAH acknowledges that the gap in health status between Aboriginal and non-Aboriginal people is wide and that there are continuing attempts to redress the differences.

The programs that OAH has a role in coordinating are aimed at strengthening self-management of health and improving accessibility. These include the Aboriginal Coordinated Care Trials, the Family Futures Program and the Building Blocks Initiative.

OAH also has responsibility for the development of the Aboriginal Health Worker (AHW) profession as a career that has become integral to the provision of primary health care to Aboriginal people. In 2000/01 OAH, along with the Office of Aboriginal and Torres Strait Islander Health (OATSIH), undertook a review of AHW training and practice in WA to consider the way forward for the state contributing to the National Review which was undertaken at the time. Some of the recommendations of this review are outlined in 3.3.3.

Another initiative administered by the OAH is the 10 youth counsellor positions funded through community-controlled organisations to assist young people experiencing emotional distress with the aim of reducing suicides.

DOH has made it clear that OAH does not fund any specific family violence and child abuse programs. Instead *'the Office indirectly purchases innovative programs in a holistic manner that links them to other support services to address a specific identified problems.'* (DOH Supplementary Submission 27 June 2002: 12)

**4. The Inquiry finds that the Office of Aboriginal Health (OAH) does not have any specific policies, procedures or agendas to address family violence and child abuse in Aboriginal communities. The Inquiry recommends that OAH be more involved in the development of programs to meet the three levels of responses (primary, secondary and tertiary) to address these issues.**

The Inquiry is aware of certain long-standing leadership and management issues within OAH and is concerned that if not resolved quickly, those issues may have the real potential to adversely impact on the effective service delivery of health programs to Aboriginal people.

The Inquiry notes that DOH is establishing and will be appointing a new position to lead OAH, ahead of the appointment of other similar senior positions in the current restructure.

**5. The Inquiry recommends the appointment of a senior officer to lead the Office of Aboriginal Health be expedited as a matter of urgency by the Department of Health.**

#### 2.1.2 Community and Child Health Branch

The Community and Child Health Branch (CCHB) is responsible for the provision of a free statewide service that includes health promotion, prevention, early identification, assessment and therapeutic services to the whole population across the entire age lifespan. These services are provided in the community in a range of venues from family homes to child health centres and schools. Practitioners including generalist nurses, child health nurses, AHWs, paediatricians, medical officers, social workers, speech pathologists, occupational therapist, physiotherapists and various other allied health practitioners work together, and individually, to provide services such as antenatal care, parenting and child development support care services, immunisation, nutritional and injury prevention advice, school-age services and specific adult-focussed services that target lifestyle diseases and conditions that affect youth, working aged adults and the elderly.

As there is currently no structured professional training for these practitioners, specific departmental procedures are the only guide they have when dealing with child abuse concerns. The procedures documented in DOH's *Guidelines for the Clinical Management of Child Abuse and Neglect (1993)*, address issues concerning identification, information gathering, consultation, assessment and planning, safety of the child and other children in the family, internal notification, discussion with parents, documentation, action and confidentiality (Health Department of WA 1993). These guidelines are currently under review and, for a more detailed description, refer to 3.2.1.

As mentioned in 1.1.2 DOH is currently undergoing a restructure in line with the recommendations of the recent HARC report released in mid 2001. One of the recommendations is a new management structure for the CCHB where, 'a special focus on workforce skills and support including new models of service delivery, improvements to interagency referral processes and working collaboratively to enhance agency cooperation will be developed.' (DOH Initial Submission 19 April 2002: 15)

**6. The Inquiry endorses in principle the Department's initiatives to build workforce skills; develop new models of service delivery that would improve interagency referral processes; and enhance interagency cooperation, as proposed for the reconfigured Community and Child Health Branch.**

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A Community Health Nurse generalist works in a number of programs ... basically our main program was the 0 to 4 program with Aboriginal children looking at their growth and development and promoting nutrition, safety, all the issues to do with child health ... immunisation, disease control, and likewise through to the adult population ... (Transcript of Evidence by Christine Harling 6 May 2002: 725)

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... a Community Health Nurse will become a de facto "everything else" ... to the extent there is time to do so. (Witness Statement of Ian Smith 22 July 2002: paragraph 20)

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#### 2.1.2(a) Community health nurses

Community health nursing has a long history in Western Australia. Its scope of practice is concerned with the health needs of communities, groups, families and individuals...(and) has expanded to become an integral part of primary health care delivery in Western Australia. (Pinch and Della 2001: 59)

While it was acknowledged that community health nurses play an integral role in the provision of primary health care, 'the West Australian study of nursing and midwifery: New Vision New Direction' reported that the service has become 'fragmented and eroded' over the past 10 years due to 'health service integration and devolution of the central policy unit. (Further) ... Community health nurses require specialised knowledge and skills to be able to function in diverse community settings! (Pinch and Della 2001: 59)

In the same report a number of recommendations were made to the Minister for Health and DOH to improve the working conditions and to recognise the vital role nurses play in the delivery of health services. These include the trial implementation of family friendly initiatives to improve working conditions, and initiatives to assist improving career pathways and specialist training for nurses, including community health nurses.

#### 2.1.3 Communicable Diseases Control Branch

One of the major roles of the Communicable Diseases Control Branch (CDCB) is to minimise the occurrence and spread of communicable diseases in WA through monitoring, surveillance and education. Of particular relevance is its Sexual Health Program (SHP) that works with various government and non-government agencies to reduce and minimise the transmission and social implication of blood-borne and sexually transmissible diseases (STDs) in WA.

In 2000/01, SHP ran a community education and sexual health traineeship for Aboriginal people in the last financial year. Additionally new sexual health curricula were introduced



for undergraduate medical students and for schools targeting students from pre-primary to Year 10s. Recently it piloted a series of workshops on understanding and responding to child sexual abuse in Aboriginal communities. For more information and evaluation of these pilot workshops, refer to 2.4.2.

**7. The Inquiry endorses in principle, the direction in training currently being undertaken by the Sexual Health Program. It recommends, on the basis of the effectiveness of the community education and sexual health traineeship program for Aboriginal people, to expand this traineeship and provide it on an ongoing basis.**

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*... difficulty to effective provision of health services is that many (remote) Aboriginal communities may not regard health care as a priority. Perhaps some Aboriginal people have not experienced the level of wellness that most non-indigenous people take for granted. (Witness Statement of Ian Smith 22 July 2002: paragraph 14)*

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*Nurses and midwives employed in rural and remote health services practise in diverse and challenging environments. (Pinch & Della 2001: 55)*

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#### 2.1.4 Regional and remote service delivery

The delivery of health services to the regional and remote areas of WA present interesting challenges to all health service providers. Regional residents are disadvantaged by their physical environment and have restricted access to prevention and treatment services compared with metropolitan residents.

Regional and remote residents can access public sector health services through hospitals, public and community health units, Multi Purpose Services (MPS)<sup>1</sup>, mental health services, remote clinics and nursing posts (refer to 2.1.5 (b)).

Another of HARC's recommendation was that there should be a Country Health Services Review undertaken as part of a wider plan to establish a single unified WA health system. The review, currently being finalised, will take into account changes in the population profile, community expectations, technology, transport systems, advances in health care and growing community concern about clinical safety.

##### 2.1.4 (a) Rural and remote area nurses

DOH published the 'New Vision – Community health services for the future' report in 2000 to provide a new vision and strategic directions for the delivery of community health services. In this report, it was identified that nursing practitioners working in regional and remote areas tend to work in less rigid and less formalised environments and often have diversified and expanded roles, compared with nurses working in the hospital environment. In some instances, nurses working in regional and remote areas prove to be effective substitutes for medical practitioners where there is a shortage, especially 'in under-serviced areas, such as rural communities ... resulting in a somewhat more equitable distribution of services.' (Marshall and Craft 2000: 83)

In 1997, the previous Commissioner of Health, Mr Alan Bansemer, endorsed the establishment of the Remote Area Nurse Practitioner Steering Committee to explore the formalisation of the role of remote area nurse practitioners legitimising the advanced scope of their work. One of the Terms of Reference was to determine an operational framework for the implementation of the remote area nurse practitioner

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<sup>1</sup> Multi Purpose Services are a jointly Commonwealth and state funded health service delivery model managed by the communities at which they are located, pooling in funds they received from both governments to provide hospital and aged care services for their communities.

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*To be appropriately qualified (level 3) Remote Area Nurse, particular skills are needed in the area of child health, immunisation ... the skilling of nurse varies dramatically from location to location ...* (Witness Statement of Ian Smith 22 July 2002: paragraph 12)

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including, but not limited to, aspects such as legislation, registration, clinical protocols and education requirements.

The 'Remote Area Nurse Practitioner' report was released in 2000 and, while it made a number of recommendations to improve the recognition of status and responsibilities of remote nurses, including legislative changes that legitimise the advanced and diverse practice of their work, the Inquiry has not received information concerning whether any of these recommendations have been implemented.

#### *2.1.4 (b) Nursing Posts*

Currently there are 32 nursing posts and nursing centres throughout rural WA that provide basic health care and treatment in townships that do not readily have access to medical services such as hospitals. Qualified nurses operate these centres, with doctors visiting on a routine basis. DOH provide funding to Silver Chain Nursing Association to operate a number of these nursing posts.

## **2.2 Responding to underlying factors**

Whilst public mental health services do not provide services that specifically target issues of family violence and child abuse, these services provide specialist assessment, intervention and consultation services throughout the state in response to incidents that could relate to, or be caused by, incidents of family violence and child abuse.

### **2.2.1 Mental Health Services**

The Child and Adolescent Mental Health Service (CAMHS) operate with multidisciplinary teams that provide specialist assessment, therapeutic interventions and specialist support, counselling and training to staff in other agencies. Essentially, along with DCD, they provide support to children and young people who have mental health problems and concerns resulting from family violence and child abuse. DOH has increased funding to CAMHS for the past three years in order to improve accessibility, resulting in an increase in services in the metropolitan, rural and remote regions.

The Inquiry was provided with information from DOH that two child psychiatrists, one of whom is employed by CAMHS, provide part-time consultation services to juveniles in Department of Justice (DOJ) facilities.

Citing Hunter and colleagues (1999) and Tatz (1999) and the Aboriginal Suicide Prevention Steering Committee noted in their briefing paper on self-harm and suicide among Aboriginal youth that

*... suicide was almost unknown within Aboriginal societies prior to colonisation and has only emerged as a problem in the last 20–30 years. Over this period the rates of both self harm and completed suicide among Aboriginal people in Australia have increased substantially.* (Aboriginal Suicide Prevention Steering Committee 2001: 4)

Suicide prevention is another area within the ambit of mental health. DOH commits funding into various areas ranging from an intersectoral committee developing suicide prevention strategies and a youth counsellor program mainly located in regional areas, to community mental health services and hospital based social workers who work with clients and patients who have engaged in self-harm or suicidal behaviours. The Inquiry has heard that suicide and self-harming behaviour among Aboriginal people is one of the tragic consequences of family violence and child abuse. The Inquiry strongly advocates for DOH and other government agencies to develop more proactive strategies and services aimed at reducing suicidal and self-harming behaviour in the Aboriginal population.

*2.2.1 (a) Child and Adolescent Mental Health Policy*

DOH identified that the previous management structure was not conducive to interagency collaboration specifically with DCD and has, in the last two years, undertaken considerable intersectoral consultation and policy development to develop a Child and Adolescent Mental Health Policy. The policy aims to assist in the breaking down of agency boundaries and making CAMHS more accessible to children who have experienced family violence or child abuse resulting in serious mental health problems. The policy, since its introduction in late 2001, has been used to underpin the development of CAMHS throughout the state and to guide best practice. It ensures that CAMHS is part of the broader change agenda that is occurring in the delivery of mental health services nationally and at the state level, by guiding the distribution of resources, prioritising new services development, assisting in determining client eligibility and outlining new roles for CAMHS providers.

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*That emergency psychiatric services for Aboriginal people be given top priority and upgraded to protect and prevent a major crisis. (Swan Valley Ngunyah Community Submission 2 July 2002: 11)*

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*2.2.1 (b) Mental Health Units*

Generally, Aboriginal patients at Graylands Hospital have been referred involuntarily under the *Mental Health Act 1996*. While some communities and local hospitals have rooming-in facilities for voluntary patients, involuntary referrals to Graylands Hospital tend to occur for severely ill rural and remote clients. In addition to rooming-in units in Broome, Kununurra, Derby, Geraldton, Narrogin, Kalgoorlie, Albany and Esperance, there are also inpatient facilities in the regional centres of Bunbury, Albany and Kalgoorlie. Rooming-in units are only opened as required and are staffed by a mental health nurse and assisted by a family member or friend of the patient.

The Inquiry notes that DOH has adopted a strategic approach in ensuring that there are inpatient and rooming-in facilities in regional areas. DOH would consider further expansion of these facilities if there were the population demand and the capacity to reallocate recurrent funding to operate new services.

*2.2.1 (c) Aboriginal Psychiatric Services at Graylands Hospital*

The Aboriginal Psychiatric Services (APS) was established at Graylands Hospital to facilitate the provision of services to Aboriginal patient through the better education of staff and to advocate between the hospital, patients and their families. DOH

provided a summary of the objectives of APS, as extracted from the information distributed by the service:

- Providing services and support to Aboriginal people with psychiatric disabilities and their families
- Educating people to the risks of alcohol and drug use by family members with a psychiatric ability
- Developing and maintaining a culturally appropriate visitors scheme within Graylands Hospital for Aboriginal patients
- Maintaining effective liaison, networking and exchange of information with other Aboriginal health services and support groups throughout metropolitan and rural areas
- Supporting clients to live independently and to assist them to find housing that meets their cultural needs (upon discharge)
- Supporting and encouraging the use of traditional Aboriginal treatments (where appropriate) alongside conventional psychiatric treatments
- Educating WA communities to be more tolerant and accepting of the different characteristics as embodied in Aboriginal people with psychiatric disabilities.

In the course of community visits, the Inquiry has heard from concerned Aboriginal communities that no further contact or feedback would be provided to families of patients, highlighting a lack of awareness from Aboriginal communities of the existence or services that APS provides.

**8. The Inquiry commends the establishment of the Aboriginal Psychiatric Services at Graylands Hospital. However, it recommends the services should be more widely publicised, especially in the rural and remote regions, and target referring professionals, agencies and Aboriginal groups.**

### 2.2.2 Drug, alcohol and substance abuse

In the Inquiry's examination of research into these issues, it was strongly demonstrated that there is a causal link between self-harming behaviours such as drug, alcohol and substance abuse and incidence of family violence and child abuse.

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*... The biggest single cause was 100% GROG. (Health Worker at an Aboriginal community)*

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The Drug and Alcohol Office (DAO) was established in January 2002. The Inquiry has heard that this newly established Office brings together the drug and alcohol related activities of the health portfolio previously allocated to the West Australian Drug Abuse Strategy Office (WADASO), Next Step Specialist Drug & Alcohol Services, the Alcohol & Drugs Policy Planning Unit and the Alcohol & Other Drugs Program. In its new capacity, the office is responsible for the design, development and implementation of policies and programs to reduce the harmful use of alcohol and drugs, and provides funding to a range of non-government service providers around the state. These include residential services,

training and education, resource and welfare, counselling and therapy, detoxification and assessment, advocacy and transitional accommodation, job placement, naltrexone programs and rehabilitation services. It also provides funding for Community Drug Service Teams, operated by non-government service providers throughout the state.

There are currently 12 sobering-up centres located throughout WA, two in the metropolitan area and the rest mainly in the Goldfields, Pilbara and the Kimberley regions. These centres are designed to offer safe care to both intoxicated male and female clients, where once they would have been detained in police cells. *'Sobering up services have also been recognised for reducing domestic violence by ensuring that clients are sober before being discharged to the home.'* (DOH Supplementary Submission 27 June 2002: 21)

**9. The Inquiry finds that the limited information provided by the Department of Health on its Drug and Alcohol programs precluded any findings by the Inquiry on the effectiveness of services provided.**

The Inquiry was charged with the task of considering some of the underlying causes of family violence in published research material. One of the factors that have consistently appeared in research is the use and abuse of drug and alcohol as a cause of family violence (see Chapter 4). While the Inquiry is aware that DOH support and fund drug and alcohol treatment and intervention services, it noted that DOH did not comment on any possible causal links or underlying factors relating to drug, alcohol and substance abuse as contributing factors to the prevalence of family violence and child abuse.

The Inquiry notes the detailed reference in DOH's Closing Submission to the activities of DAO aimed at improving service provision to Aboriginal people. These activities include 12-month traineeships for Aboriginal people in responding to drug-related harm statewide, employment of Aboriginal people in drug and alcohol services and to have Aboriginal Practice Development staff in DAO to coordinate practice development initiatives and contribute to policy development. (Council Representing Agencies 2002: paragraph 436)

The Inquiry appreciates the depth and range of responses submitted in the Closing Submission, which emphasises the importance of addressing the underlying issues of drug and alcohol abuse.

**10. The Inquiry acknowledges Drug and Alcohol Office's current activities, and recommends that the proposals be progressed as a matter of urgency, to address the enormity of the problems associated with drug, alcohol and substance abuse.**

*2.2.2 (a) WA Community Drug Summit 2001*

The Western Australian State Government hosted the WA Community Drug Summit in August 2001, following its pre-election commitment to develop a comprehensive drug strategy for WA. The summit provided a platform for the sharing of knowledge, ideas and experience from a broad section of the community to assist the government with formulating long term strategic policies to address the illicit drug problem in the

state. The recommendations from the summit were to form the basis for the government's drug policy reform. The DAO was charged with the task of developing the new Drug Strategy as its priority, taking into account the summit's recommendations, to be completed by the middle of 2002.

The summit produced 45 recommendations. Grouped into common themes, broadly these were:

- A greater emphasis on education, prevention and early intervention
- More support for families
- Culturally appropriate services for indigenous people
- Better services for young people and those in regional and remote areas
- More diversion
- Drug law reform
- Greater community involvement. (Government of WA 2001: 1-2)

The Inquiry heard in the Closing Submission that DAO has as its central responsibility the development and coordination of the WA Drug and Alcohol Strategy. According to DOH, Cabinet endorsed the strategy on 15 July 2002, and is anticipating the launch in mid-August.

The Inquiry notes that the strategy would provide a framework for action on drug and alcohol related harm for Aboriginal people and communities.

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*In Pukatja (community), petrol sniffers control the area outside the store, the council office, the homelands centre ... when petrol sniffers have children, it suggests the sniffing culture has infiltrated well beyond superficial material damage. (The Weekend Australian Magazine 2001: 26)*

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#### *2.2.2 (b) Volatile substance abuse*

The Inquiry has heard and read about the prevalence of volatile substance abuse in Aboriginal communities and the enormity of this issue that has, to date, failed to attract any effective intervention strategies. Studies have found that, while petrol sniffing is primarily an issue that concerns remote Aboriginal communities, it also occurs in Aboriginal and non-Aboriginal youths in urban and regional communities. (d'Abbs and Maclean 2000)

Whilst government and non-government agencies have implemented a number of interventions in affected Aboriginal communities, it would seem that these interventions have occurred sporadically with varying degrees of success (Chalmers 1991, Brady 2001). These studies would argue that more socially-oriented research is required to understand the issues in a socio-anthropological context in order to find more effective solutions delivered in innovative ways, aided by appropriate government policies.

Volatile substance abuse is described as *'the intentional inhalation of substances which give off vapours and cause intoxication.'* (Rose 2001: 1) Substances used include semi-solids (glues), liquids (petrol, thinners), gas fuels (lighter fluid) and anaesthetics (nitrous oxide), and users can be classified as experimental, social and dependent abusers.

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*So I see a lot of young people sniffing in the Midland area - than what I do in the Mirrabooka area ... My view around sniffing is that it's very unhealthy ... And it's very sad to see young people just locking away the pain and having to sniff to be able to make themselves feel better ... And it's also a definite cry for help.* (Transcript of Evidence by Donna Birch 25 March 2002: 444-445)

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*... that the Top People in Government, that is the Premier and Ministers meet with Top People from the Aboriginal Side, that is Aboriginal Lawmen and Law-women and Elders on the issue of young people and solvent abuse ...* (Swan Valley Nyungah Community Submission 2 July 2002: 4)

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As noted at the Inquest of Susan Taylor's death,

*...this case has highlighted the fact that young persons who are involved in paint and solvent abuse are vulnerable and likely to become victims of sexual abuse and that they are also likely to live a high risk lifestyle which places them at risk of a number of disease and infections.* (Hope 2001)

In the 'Volatile Substance Abuse Background Paper' prepared for the WA Solvents Abuse Working Party<sup>2</sup>, the point is made that

*Volatile substance abuse in Aboriginal communities and Aboriginal young people differs from non-Aboriginal communities by way of cultural heritage, patterns of use and some intervention strategies as compared with non-Aboriginal communities.* (Rose 2001: 9)

Chronic inhalation of solvents, such as petrol fumes, can have a serious of physical effects including seizures, tremor, anorexia, hyperactivity, bizarre behaviour, encephalopathy and ataxia. (Brady 2001)

One of the issues papers presented at the Community Drug Summit was entitled 'Addressing Illicit drug use among Aboriginal people, including the provision of treatment programs for drug dependent Aboriginal people'. An Aboriginal Community Drug Forum was held in June 2001, where a broad cross-section of people from both Aboriginal and non-Aboriginal communities participated in developing outcomes for a submission to the Summit. While some recommendations that were developed from information presented in the issues paper were eventually adopted by the summit, it was documented in their submission of

*their (forum participants) disappointment that legal drugs like alcohol and tobacco, and the misuse of prescription drugs and volatile substances were not to be part of the debate at the Community Drug Summit. It was felt that these substances were more of an issue for indigenous communities than illicit drugs and they needed to be addressed in their own right.* (Community Drug Summit Office 2001: 28)

The Inquiry notes that DOH, as stated in its Closing Submission, is planning to develop, in collaboration with key stakeholder groups, a Volatile Substance Abuse Action Plan.

**11. The Inquiry supports the Department of Health's intention to develop a Volatile Substance Abuse Action Plan (VSAAP) and recommends that the VSAAP adopts a comprehensive approach to the development of strategies that include treatment initiatives to address volatile substance abuse in Aboriginal communities.**

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<sup>2</sup> Convened by the Office of Aboriginal Health and the Drug and Alcohol Office, and comprising of representatives of the WA Aboriginal Community Controlled Health Organisations, Derbarl Yerrigan Health Service, Noongar Alcohol and Substance Abuse Service and DCD.

**12. The Inquiry recommends that in developing appropriate strategies, it should include a review of the legislative framework and any requirements for change.**

## 2.3 Responding to family violence (overview)

DOH stated quite explicitly that it does not fund specific family and domestic violence services (FDV). DOH identified its role as providing immediate treatment and follow-up counselling and referral for individuals affected by FDV. Further, on a broader perspective, DOH sees its role as contributing to the development of appropriate prevention measures and to coordinating its services and activities to complement a whole of government response to family violence.

### 2.3.1 Sexual assault services

Sexual assault services in the metropolitan area are provided predominantly by the SARC located at the King Edward Memorial Hospital (KEMH). The centre is funded by DOH and provides a free 24-hour crisis medical, forensic and counselling services to female and male victims aged 13 years and over, who are victims of recent<sup>3</sup> and past sexual assault. According to Paula Chatfield, Manager of SARC, due to resource limitations of resources, providing a crisis service is SARC's core business—that is, providing a treatment or intervention service to victims of recent sexual assault. Providing counselling services to people who had experienced past sexual abuse or assault and their families was deemed as a 'second priority'. (Transcript of Evidence by Paula Chatfield 16 May 2002: 1111)

Metropolitan SARC also operate outreach services that are provided in prisons and at seven other metropolitan locations. Seven mostly non-government providers with funding from various departments including DOH operate specialised sexual assault services for victims in regional WA.

Besides medical, forensic and counselling services, SARC in Perth conduct professional training services to incoming police recruits, medical students and other health professionals in how to respond to disclosures of sexual assault. On the job training for counselling and medical staff at SARC is another crucial component of training the centre provides. Although limited, educational sessions with a preventative focus are also conducted at schools and with community groups.

Around eight to nine percent of all clients seen in the metropolitan area are Aboriginal females. It was suggested that while this proportion may seem like an over-representation of Aboriginal people accessing services compared to the overall proportion of Aboriginal people in the population, it is still under-representing the number of Aboriginal women being assaulted. Further, Aboriginal males are unlikely to access any sexual assault services themselves.

To improve services delivered to sexual assault victims, Ms Chatfield identified a number of key issues that need to be addressed, including the introduction of accredited training for workers in service provider agencies; education, prevention and awareness raising programs

<sup>3</sup> Within 30 days of assault, particularly for medical and forensic intervention.



for schools and community groups; the increasing of SARC's profile in Aboriginal communities and the improvement of the funding nature of services for non-government service providers.

*The fragmented nature of services that are provided to clients in rural areas is partially due to the limited funding and the fact that funding is only provided on a short term and non-recurrent basis. This prevents continuity of programs or inability to implement long term strategies.* (Witness Statement of Paula Chatfield: 15e)

One regional interagency committee with government and non-government constituents, submitted to the Inquiry that there is an '*... absence, or inconsistency, of dedicated psychological services in the region specifically for people affected by sexual assault and abuse.*' (Carnarvon Interagency Committee on Sexual Abuse Submission 23 April 2002: 4)

DOH has indicated that it is considering a number of proposals to enhance sexual assault services provided by SARC in Perth and the rural and remote regions. They include:

*2.3.1 (a) Counselling outreach services*

- The establishment of a SARC outreach centre at Joondalup
- Increasing outreach sessions to two days a week at Armadale and Rockingham
- Conducting a feasibility study of setting up a counselling outreach centre for Aboriginal people
- Exploring options to increase access to counselling services for CALD and other minority groups
- Increasing counselling services generally in response to the potential increase in demand due to community awareness programs
- More counselling support in the rural and remote regions, and employing a Senior Social Worker dedicated to that role.

*2.3.1 (b) Crisis services*

- Increasing counselling and medical staff to address the growing number of victims who require emergency services without compromising the resources needed to meet the counselling needs of victims of past sexual assault or abuse
- Resource requirements to meet demand from rural services such as GPs needing telephone support and guidance with medical forensic examinations and writing of police report

*2.3.1 (c) Education and training*

- Establishment of a Training and Education Unit within SARC to deliver a comprehensive education and training program for health care workers, agencies, communities and schools to address sexual abuse issues and provide education on preventative and protective strategies

- More counselling staff to enable some resources to be dedicated to training and education in outreach and to specifically work with Aboriginal clients

*2.3.1 (d) Rural and remote regions*

- Position SARC as the statewide key support agency for all other sexual assault services as well as be responsible for the skill development of workers in the rural and remote regions
- Options to provided alternative forms of care such as access to telepsychiatry or telehealth, or linkages with other mental health services for follow-up care, where no current services exist for clients.

(DOH Supplementary Submission, 26 June 2002: 9–10)

**13. The Inquiry endorses in principle options currently being considered by the Department of Health and recommends that resources be made available for the following initiatives:**

- **Expansion of delivery of sexual assault services in the metropolitan and rural and remote regions**
- **An increase in counselling services, to include Aboriginal-specific services, provided by government and non-government agencies**
- **Improvement of education and training to health care workers, agencies, communities and schools to address sexual abuse issues and provide education on preventative and protective strategies**
- **The positioning of metropolitan Sexual Assault Research Centre at King Edward Memorial Hospital key support agency for all sexual assault services state wide, as well as being responsible for the skill development of workers in the rural and remote regions.**

**14. The Inquiry recommends that key Aboriginal community members be identified for training in sexual assault education and support services so they become a resource in their own communities.**

## 2.4 Responding to child abuse (overview)

### 2.4.1 Child Protection Services

*The Department of Health, the Department for Community Development and other agencies involved in child protection activity in Western Australia has (sic) already developed policies and procedures to ensure consistency with direction given by the State and National Child Protection Councils. The Department of Health's specific role in child protection forms part of an interdependent and complementary child protection service provided by all these agencies. (DOH Supplementary Submission, 26 June 2002: 4)*

The Child Protection Unit (CPU) at Princess Margaret Hospital (PMH) provides services to ensure the protection of children when presented at the unit through referrals from various agencies such as DCD, Western Australian Police Service (WAPS), PMH and other hospitals, families and the legal fraternity. *'CPU deals with approximately 750 case contacts per year, covering non-accidental injury, child sexual abuse, neglect, burns, ingestions, emotional abuse and Munchausen syndrome by proxy.'* (DOH Initial Submission 19 April 2002: 12)

The model of service delivery by CPU concentrates on providing medical services to the child and parents in cases of suspected child abuse and providing advice on how to best protect the child. The CPU has also entered into a tripartite agreement with DCD and WAPS as the medical response to investigations of suspected child abuse<sup>4</sup>. Reports are made to DCD and WAPS when cases indicate a level of risk or harm to the child. However, *'CPU does not establish a long-therapeutic relationship with the child or parents.'* (DOH Initial Submission 19 April 2002: 12)

The Inquiry heard that there is a need for an effective hospital-based child protection service which can meet not only a child's medical needs, but also provide comprehensive forensic services to complement other investigative processes and gather evidence for potential legal proceedings.

Further, the Inquiry has heard suggestions that CPU could be improved to enable this vision by providing further forensic medicine training for paediatricians working in the CPU. DOH is currently considering a range of proposals to improve CPU's services. These include:

- CPU becomes a model unit for child protection in WA
- CPU runs educational programs for all disciplines of health care workers involved in this field
- a specific clinic with an indigenous focus is established where cases can be co-worked with health care workers from DYHS
- eight rural regional units are established to provide a better response to families and children
- additional funding for CPU to recruit skilled staff and further accommodation (DOH Supplementary Submission 26 June 2002 : 9)

**15. The Inquiry supports the options the Department of Health is considering to improve and expand the Princess Margaret Hospital (PMH) Child Protection Unit's (CPU) services, these being:**

- **Education for all health workers, particularly in the range of specialised services that CPU provide**
- **Improvement of the working relationship with Aboriginal Health Services, such as Derbarl Yerrigan Health Service to enable the establishment of a specific**

<sup>4</sup>Tripartite Agreement between PMH, WAPS and DCD was built on initial joint response between WAPS and DCD, that recognised the need to ensure that children who have been abused do not experience additional unintentional stress during assessment and investigation of the allegation. The medical response constitute firstly, evaluation and treatment of the child's medical condition and secondly, the documentation and preservation of evidence of abuse.

**clinic with an indigenous focus**

- **Establishment of rural regional units to better respond to families and children**

**The Inquiry recommends that the Department of Health provides psychiatric, psychological and counselling services for victims of child sexual abuse and their families through CPU at PMH.**

DCD funds a small number of non-government agencies to provide child sexual abuse treatment services. According to DCD, Child Sexual Abuse Treatment Services are funded to address harm arising from the abuse and to build protection for the child by addressing issues that contribute to the abuse. The services, depending on need, can range from telephone counselling, assessment and referral, to individual, family and group counselling.

Most of these DCD-funded agencies, of which one is specifically for Aboriginal clients, deliver services in the metropolitan area. In the rural region, located in Bunbury and Geraldton, there are two agencies funded to provide counselling services to address child sexual abuse.

#### **2.4.2 Understanding and responding to child sexual abuse in Aboriginal communities training workshops**

The Sexual Health Program (SHP) of the Population Health Division piloted two day workshops in Carnarvon and Port Hedland in May 2002 and another to run in Halls Creek in August 2002. These provided training to agency workers on understanding and responding to child sexual abuse in Aboriginal communities. The workshops were a result of a training needs analysis identified by providers of sexual health in the area of child sexual abuse and new information linking the possibility of child sexual abuse when Sexually Transmitted Infection (STI) is diagnosed in a child, acknowledging that there is a high need for counselling skills and information about sexual abuse, especially for those working in or with Aboriginal communities.

The workshops were attended by a range of service providers from both the government and non-government sector that included representatives from DOH, Department of Education (DOE), DCD, Department of Justice (DOJ), WAPS and women shelters, AMSs and various other community service providers. The objectives that were to be met at the completion of the workshops included an ability to:

- recognise signs of child abuse
- understand the obligations and responsibilities of agencies involved in responding to child sexual abuse
- understand some of the barriers which may prevent people from responding to child abuse in Aboriginal communities
- have considered strategies to overcome those barriers in the best interests of the child
- understand the ongoing role of professionals after intervention by the DCD and/or WAPS. (SHP Submission 27 June 2002: 6)

An interim report of the workshops piloted in May 2002 found that the workshops assisted in building community networks. It found they brought together different groups of service providers with different skills, experience and legislative responsibilities (that provide the collaborative framework within a community) to address the issue of child sexual abuse. The report iterated that

*... the issue of child sexual abuse will not be optimally addressed by service providers until there is a greater sense of community cohesion between them that is informed by a commitment to understanding Aboriginal community aspirations and perceptions, and to overcoming barriers to service delivery. (SHP Submission 27 June: 9).*

General feedback from participants also indicated that the workshops were well received and met most of the workshop objectives. Other feedback included follow-up workshops, and/or ongoing support process to build local capacity and the possibility of making the training mandatory to all agency workers in this field.

Contingent upon the availability of funding, SHP anticipates that the training package will be delivered more widely when the pilots have ended.

**16. The Inquiry supports the interim evaluation of the 'Understanding and responding to child sexual abuse in Aboriginal communities' training workshops, piloted in May 2002 in regional WA. The Inquiry recommends on the basis of that interim report that**

- The training be redesigned to target different audiences, such as community members and professional/field workers
- The training occur on an ongoing basis
- Training is provided in a series to enable workshop participants, incremental professional development training in responding to child sexual abuse
- The training should include a follow-up competency assessment element ensuring ongoing application of training objectives

**17. The Inquiry recommends that adequate resources be made available to the Sexual Health Program to expand its revised training workshops to all regions.**

### 3. ORGANISATIONAL ISSUES

#### 3.1 Planning

DOH has outlined a number of initiatives it is planning to address the incidents of family violence and child abuse. The description of these initiatives have been placed in 4.4 'future directions'.

#### 3.2 Policy and procedures

DOH described a number of policy guidelines and practices that government health care providers

in public hospitals and community health clinics operate under when addressing suspected family violence and child abuse.

*These policies require suspected cases of child abuse which present at health services, to be referred to the Department of Community Development (DCD) by health service staff for investigation and management. There is liaison between the police, DCD, community health staff and paediatrician specialists in the identification and management of such cases. (DOH Initial Submission 19 April 2002: 7)*

However, while these procedures are in place, it was acknowledged that there are difficulties involved in the carrying out of these procedures in some locations.

A brief description of each and how they apply in the service provision setting is provided in the sub-sections below.

### **3.2.1 Guidelines for the Clinical Management of Child Abuse and Neglect (1993)**

The 1993 guidelines are an updated version of the original 1988 guidelines that were developed to help coordinate *'the approach and practice arrangements of the various sections of the Department currently dealing with and having responsibility for the identification and management of child abuse and neglect'* (HDWA 1993: 1). These guidelines were revised in 1993 to improve the knowledge and awareness of child abuse issues among service providers and to encourage ongoing improvements in practice and policy development.

In essence, the 1993 guidelines provided clear definitions of the role and function of DOH in response to concerns of child abuse and neglect at 3 levels—direct client services, education and evaluation. It also provided an overview of general procedures in the areas of identification; information gathering; consultation, assessment and planning; safety of the child and other children in the family; discussion with parents; documentation; action and confidentiality. The guidelines list procedures for specific disciplines, such as community nurses, medical officers and allied health professionals, and specific health units, for example, hospitals, CAMHS. Other information of relevance included information such as the indicators of child abuse - 'what to look for', list of relevant community agencies, multicultural and language issues, legal considerations (health professionals' own legal obligations and responsibilities towards clients/patients), a description of the role of other departments and the *Reciprocal Child Protection Procedures* between DCD and DOH.

These guidelines are currently under review. A copy of the draft review working paper was tendered and referred to briefly by Mr Michael Jackson, Executive Director, Population Health Division. The review working paper provided a list of principles, values, definitions and general procedures under which the new guidelines will be considered.

### 3.2.2 Health Department of Western Australia, Guidelines for Dealing with Domestic Violence, responding to Family and Domestic Violence: A Guide for Health Care Professionals in Western Australia (2001a)

In an effort to address family and domestic violence issues, DOH published two documents in recent years, encouraging hospitals to develop appropriate family and domestic violence policies for hospitals. The '*Guidelines for Developing Protocols on Intervention and Management of Family and Domestic Violence for Hospitals in Western Australia (1998)* and *Accompanying Resource Manual for Family and Domestic Violence Protocols for Hospitals in Western Australia (May 1999)*' provided health policy, definition, identification and intervention guidelines for health practitioners handling family and domestic violence cases in WA hospitals.

This initiative was followed up with the appointment of a Family and Domestic Violence (FDV) Project Office, who assists rural and metro hospitals to develop and implement their own protocols. Fifteen sites have implemented this initiative to date, with the nomination of family and domestic violence liaison coordinators (FDVLC) who receive mentoring support from the FDV Project Officer. The FDVLC in turn coordinates the implementation of the program and provides training to other staff within their respective hospitals.

The third in the series of this publication, '*Responding to Family and Domestic Violence: A Guide for Health Care Professionals in Western Australia, 2nd edition, December 2001*' tendered to the Inquiry during the course of Michael Jackson's evidence, is a clinical guide focusing on intervention strategies. '*The booklet aims to provide the practical knowledge and skills (for all health care practitioners in WA) to best support patients presenting at hospitals who have experienced domestic violence.*' (DOH Initial Submission 19 April 2002: 1)

As well as listing a number of procedures that the treating health care professional can undertake when responding to patients presenting with symptoms of domestic violence, there were specific intervention strategies identified when treating Aboriginal people, specifically Aboriginal women. The strategies emphasised that particular sensitivity to cultural differences, such as the issue of 'shame', include use of an Aboriginal support worker as an intermediary and being aware of repercussions in the community for Aboriginal women when they are reluctant to pursue a legal recourse.

### 3.2.3 Health Department of Western Australia, Sexually Transmitted Infections, A Guide for Primary Health Care Providers (2001)

These guidelines, originally published in 1997, were developed to help improve the management of notifiable sexually transmitted infections (STIs). These clinical guidelines were updated in 2001 to '*promote the principles of best practice to the wide range of providers who are responsible for STI management in the State.*' (HDWA 2001b: 1) The guidelines are aimed specifically at primary care doctors, nurses in remote areas and Aboriginal health workers and is set out to allow for the huge variance in training of the different disciplines.

The guidelines also included a section on child sexual abuse and STIs. It stated that

*... most cases on child sexual abuse do not result in STIs. However, if an STI (such as gonorrhoea, chlamydia, trichomoniasis, genital herpes or genital warts) is isolated from the genitalia or throat of a child or an adolescent under the age of 16 years, then sexual abuse should be considered. (HDWA 2001b: 10).*

The section outlined management procedures for a child with an STI and response procedures to suspected child sexual abuse including reporting (this is discussed to some detail at 3.4 of this Chapter).

#### **3.2.4 Health Department of Western Australia, Community Nursing Policy Manual (1994)**

The Community Nursing Policy Manual contains the '*Standards of Practice*' that has to be adhered to by all practicing community nurses in WA. The '*Competency Standards for Community Health Nurses*' was developed based on this policy manual. The manual outlines practice requirements for community nurses and the parameters for community nursing practice within the department. It is also used for performance management evaluations of community nurses.

#### **3.2.5 Reciprocal Child Protection Procedures 1997, Department of Family and Children's Services**

DOH has a reciprocal child protection procedure agreement with DCD (formerly Department of Family & Children's Services), which requires both departments to cooperate in identifying and providing child protection services to children identified as being at risk of harm. The agreement, in place since 1992, sets out procedures for referrals and case management between the departments, and how to resolve difference should it arise in the process of joint intervention and management of cases.

#### **3.2.6 Other relevant policies**

To facilitate collaboration amongst agencies in the early identification and early intervention where family violence and child abuse is suspected, DOH is planning to undertake a review of its current information sharing legislation.

**18. The Inquiry endorses the Department of Health initiative to review its current information sharing legislation to ensure more effective communication practices between agencies responding in the area of family violence and child abuse.**

### **3.3 Human resource issues**

#### **3.3.1 Training and specific employment recruitment**

In the past, training in (the clinical management of) child abuse was provided at regular intervals, however it has been reported that there has been a lack of structured professional development in this area since 1993/94. With the recent identification of the specific



training needs in this area, DOH is currently progressing the development of a workforce strategy to address these needs.

**19. The Inquiry strongly supports the Department of Health proposal to reintroduce regular training for its nursing staff in the clinical management of child abuse, which was discontinued in 1993.**

Despite the availability of numerous departmental guidelines and procedures, the Inquiry has heard during consultations that remote area staff are still unclear of their roles and responsibilities when dealing with incidents of family violence and child abuse. Instead they suggested that regional guidelines and ongoing training that would give them the confidence to deal with family violence in a consistent and culturally appropriate manner would be more relevant in the communities and circumstances they operate under.

DOH recognises the importance of upskilling staff who work with and provide services to Aboriginal people. To this end, DOH is supporting the development of a training program that will include necessary cross-cultural training that recognises the specific cultural needs of Aboriginal people. One such initiative is the commissioning of a training program through the Curtin Centre for Aboriginal Studies and Marr Moorditj<sup>5</sup> to better equip mental health staff to work more effectively with Aboriginal clients.

**20. The Inquiry endorses the cross-cultural training programs proposed by the Department of Health (DOH) that recognise the specific cultural needs of Aboriginal people, for all DOH's service providers. The Inquiry recommends that this Inquiry's proposed Implementation body expedite this initiative as a matter of priority.**

### 3.3.2 Recruitment strategies for remote area staff

*... peculiar difficulties in running a health service of such a large geographical size ... involving such a diverse number of remote communities. The single biggest problem is the extreme turnover of staff ... particularly ... nurses but ... also ... doctors and allied health professionals' (Witness Statement of Ian Smith 22 July 2002: paragraph 8)*

The high turnover of staff is an issue that was identified consistently as having a major impact on the provision of services to rural and remote regions. As stated by a senior manager of a remote area health service,

*... it is extremely difficult to get nurses to remain working in a particular location for any appreciable length of time (say, longer than 3-4 years); often they remain in a particular location for an even shorter period. (Witness Statement of Ian Smith 22 July 2002: paragraph 9)*

Reasons for this, according to Mr Smith could be attributable to

- Changing demographics of the nursing workforce
- Inadequate or inappropriate accommodation

<sup>5</sup>The Marr Moorditj Aboriginal Health College offers training for Aboriginal Health Workers.

- Less willingness to remain in rural or remote locations (Witness Statement of Ian Smith 22 July 2002: paragraph 10)

*3.3.2 (a) Remote area staff recruitment and retention incentives*

DOH provided a submission specifically describing strategies that it identified to address staff recruitment and retention for regional and remote areas.

In November 2001, DOH released *'The New Vision, New Direction nursing and midwifery study'* outlining strategies to increase the participation rate of nurses and midwives in the workforce. Childcare was one of the issues the study found that affects the retention of nurses and midwives in the workforce. The resulting recommendation was the adoption of system-wide family friendly employment initiatives within 12 months release of the report. Another issue is the high use of non-government agency nurses, which has implications for the continuation of care and the effect of limiting the recruitment of nurses and midwives into the system.

The following are recruitment and retention strategies that the department has, or is considering adopting:

- Incentives such as district allowances, relocation expenses, extra leave, housing and utility subsidies (above the 26th parallel), gratuity payments, professional development and on-call rates
- Allied health recruitment strategy that includes undergraduate and postgraduate scholarships to encourage new graduates to work in the rural areas, financial support for rural placements, a national and international advertising campaign, and increasing secondment opportunities in the rural sector
- Recruitment of overseas-trained doctors to work in rural areas where there are a shortage of GPs; the creation of salaried medical practitioner positions in areas where establishing private practices is not viable; and the increase of visiting medical practitioners
- The University of WA applied for and shall be receiving funding from the Commonwealth Government to establish a multi centre rural clinic school with sites in Geraldton, Kalgoorlie/Esperance, Port Hedland and Broome for Fifth Year medical students
- Policies and guidelines to guide nursing practice are to be developed at the local and state level. The remote area nurse will be part of a management team that will be based at the nearest largest town. Access to the team provides the nurse with support and professional advice on all areas of practice including child abuse. (DOH Supplementary Submission 20 June 2002)

### **3.3.3 Aboriginal training and recruitment**

In 2000, DOH, jointly with the Commonwealth Department of Health and Aged Care and WACCHOs, undertook a review of AHW training in WA as part a national review. This study described that since the introduction of AHWs into the WA health system 30 years ago, they

have continued to play an important role in the provision of primary health care in Aboriginal communities. The review made the following recommendations for the improvement of Aboriginal and Torres Strait Islander Health Work in WA:

- To clearly define the current and anticipated scope of AHW roles
- Increasing the number of AHW positions and improve conditions of service, particularly in remote areas
- To create a model for accreditation of AHWs
- To put in place mechanisms to improve career structures and mobility
- Changes to training to more closely align it with industry and health worker needs
- The establishment of a Western Australian AHW Association
- Legislative changes to improve AHW practice
- The need to customise the National Competencies and have timely input into the development of the National Training Package. (UWA 2000: 3)

*3.3.3 (a) Office of Aboriginal Health Scholarship Program*

This scholarship program was established in 1998 to address concerns of the low rate of Aboriginal people enrolling in health-related courses. According to DOH's 2000/01 Annual Report (HDWA 2001c), at the time, there were nine continuing scholarships and nine new scholarships awarded to students in the disciplines of medicine, nursing, allied health, social work and Aboriginal health work courses.

**21. The Inquiry supports the Department of Health's development of an enhanced professional role and career development path for Aboriginal Health Workers and Aboriginal Mental Health Workers. The Inquiry recommends these incorporate a primary therapeutic role and should be reflected in work responsibility and remuneration.**

Other areas introducing training and recruitment initiatives specifically aimed at increasing skill level and employment of Aboriginal people include

- SARC at KEMH are reinstating training services that it previously provided, particularly to Aboriginal Health Workers, and to reintroduce Aboriginal liaison workers into its centre
- Kalgoorlie SARC, a non-government agency funded by different government bodies including DOH, has just developed an indigenous-specific training program for volunteers in the communities to respond own community members disclosing about sexual abuse.

**22. The Inquiry recommends that the Department of Health consider more professional development options for newly employed Aboriginal staff, such as the Aboriginal mentoring programs recently introduced by the Department of Housing and Works and the Department of Education.**

**23. The Inquiry supports the metropolitan Sexual Assault Resource Centre's (SARC) initiative to reinstate training services that it previously provided. The Inquiry recommends the training package be redesigned in conjunction with experienced and qualified professionals, academics and Aboriginal Health Workers.**

**The Inquiry endorses the SARC's intention to reintroduce Aboriginal liaison workers as outlined in the Department of Health's Submission.**

**The Inquiry endorses the Indigenous-specific training program for volunteers to respond to their own community members' disclosure of sexual abuse that is currently being implemented by the Sexual Assault Resource Centre in Kalgoorlie. The Inquiry recommends that DOH consider this initiative, upon evaluation, for a statewide implementation.**

### **3.4 Information collection/sharing, including mandatory reporting**

According to the DOH's *'Guidelines for the Clinical Management of Child Abuse and Neglect (1993)'*, health care providers have discretion in reporting suspected child abuse allegations at their discretion, and are not currently mandated to do so. Even the knowledge of practices contained within the guidelines, DOH noted, is variable. Ongoing training in the use of the guidelines has not been offered since their preparation in 1993.

In DOH's *'Guidelines for the Management of Sexually Transmitted Infections 2001'*, it stipulated that *'the occurrence of an STI in a child is strong, circumstantial evidence that abuse is occurring (and that) based upon reasonable suspicion'*, these cases should be reported to DCD for investigation and action by the treating practitioner. (HDWA 2001b: 10)

*'It is the legal requirement under the Health Act 1911 that diseases gazetted as notifiable are notified to HDWA'* (HDWA 2001b: 11). However the support for notification of STI cases in children to child protection authorities was not widely supported by practitioners, as they felt this could jeopardise the *'support for testing of STIs in minors and the trust of notifying health care providers'* (DOH Initial Submission 19 April 2002: 27). If mandatory notification is to go ahead, DOH feels that this would need to be supported by clear legislative framework.

### **3.5 Coordination**

#### **3.5.1 Include other 'same service' providers**

Acknowledging that DCD plays a lead role for the provision of services that respond to family violence and child abuse, DOH and its various service delivery agencies play a role in supporting DCD through the delivery of services that meet the physical, emotional and psychological needs of victims and families affected by family violence and child abuse.

DOH plays a coordinating role to in addressing underlying issues of family violence and child abuse through the development of the Child and Adolescent Mental Health Policy. DOH undertook considerable intersectoral consultation with various community and government

agencies in the development of this policy. The Child and Adolescent Mental Health Services are required to develop links with other mental health and social services involved in treating children and young people with mental disorders and mental health problems. There are protocols with WAPS, Supported Accommodation Assistance Program (SAAP) and GP divisions that formalise arrangements between mental health services and these agencies. They also link with CPU where required.

As a commitment to improving local child protection strategies, DOH has proposed to engage with other

*... agencies who are partners in this process to identify a governance model that embraces local community needs as well as providing the necessary confidentiality and security in regard to the information dealt with...* (DOH Supplementary Submission, 26 June 2002: 11)

## **4. ANALYSIS OF SERVICE PROVISION**

### **4.1 Access to services**

The evidence of Michael Jackson (Transcript of Evidence 16 May 2002) reinforced the point that, due to the geographical dispersion of WA's small Aboriginal population, it is often difficult to deliver services and programs in remote Aboriginal communities.

While there are services being delivered on site in most rural and some remote communities, there still exist fundamental problems in meeting expectations and needs of the whole community. As discussed in 3.3.2, recruiting and retaining skilled staff was highlighted as one of the issues hampering the delivery of appropriate health services in these areas.

#### **4.1.1 Patient Assisted Travel Scheme**

The Patient Assisted Travel Scheme (PATS) is a travel assistance program operated by DOH since 1987. Administered by rural health services throughout WA, PATS provide assistance to rural residents having to travel more than 100 kilometres to attend specialist medical appointments in the metropolitan area or at regional centres.

A review of PATS was conducted in 2001 in the context of changing community expectations, advances in technology, which has implications for the way medical services are delivered. The review made the following recommendation: improve community knowledge of the scheme; explore alternative options to travelling to the metropolitan hospitals; to expand the scope of PATS for patients needing highly specialised allied health services; and improve communication between destination and referral hospitals to ensure better coordination of services for the patients and families. The last recommendation is particularly relevant for Aboriginal patients travelling from remote communities with little or no family support in the metropolitan area and who may not speak fluent English.

#### **4.1.2 Use of Aboriginal interpreters services**

DOH provided information on their use of Aboriginal interpreter services in the delivery of services to Aboriginal clients in one of their supplementary submissions. DOH acknowledged that it is not common for health staff to use interpreter services in the delivery of health services to Aboriginal clients in WA and instead, rely on Aboriginal staff when they are available. Despite the establishment of the Kimberley Interpreting Service, there are still operational and logistical difficulties with accessing this service consistently throughout the region due to the lack of available interpreters when required.

## **4.2 Challenges**

Emphasising the limitations of DOH's previous structure and operational inefficiencies that has impacted on its ability to adequately address the issues of family violence and child abuse, DOH has since implemented or are in the process of implementing a number of initiatives to redress this concern. Additionally, DOH states,

*... an appreciation of the fact that the bulk of services in the area of family violence and child abuse were directed at crisis care and responses to actual incidence and not to prevention has informed the Department of the need for a more comprehensive approach, including the need to develop appropriate community wide preventative strategies. (DOH Supplementary Submission, 26 June 2002: 5)*

## **4.3 Strengths**

Information provided by DOH in evidence and in writing emphasised that the previous administrative and operational structure of the department has impeded the delivery of coordinated and consistent services that could respond effectively to the issues of family violence and child abuse.

*Previous structures and policies in Health in Western Australia have inadvertently resulted in some fragmentation that has reduced the efficacy of service delivery, despite the commitment and clear goodwill to improve health outcomes. (DOH Supplementary Submission 26 June 2002: 12)*

Since July 2001, DOH has been working to implement the recommendations of HARC. The areas in which HARC had made recommendations ranged from how to improve efficiency in delivery of health services to restructuring of specific functions and responsibilities of units and branches for greater efficiency and effectiveness. One such targeted area is in relation to Aboriginal Health. In the HARC report, it recommended that

- *Improving the health of Indigenous (sic) people, in partnership with relevant organisations (particularly community controlled health organizations) and communities, be a continuing high priority for the HDWA both centrally and across the metropolitan and non-metropolitan health services. The HDWA's work in Indigenous health should be supported by the Office of Aboriginal health, to be located within the Population Health Division. Area Health Boards and other relevant committees should include Indigenous members.*

- *A new Aboriginal Health Advisory Council to the Minister be established (on matters relating to Aboriginal Health)*
- *Recognising that Indigenous health cannot be addressed by the Health Department in isolation, but that health is a fundamental indicator of disadvantage, it is recommended that a high-level Indigenous Health Forum be established reporting to the Premier and other relevant ministers through the Cabinet Standing Committee on Social Policy, and to be chaired by an independent community leader. The Indigenous Health Forum should include participation from not only the Health Department but also other major government agencies and those with whom the Government is appropriately in partnership on efforts to improve Indigenous health. (HARC Committee 2001: 23)*

The HARC report in general, is providing a framework for DOH to improve its processes, policies (operational and legislative) and direction so as to deliver *'the best possible levels of health care to the community'* (HARC Committee 2001: 1)

**24. The Inquiry acknowledges the Department of Health's position that its previous structures and policies have inadvertently reduced the efficacy of service delivery, despite the commitment and clear goodwill to improve health outcomes and supports the department's intent to redress the situation.**

## 4.4 Future Directions

DOH provided additional information to the Inquiry on June 26 2002, outlining current initiatives and initiatives that are occurring within the framework of the new structure to shape service delivery and coordination to address the issues of family violence and child abuse. The Inquiry has not had an opportunity to evaluate these strategies.

### 4.4.1 Strategies for first level (primary) response

DOH provided information on programs to be offered to the whole community with a preventative focus. The strategies that DOH are planning on implementing include:

- Development of partnerships with Aboriginal communities and community controlled organisations to develop culturally appropriate preventative services
- Forming partnerships with Aboriginal families to create a healthy environment
- Using community and public health staff in a supported network through expert advisory services and appropriate training and development
- DOH will work in partnership with DOE to develop programs to promote self-awareness and self-protection behaviour among school aged children to enable them to recognise inappropriate behaviours and to provide them with the skills and confidence to appropriately report any incident, or threat of child sexual abuse
- Recognising that mass media campaigns will not be effective with the Aboriginal population, DOH proposed strategies to be developed to deliver locally based community education and health promotion activities that could reach target groups within the Aboriginal communities.

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*... create messages that are in your face campaign ... (Health Worker at an Aboriginal community)*

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#### 4.4.2 Strategies for second level (secondary) response

Second level or secondary responses are described as

*... targeted programs aimed at specific sections of the population considered to be more at risk of being the victims of violence or abuse as well as specific groups in the adult population considered to be more at risk of abusing. (DOH Supplementary Submission 26 June 2002: 4)*

The following strategies, according to DOH, should complement the preventative strategies described above in 4.4.1:

- Early intervention support from the network of community and public health staff to identified, or potentially at-risk, clients such as those enlisted in drug and alcohol programs or receiving mental health services. These services include support and education to families during the critical perinatal period.
- The provision of intervention or counselling services *'at moments of crisis in a child's life where they are most vulnerable to the predatory tactics of entrapment of child sex offenders'* (DOH Supplementary Submission 26 June 2002: 7) and development of knowledge to be able to recognise inappropriate behaviour and to develop the confidence to report this behaviour to the proper authorities.

#### 4.4.3 Strategies for third level (tertiary) response

To prevent further incidents of family violence and child abuse, and to address the long-term consequences of these incidents, DOH has identified a series of intervention strategies that it has adopted or is considering adopting. They are:

- Development of internal policy in the provision of crisis intervention services
- Reinstating training and support roles of SARC and providing CPU at PMH with resources to expand its advisory, support and educational role to community and health workers across the state
- Review of guidelines for the clinical management of child abuse and neglect that will result in a set of procedures that are integrated with existing reciprocal child protection procedures. Health service staff will be provided with guidance and information to assist with the recognition, notification and response to risks and incidents of family violence and child abuse. Part of the response will also be ensuring that there is health participation on local child protection committees to promote a more collaborative and consistent Statewide approach.
- The Department will develop a training program for all health professionals in this area to enable them respond appropriately and be an effective partner with other key agencies in providing a seamless and complementary child protection system
- The Department will also continue as a member of committees such as the Child Protection Council and to contribute to work of the Child Protection Coordination Committee and other similar committees that aims at developing a multi-agency response to the delivery of a comprehensive child protection system



- The development of a co-medical counselling response jointly provided by SARC at KEMH and CPU at PMH that will include the 13 to 17 year age group
- Formalising the linkage between ED/Hospitals and SARCs where both exist in the same region so as to provide and continue services to meet the victim's psycho/social needs

**25. The Inquiry recommends that the proposed Implementation Body evaluate and monitor the progress towards implementation of the proposed changes outlined by the Department of Health.**

**26. The Inquiry recommends that as a matter of priority, Healthwatch examines and provides relevant advice to the Minister and Director General of Health to address issues associated with drug and alcohol and substance within Aboriginal communities, which were identified as underlying factors in the incidence of family violence and child abuse.**

## 4.5 Conclusions

DOH provided a number of submissions, both written and endorsed by the Director General of Health, and through the verbal evidence of Michael Jackson, Executive Director, Population Health, Paula Chatfield, Manager of the SARC, Christine Harling, Clinical Nurse Manager at Swan Health Service and Ian Smith, General Manager of Kimberley Health Service.

The submissions gave an overall view of services DOH provides in response to family violence and child abuse in WA. DOH has indicated that the focus of its response has predominantly been in the intervention and treatment of victims. However, with the implementation of a new administrative structure prescribed by the HARC report, the department envisaged that the Population Health Division, in its new role, would undertake to *'provide a patient and community focussed specialist network throughout Western Australia in both child protection and in addressing incidents of sexual assault.'* (DOH Supplementary Submission 26 June 2002: 12) Additionally, DOH planned to improve the skills and support for its workforce in order to deliver

*... first and second level preventative strategies and appropriate responses to third level contact in cases of family violence and child sexual abuse. In particular, the expansion of the role of Aboriginal Health Workers and the provision to those individuals of additional counselling skills may improve access and the capacity for early intervention to Aboriginal families and communities ...* (DOH Supplementary Submission 26 June 2002: 12)

The Inquiry will be making recommendations to the Implementation Committee proposed by the Inquiry, to examine and monitor the progress of DOH's planned initiatives as provided in the department's submissions.

Further, the Inquiry noted with interest, the recent launch (*Minister announces establishment of new independent health watchdog - 16 July 2002*) by the Minister for Health, of an independent health 'watchdog' body, Healthwatch. This body was reported to have the mandate to investigate and report on existing and emerging areas of concern in health, and to advise the government of appropriate responses to address these areas of concern.

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- UWA see *University of Western Australia*

## LEGISLATION

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- Disability Services Act 1993 (WA)
- Mental Health Act 1996 (WA)
- Public Sector Management Act 1994 (WA)



*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse clinic opens in Perth'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## Community service

### CHAPTER 7

# SECTION 3

*This chapter describes services provided by the Department for Community Development that particularly addresses family violence and child abuse.*





## 1. OVERVIEW OF SERVICE PROVIDERS

### 1.1 Department for Community Development

#### 1.1.1 Broad intent and mission statement

The Department for Community Development (DCD) is established and operates under the *Community Services Act 1972*. DCD was renamed from Family & Children's Services on 1 July 2001. The new DCD now encompasses Family & Children's Services, Family & Children's Policy Office, Office of Senior Interests, Women's Policy Office and the Office of Youth Affairs. DCD is known by a number of names within the community, DCD, Family and Children's Services (FCS), and often just as 'Welfare'.

DCD states that it is '*committed to enhancing the quality of family life for Western Australians.*' Further, in the DCD Strategic Plan 2005, it recognises that there is a high representation of Aboriginal children and families in the care and protection of DCD. (Family and Children's Services 2000)

#### 1.1.2 Structure and management

The renaming of DCD, and the inclusion of a number of different separate agencies under that one department, was a recommendation of the '*Machinery of Government Taskforce*'. The detail of the '*Government Structures for Better Results: The Report of the Taskforce Established to Review the Machinery of Western Australia's Government*' Machinery of Government report (2001) is discussed in Chapter 13. The rationale behind this recommendation was to create an over-arching community development portfolio which encompassed improved social wellbeing for all individuals, families and communities in Western Australia (WA). The Inquiry understands that this restructure was intended to better coordinate the service delivery of the existing agencies.

DCD states that:

*'This vision will see the portfolio move from a predominant focus on the provision of welfare and safety net services in response to problems, towards a greater emphasis on building the capacities and strengths of individuals, families and communities.'*

(DCD Initial Submission, 5 April 2002: 6)

This 'capacity building' is intended to allow families and communities to shape their own lives, while ensuring the safety, protection and care of vulnerable individuals.

The Inquiry notes that DCD is still undergoing changes as a result of the recommendations of the *Machinery of Government Taskforce*, and as such field service delivery arrangements are still being determined.

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<sup>1</sup> A task force established by the new Government in May 2001 to streamline Government in Western Australia.

In the Closing Submission to the Inquiry, Counsel Representing Government Agencies stated that *'DCD welcomes the Inquiry's recognition of the importance of placing greater emphasis on building the capacities and strengths of individuals, families and communities and agrees with the need for an increased emphasis on identifying and responding to the needs of the family identified after reports of family violence and child abuse'* (Counsel Representing Agencies 22 July 2002: paragraph 96). Further, *'(e)ach of the seven recommendations presented in DCD's final submission directly or indirectly, focuses on freeing up or strengthening DCD's capacity to identify and respond to these needs.'* (Counsel Representing Agencies 22 July 2002: paragraph 99)

**27. The Inquiry endorses the Department for Community Development's (DCD) recognition of the need for '... a greater emphasis on building the capacities and strengths of individuals, families and communities'. The Inquiry recommends that DCD continues to increase its emphasis on identifying and responding to the child and family identified, following reports of family violence and child abuse.**

### 1.1.3 Staff, budget and office locations

DCD's estimated budget for 2001/02 is \$197 million, with approximately \$20 million of that budget being received from the Commonwealth Government and other sources. DCD received an additional \$4.8 million from the State Government for capital works in 2001/02.

DCD's recurrent budget is expended in the following manner with employee expenses accounting for 38 per cent, 28 per cent to funding of non-government services, 12 percent for grants and subsidies, four per cent on accommodation and the remainder on operational expenses.

DCD's total budget is spent on key outputs as follows:

- Family and individual support services, 33 per cent
- Child and family safety, 31 per cent
- Care for children, 27 per cent
- A further nine per cent relates to DCD's other portfolio agencies.

DCD allocates funding for the delivery of services to 462 non-government services. Of those 462 services funded, 17 per cent have Aboriginal people as their primary target group, of which about half are provided by organisations managed by Aboriginal people.

DCD employs 1476 people as at 30 June 2002 which equates to approximately 1210 full time equivalent (FTE) employees. DCD has identified the need for additional staff to provide appropriate assessment and protective services both in metropolitan and non-metropolitan areas. (DCD Initial Submission, 5 April 2002 10-11)

Services are delivered across WA, with the metropolitan area divided into four zones and an office located in Mirrabooka, Joondalup, Cannington and Fremantle. There are five zones located in the rural and remote area with offices in Broome (Kimberley), Karratha (Pilbara), Geraldton (Murchison), Kalgoorlie (Goldfields) and Bunbury (Southern). A Zone Manager manages each zone office.

#### 1.1.4 Legislative responsibility

As previously noted, DCD is established under the *Community Services Act 1972* and is responsible, in part or in full, for the administration of a number of other Acts and associated regulations. Most important of these is the *Child Welfare Act 1947* which provides, in part, for the making of care and protection orders, the making of orders for the maintenance of wards and the establishment of facilities for the care of children placed in the care of DCD.

The Inquiry has not had an opportunity to consider all the amendments to the *Community Services Act* and *Child Welfare Act* since their enactment in 1972 and 1947 respectively. The Inquiry notes that new legislation to replace these, and other Acts, with a *Family and Children's Services Act* in 1998 were not proceeded with.

The Inquiry notes comments from DCD with regard to the suitability of the current legislation not reflecting current contemporary practices and philosophies. The Inquiry is also aware of the draft Children and Community Development Bill 2002.

**28. The Inquiry recommends that the Department of Community Development completes the draft Bill to such a stage as to enable its public release for comment.**

#### 1.1.5 DCD Submissions

DCD has made two main submissions to the Inquiry:

- Submission dated 28 February 2002, Initial Submission
- Submission dated 26 June 2002, the final DCD Submission.

DCD also provided a large volume of other material to the Inquiry.

The final DCD Submission included recommendations made to the Inquiry. These are addressed both throughout this chapter and in Section Four of this Report.

## 1.2 Other service providers

The Inquiry notes that a large number of other service providers are responsible for the provision of 'community services'. Many of these service providers receive funding from DCD, which accounts for more than \$50 million of DCD expenditure per annum. (DCD Initial Submission, 5 April 2002: 9). Of this expenditure, nearly half is directed to services under the Supported Accommodation Assistance Program (SAAP) and 17 per cent of the services have Aboriginal people as their target group. Other types of services that receive funding include family support services, counselling, home visiting services, crisis response, domestic/family violence services, placement services, parenting educational programs, family abuse intervention programs and other support services in relation to care and support for children.

The Inquiry has not inquired into the 462 services funded by DCD to determine the effectiveness of the service delivered by these other service providers. It has however considered, generally, the mechanisms by which funding is provided to these services. The Inquiry has heard that some Aboriginal agencies seeking funding from DCD, and indeed other government agencies, have

difficulty in meeting application criteria and ongoing auditing and management requirements. It has been suggested to the Inquiry that these standards should be changed so that Aboriginal agencies do not have to meet such stringent requirements. Whilst the Inquiry understands the motivation for such suggestions, it does not see a reduction in standards to be the most effective way to improve service delivery. This will be discussed in greater detail at Chapter 18.

Community services are also delivered by a number of other non-government organisations that are funded from various other sources. This mix of services with various objectives and funding sources add to the complexity in the range of community services available.

## **2. SERVICE PROVISION BY DEPARTMENT FOR COMMUNITY DEVELOPMENT**

### **2.1 General service delivery**

For the purposes of the Inquiry, DCD provides two key services:

- Child protection services
- Family safety, assistance and support services.

#### **2.1.1 Child protection services**

DCD receives and assesses allegations of child maltreatment and neglect, and harm to children and young people.

The best known 'child protection service' provided by DCD is intervention to protect children. This is progressed by lodging a Care and Protection application with the Children's Court asserting that the child within the meaning of section 4(1) (a) to (k) of the *Child Welfare Act 1947* (CW Act) is a '*child in need of care and protection*'. An order pursuant to section 30 of the CW Act will be granted if the Children's Court is satisfied that the child is in need of care and protection.

DCD also intervenes to protect children removed from the care of their parents by placing them with foster parents. These services are described in greater detail in 2.5.1 of this chapter.

#### **2.1.2 Family safety, assistance and support services**

DCD provides services to assist children, individuals and families who are in crisis or are experiencing difficulties that hinder personal or family function and safety, for example, family violence and drug abuse.

#### **2.1.3 Regional (Zone) office structure**

Child protection and family support services are delivered by DCD across the state through zone officers. There are four metropolitan zones and five country zones. Each zone is managed by a Zone Manager and has between 56 and 176 employees. In general the metropolitan zones have a higher level of staffing, often exceeding 100 employees. Within each zone there may be a number of discrete offices, however the structure does vary



between zones particularly between metropolitan and non-metropolitan zones, so as to maximise the service delivery to those areas. Generally each zone has 'teams' which perform the following tasks:

- Intake assessment and referral
- Child protection services
- Services to children requiring out of home placements and their families
- Parenting and life skills services to families, youth and individuals
- Community development services which includes community education
- Family casework services that include providing planned intervention services to families, groups and individuals.

## 2.2 Delivery of services to Aboriginal families and children

The Inquiry notes the advice from DCD that:

*Aboriginal children, young people, individual adults and families are significant consumers of the Department's services because of their disadvantaged position in the community. (DCD Initial Submission, 5 April 2002: 15)*

In addition, DCD has provided the Inquiry with a range of statistics concerning the provision of services by DCD to ATSI<sup>3</sup> children. The DCD Submission states that approximately six per cent of children in WA aged under 18 years are Aboriginal children, however they account for 24.7 per cent of child maltreatment allegations and comprise about 30 per cent of children in out-of-home care (DCD Initial Submission, 5 April 2002). There is little doubt that Aboriginal families and children comprise a significant proportion of DCD's clients, and DCD has responded to this need by employing more Aboriginal employees, implementing Aboriginal specific programs and trying to make mainstream services more responsive to the needs of the Aboriginal community.

The delivery of services to Aboriginal families and children is also particularly influenced by DCD's ability to provide services in rural and remote areas of the state. DCD states that it does not have sufficient manpower or logistical resources to have a presence in, and respond to the needs of, remote communities in a truly effective way (DCD Supplementary Submission 5 July 2002). DCD provided the Inquiry with profiles of the services it provided directly<sup>4</sup> to Aboriginal communities. The level of service delivered varies between communities; for example Jigalong is visited by DCD officers on a weekly basis, and as need arises, whilst the remote communities in the Laverton/Leonora are visited one week in every eight weeks. (DCD Supplementary Submission 5 July 2002)

To address the issues raised by the Inquiry, DCD prepared a model of a four-tiered framework for the improvement of service delivery. In the Closing Submission of DCD, the Counsel representing Agencies stated that the Department

<sup>3</sup> The use of Aboriginal and Torres Strait Islander or ATSI at various times during this document is only in relation to statistics, generally sourced from the Australian Bureau of Statistics which uses this categorisation in all its reports.

<sup>4</sup> The profiles do not include services which are provided by independent service providers but funded, in whole or in part, by DCD.

*is in the process of costing the full implications of the strategic recommendations encompassed within this framework and will provide these to the Minister for Community Development for presentation to the Hon Premier. (Counsel Representing Agencies 22 July 2002: paragraph 194)*

**29. The Inquiry recommends that an analysis of the gaps in service delivery be conducted and considered as part of the framework for incorporation into the Department of Community Development's planning process.**

**The Inquiry notes that advice is to be provided to the Hon Premier on the initial review and recommends that the advice includes additional information regarding funding implications for the identified services.**

## 2.3 Responding to underlying factors

The government and DCD recognise the need for ongoing intervention services for children and families at the secondary and tertiary levels.

In DCD's final submission (26 June 2002), the department recommended that the Inquiry

*...give consideration and support to the importance of the engagement of tertiary institutions, professional associations and other relevant groups in the development of culturally sensitive programs tailored to specific training in healing/therapeutic/counselling methods and approaches for Aboriginal people experiencing trauma as a result of sexual abuse and/or violence. (Counsel Representing Agencies 22 July 2002: paragraph 109)*

DCD acknowledges that its capacity to provide or fund therapeutic services to meet the needs of Aboriginal children and families are limited due to the '*lack of culturally sensitive models and programs tailored specifically to training in healing, therapeutic and counselling methods and approaches for Aboriginal people experiencing trauma as a result of sexual abuse and/or violence*' (Counsel Representing Agencies 22 July 2002: paragraph 108). Instead, DCD points to the department's provision of casework and clinical services to vulnerable children and the range of services that it does fund for families and children who have experienced harm, abuse and violence.

The Inquiry is aware that the Department of Health (DOH), similarly, provides a range of intervention services in responding to family violence and child abuse. While the Inquiry acknowledges the collaborative efforts of both DCD and DOH, the Inquiry finds that there is confusion as to the type of services both departments are delivering.

**30. The Inquiry finds that there is inadequate provision of ongoing intervention services for children and families. The Inquiry finds that there needs to be greater coordination and clarity between the Department for Community Development and the Department of Health for the responsibility of providing therapeutic and counselling services.**

### 2.3.1 Drug, alcohol and substance abuse

As noted in Chapter 4, drug, alcohol and substance abuse is one of the underlying factors which contribute to the occurrence of family violence and child abuse. In 2001 DCD

undertook a study of the *'prevalence of substance abuse in care and protection applications'*. The research identified correlations between family violence, substance abuse, mental health issues, and child maltreatment in a large proportion of DCD cases. For example in 2000, drug, alcohol and substance abuse featured in 71 per cent of care and protection applications, and domestic violence in 66 per cent. (DCD Initial Submission)

DCD provides funding to some non-government agencies to provide services which address alcohol and solvent abuse. Further DCD makes referrals to the Strong Families Program (SFP) (discussed at 3.5.3), the Indigenous Families Program (IFP) (discussed at 3.5.3) and drug and alcohol treatment services offered by DOH (Chapter 6). The issue of the availability of drug, alcohol and substance abuse treatment services is referred to in Chapter 7 and the Inquiry notes that, without addressing this major underlying factor, the likelihood of other interventions being successful is significantly reduced.

DCD commenced a project in 1997 to use the Action Learning Methodology to provide training for service delivery staff. The methodology is intended to assist officers in dealing with drug and alcohol issues relevant to their work. Key zone staff such as Senior Case Work Supervisors and psychologists have been trained in this methodology. The Acting Director of the Drug and Alcohol Office is keen to work with DCD on future directions to strengthen practices and services to families dealing with parental alcohol and drug abuse.

### **2.3.2 Early intervention programs**

DCD provides programs to both Aboriginal and non-Aboriginal families which provide an early intervention into families and communities that exhibit a high number of 'risk factors'<sup>5</sup> which may lead to poor life outcomes for children in those families or communities.

#### *2.3.2(a) Best Start Program*

The aim of Best Start is to improve the life opportunities for Aboriginal children between zero and five years by providing projects and activities that will improve their health, educational opportunities, social and cultural development. It is based on the principle that Aboriginal children will have greater life chances and opportunities if their cultural needs, health and social development are enhanced in the first five years of their life. The Best Start program requires interagency collaboration between the DOH, Department of Education (DOE) and DCD both at the managerial and local levels to ensure the program is effective. The funding for Best Start is provided by DCD and as such the Inquiry considers them to be the 'lead agency' in the program.

Best Start Programs are negotiated with the community and designed to meet the needs of that community. DCD advises that currently Best Start Programs are conducted in Roebourne, Jigalong, Carnarvon, Kalgoorlie, Kwinana, Coolgardie, Laverton, Mandurah, Waroona, Moora, Narrogin, Midland and Forrestfield. Between April and June 2001, 770 children participated in Best Start projects.

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<sup>5</sup> These risk factors are identified in Chapter 4

<sup>6</sup> These risk factors are identified in Chapter 4

### 2.3.2(b) Best Beginnings Program

The Best Beginnings Program is an intensive home visiting service targeting families with children aged zero to two years which exhibit a high number of 'risk factors' and are therefore at risk of poor life outcomes<sup>6</sup>. The program offers those parents a home-based visiting service that builds on the strengths within the family and maximises the child's life chances over a period of time. This program, compared to the Best Start Program, promotes parental competence, knowledge, skills and positive behaviours during pregnancy. The program began as a pilot project in 2000/01 and is being expanded into other areas of the state. (DCD Initial Submission, 5 April 2002: 69).

**31. The Inquiry endorses the creation of programs by the Department for Community Development which identify families and communities who exhibit 'risk' factors and the provision of services to those identified families and communities.**

### 2.3.2(c) Family Group Conferencing

In some zones DCD had designated Family Group Conferencing Co-ordinators whose role it was to work with families with young children who exhibit 'at risk' behaviours. The conferencing service is provided upon a request from the family and is driven by the family. The Inquiry heard evidence from Ms Julie Newsham, Kimberley Zone Manager, about the role of this officer, a position she had previously filled for the Murchison district. According to Ms Newsham, the key benefits of this process were that it allowed the family to receive information from DCD about the 'at risk' behaviours, participate in decision making and potentially avoid intervention by DCD. (Witness Statement of Julie Newsham, 10 May 2002)

From the perspective of the Inquiry, the Family Group Co-ordinator was one of the few designated positions within the zone structure focussed at a more secondary intervention. According to Ms Newsham, the designated Family Group Conferencing positions no longer exist in each zone as it was only a pilot program, but instead *'each individual officer (has to be trained) to be able to use the techniques of family group conferencing.'* (Transcript of evidence by Julie Newsham 10 May 2002: 1015). The model, however, is based on a New Zealand precedent which may need more work to deal effectively with Australian Aboriginal family dynamics and situations.

**32. The Inquiry endorses the Department for Community Development's use of alternative methods in working with families with young children who exhibit 'at risk' behaviours.**

## 2.4 Responding to family violence

### 2.4.1 Family violence data and trends

The Inquiry and DCD acknowledge that often victims of family violence can present to DCD for assistance that is tangential to family violence. DCD has analysed data from the past

five years to determine the extent to which factors associated with family violence feature in reasons why individuals seek assistance from DCD. Incidence of family violence can lead to the need for services for substance abuse, homelessness, adolescent-parent conflict and financial assistance. More directly, victims of family violence can seek assistance from DCD to leave an abusive spouse or parent. DCD noted that 32.2 per cent of the contacts between families and the Department identified as 'family support' contacts were with ATSI families. Further, the most common reason for that 'family support' contact was a request being made by a member of the family for financial assistance. (DCD Initial Submission 5 April 2002: 53)

In the research conducted by DCD discussed above at 2.3.1 it was shown that family violence was present in 28 per cent of the department's child maltreatment cases. This suggests that domestic violence is an important indicator for the presence of child maltreatment. The Inquiry is of the view that this correlation is particularly prevalent in Aboriginal communities, indeed family violence is a form of 'child abuse' in many instances. (DCD Initial Submission: 55)

The DCD Submission also refers to findings of external studies undertaken which provide some insight into family violence in Aboriginal families and children. Some of these findings are explored in Chapter 4.

#### **2.4.2 Family violence services—overview**

DCD provide a range of services to address family violence issues both directly and by funding non-government services. Indeed, the provision of family violence related services is a primary responsibility of the department. DCD acknowledged that the majority of women who seek assistance from the department do so for issues related to family violence or conflict. The proportion of Aboriginal women who seek assistance for these reasons is significant; indeed 50 per cent of women using domestic violence refuges and services are ATSI women. (DCD Initial Submission 5 April 2002: 50)

In examining the services provided by DCD, it is apparent to the Inquiry that women living in rural and remote areas have difficulties in accessing domestic and family violence services.

**33. The Inquiry finds that a significant number of Aboriginal women are unable to access family and domestic violence services in the regional and remote areas.**

In Closing Submission, Counsel representing DCD described a project currently being implemented in Meekatharra, Laverton, Beagle Bay, Kalumburu, Looma, Jigalong and Wirrimanu, where community women are developing a range of responses to violence against women and children. It was also submitted that '(h)aving a stronger capacity to deploy officers to work in and with communities along with additional funding would allow a greater number of communities to develop and manage their own responses to violence.' (Counsel Representing Agencies 22 July 2002: paragraph 221)

**34. The Inquiry endorses, in principle, the design of a 'developmental community process' that is in response to violence against women and children, which the Department for Community Development is currently undertaking in collaboration with Aboriginal community women.**

Family violence services offered by DCD include:

- Supported accommodation for homeless people
- Services for victims of domestic violence such as counselling, women's refuges and safe houses
- Financial assistance and counselling
- Relationship counselling
- Intensive family support and reunification services where children are at risk
- Child protection services
- Counselling and treatment to alleviate the effect of abuse within families.

DCD also states that it has a range of preventative and early intervention strategies and services such as parenting information courses and advice, family violence prevention and support services, and community education programs both directly and in the radio and press. (DCD Initial Submission 5 April 2002: 49-50).

The State Government has committed \$4.6 million over four years to improve domestic violence programs. Particular areas targeted include women's refuges, counselling services for children exposed to domestic violence and a proposed integrated Family Violence Helpline.

The Family Violence Unit was very recently established within DCD, and is responsible for coordinating the development of family violence policies and services to establish a framework for effective collaboration and co-ordination. *'The Executive Director responsible for this Unit will be part of the DCD's Executive and for the provision of policy advice and reporting direct to the Minister'* (Counsel Representing Agencies 22 July 2002: paragraph 165). This unit's formation resulted from a review of the Women's Interest portfolio, which was finalised in September 2001. The review recommended a separation of the Women's Policy Office into two separate entities: the Family Violence Unit and the Office for Women's Policy. Issues of collaboration and coordination are discussed more detail at Chapter 13.

#### 2.4.3 Family Violence Coordinating Committee

The Family Violence Coordination Committee supersedes previously established coordinating bodies responsible for the development of a strategic approach to planning and coordinating family violence services across WA. The Minister for Community Development announced the establishment of this committee in March 2002 and appointed Pauline Phillips to chair this committee. Its first meeting was held on 24 June 2002.

Amongst the more immediate tasks assigned to the committee is the review of some of the current and draft strategies, plans and initiatives currently in place for family violence.

The terms of reference of this Committee include

- The development of a strategic approach to planning and coordination of the across-government response to family violence
- To ensure the policy framework will support regional coordination, develop inter-agency protocols across government
- The development of mechanisms that evaluate and monitor the implementation of the protocols
- To facilitate community development of indicators
- To advise the Minister
- To regularly report to the Cabinet sub-committee on Social Policy on directions, emerging issues and resourcing implications of family violence.

#### **2.4.4 Key Domestic Violence Strategies**

Two fundamental documents remaining in draft form are the *'March 2001 Action Plan II on Family and Domestic Violence'* (the draft Action Plan) and the *'June 2001 Aboriginal Family Violence Strategy'* (the draft Strategy). Ms Carole Kagi, the then Director of the Domestic Violence Policy Unit, spoke to these documents during the course of her evidence to the Inquiry.

The Inquiry regards these two documents as being of considerable importance in the ongoing response by government to family violence in Aboriginal communities. It commends their respective approaches and specific contents. Nevertheless the Inquiry notes with some concern the delays in the implementation of the drafts.

#### **2.4.5 Aspects of bureaucratic support**

The history of government initiatives targeted at family violence in WA is not straightforward. Of seminal influence was the Family and Domestic Violence Taskforce of 1995 (Witness Statement of Carole Kagi, 22 May 2002). The initial Action Plan grew from the work of that Taskforce. A succession of different entities—including the Implementation Advisory Committee (IAC), Action Plan Implementation Committee (APIC), Domestic Violence Ministerial Reference Group (DVMRG) and Women's Advisory Council Domestic Violence Committee (WACDVC)—were set up with related, yet nonetheless distinct, Terms of Reference, membership, and levels of expectation. (Witness Statement of Carole Kagi 22 May 2002: paragraphs 17–25, 30 and 69)

The contemporary position is that the Family Violence Coordinating Committee (FVCC), (referred to at 2.4.3 above), which is replacing both the APIC and WACDVC, is designed as a committee with high level government representation. The role of the Family Violence Unit (FVU), conceptualised to supersede the Domestic Violence Prevention Unit (DVPU), has already been noted.

Comment was made by Counsel Assisting, in the course of his Closing Submission, as to the delays in the commencement and substantive work for the FVCC and FVU. A Supplementary Closing Submission, provided by DCD on 29 July 2002 addressing these matters, has been taken into account by the Inquiry.

**35. The Inquiry:**

- **Endorses the content of both the draft Action Plan II on Family and Domestic Violence and the draft Aboriginal Family Violence Strategy**
- **Endorses the functions of both the Family Violence Coordinating Committee and the Family Violence Unit**
- **Finds to be unsatisfactory the delays in the implementation of these draft documents and the delays in the formal commencement of those two bodies.**

It ought not be concluded, however, that the work of the DVPU (soon to be superseded by FVU) has failed to manifest in any ongoing, practical content. A clear example of that work lies in the specifics of the 'Freedom from Fear' campaign (Witness Statement of Carole Kagi, 22 May 2002: paragraph 62-63). The positive outcomes of the Men's Helpline (potentially to be integrated into a Family Violence Helpline) also provide considerable optimism for the progress that can be made once the work of FVCC and FVU is fully functional. Other important work has resulted in the Best Practice Models for Domestic Violence (separately applicable to both victims and perpetrators).

#### 2.4.6 Regional Domestic Violence Committees

The initial Action Plan on Domestic Violence provided for the consolidation of regional domestic violence committees to place a focus on local level coordination and the promotion of interagency partnerships.

There are 16 Regional Domestic Violence Committees (RDVC) operating across the state. They include government, non-government agencies and representatives of different interest groups, for example the Women's Refuge Group of WA. Previously the Women's Policy Office (WPO) funds regional coordinators and local activities for the committees and the DVPU. DCD's Domestic Violence Policy Unit provides other support and assistance. These roles are now to be provided by the newly established FVU within DCD.

The effectiveness of RVDCs has been evaluated on a number of occasions. The committees were first evaluated in 1997 by the Centre for Research for Women to assess the effectiveness of regional coordination in its earliest inception. The second evaluations were conducted in July 2001 by the Matrix Consulting Group, Data Analysis Australia and Gatley McGurk Consultants. This second evaluation provided a more comprehensive review of regional coordination to maximise service delivery in domestic violence (the '*Matrix Evaluation*').

The *Matrix Evaluation* described RVDC structure as

*... one of the few government initiatives in Australia designed to develop coordinated approaches to family and domestic violence across a whole state.* (DCD Supplementary Submission, 5 April 2002: 11)

It also identified some key issues for the provision of family violence services within WA, which included:



- lack of clarity of what constituted domestic violence
- the amount of time some committees took to agree on purpose and focus
- tension between local agenda and meeting overall DVPU priorities
- lack of resources and infrastructure for coordination.

On a positive note, the *Matrix Evaluation* found that the committee structure has achieved a high level of awareness about domestic violence locally and there was generally an improvement on the range of services available to people affected by domestic violence. (DCD Supplementary Submission, 5 April 2002: 14)

The *Matrix Evaluation* made a number of recommendations to be pursued as 'future directions' for the Domestic Violence Committees. The implementation of these recommendations is understood to be contingent upon the review of the Women's Policy Office. (Transcript of Evidence by Carol Kagi, 22 May 2002: 1380)

The Inquiry particularly notes the following 'future directions' identified in the *Matrix Evaluation*:

- The need to locate of the regional Domestic Violence Committees within a broader policy context to identify those policy and contextual imperatives that shape regional coordination
- The need to allocate responsibility to coordinate responses across government to family violence and provide funding, support and guidance to regional Domestic Violence Committees
- The Senior Aboriginal Officers Group and Aboriginal and Torres Strait Islander Commission (ATSIC) need to be more involved in driving agenda on Indigenous family violence to clarify which agency has responsibility
- The need to put in place strategies to encourage continuity of chairpersons and coordinators in Domestic Violence Committees. (DCD Supplementary Submission 5 April 2002: 11-16).

RDVCs have been provided with increased funding of \$1 million over the next four years. Funds have been provided to each committee, as well as a Community Capacity Building Grants program.

#### **2.4.7 Aboriginal community education projects – Kimberley region**

One of the key objectives of a RDVC is to better educate the community about family violence. The Kimberley region's Domestic Violence Committee recommended a Kimberley Aboriginal Family Violence Community Education Project (KAFVCEP) in the Kimberley Regional Domestic Violence Plan it prepared. DCD funded the KAFVCEP for \$315,000 over three years. An Aboriginal non-government service provider in the region applied for, and received, this funding in April 1999, to design and deliver an effective family violence community education right across the Kimberley region. (Barrett 2001: 1)

In 2001, the service provider and DVPU commissioned an evaluation process. The evaluation reviewed:

- the processes which led to the requirements of the KAFVCEP being established
- the appropriateness of the method of developing and implementing community-driven and culturally relevant Aboriginal family violence education programs or services in the Kimberley.

The evaluation of the KAFVCEP offered an insight into the difficulties service providers experienced in implementing projects of this nature and magnitude. The evaluation recommended rationalisation of the program design and funding and the implementation of more flexible program management and processes. (Barrett 2001: 20)

More community education projects are currently being developed for application in the Kimberley region. DCD states that these projects take into account the reviews of the KAFVCEP. The projects are based on working with Aboriginal people to encourage discussion on the issue of family violence and to assist in local and culturally appropriate solutions (DCD Initial Submission, 5 April 2002: 60). DCD states that specific material has to be developed for different communities that meet the specific community requirements, such as the use of local language. Additional resourcing would be required to ensure that the appropriate expertise is available to develop the material. (Counsel Representing Agencies 22 July 2002)

**36. The Inquiry endorses the concept of the Kimberley Aboriginal Family Violence Community Education Project, which addresses family violence in the region. The Inquiry recommends that education initiatives addressing family violence be continued and expanded statewide.**

#### 2.4.8 Aboriginal Family Violence training package

The Hedland College Social Research Centre has developed a training package to assist in understanding and responding to Aboriginal family violence for Aboriginal community members. The training package has been piloted in the Pilbara, Geraldton and Perth areas. Funding has been made available to DCD in 2001/02 for this training program to be delivered across the state by ATSI organisations.

**37. The Inquiry supports the Aboriginal Family Violence initiatives outlined in the Department for Community Development's submissions.**

## 2.5 Responding to child abuse

### 2.5.1 Child protection services

DCD states that:

*Child protection services are provided to protect children and young people under the age of 18 years who are at risk of harm within their family or whose family do not have the capacity to protect them from maltreatment and neglect. (DCD Initial Submission, 5 April 2002: 17)*

According to the DCD Submission, the child protection services the department provides includes receiving and responding to reports, providing services, initiating intervention, responding to general concerns about children, working with families and reuniting children with their parents wherever possible. (DCD Initial Submission, 5 April 2002: 17)

The Child Protection Policy Statement was developed in 1991 and sets out the principles of departmental intervention. The policy states that children have the right to be protected from harm and exploitation and the family have prime responsibility for the care and protection of children. The policy goes on to state that the termination of parental rights is the last option; rather the prevention of harm and exploitation is the best form of child protection. The policy makes specific comment with regard to Aboriginal children and families insofar as granting them the 'right' to services which are culturally sensitive. Nevertheless the safety and wellbeing of the child takes precedence over anything else.

The policy, and indeed the practices, of DCD try to then join two rather incompatible concepts. That is,

- the welfare of the child is a paramount concern
- the welfare of the child is served by the least intrusive appropriate response.

In practice, this means that DCD, wherever possible, supports families to allow them to care for their children in their own homes. DCD also states that where the level of risk to the child, having been assessed, is considered reasonable, arrangements are to be made for ongoing monitoring to ensure that the child is not at additional risk. This adoption of a 'risk management' strategy is discussed below at section 3.6.1.

The Inquiry notes that between 1996 and 2001 there has been approximately a 66 per cent increase in physical maltreatment allegations recorded and a 15 per cent increase in the number of allegations of neglect recorded for ATSI children. The allegations concerning child sexual abuse have fluctuated across the years, and no strong trend has emerged. The comparable figures to non-ATSI children show a fluctuation in neglect allegations and a reduction in physical maltreatment allegations. (DCD Initial Submission, 5 April 2002: 37)

### 2.5.2 New directions in child protection and family support

In 1996 DCD piloted a new approach, referred to as '*New Directions in Child Protection and Family Support*' which created a system based upon classing reports as either Child Concern Reports (CCR) or Child Maltreatment Allegations (CMA). The purpose of this new direction

was to get a clear focus on child protection and to encourage professional judgement and practice rather than a reliance on procedures. (DCD Initial Submission, 5 April 2002: 19)

According to DCD, this categorisation places greater emphasis on the harm experienced by the child rather than on the nature of the act or incident in isolation. The new classification was intended to differentiate between actual child maltreatment and issues that involved family function, poverty, poor parenting or social disadvantage which would be more correctly defined as child concern allegations. The purpose of this categorisation was to allow DCD to respond with the appropriate interventions immediately to the CMAs and to provide appropriate services to families who are the subject of CCRs.

### **2.5.3 Sources of reports to DCD**

The primary source of reports—both CMA and CCR—are parents, the child or young person, a relative or friend, someone in the community, a professional or an organisation that has contact with the family or child. These referrals are usually made directly to the Duty Officer, who is responsible for gathering initial information from the agency or referrer and then making a decision about whether DCD has an responsibility to provide a service or to direct the referral elsewhere.

The classification of the report as a CMA or CCR is made by the Duty Officer. Whilst DCD advise that a Duty Officer is usually very experienced, in the event that the Duty Officer does not have the necessary knowledge or skill to make that determination, there is a consultative approach available to assist in the process. In particular, where the Duty Officer is called upon to make a difficult decision, it is essential that the officer consult with a relevant Senior Officer.

After the Duty Officer makes an assessment the matter is passed to the appropriate team within the Zone Office. DCD has identified that, in the case of ATSI children, the source of allegations is more likely to be public officers, particularly health and hospital workers, medical practitioners and police, and other relatives. The analysis showed a trend toward reports of child abuse being made by public officers and agencies rather than family members. By comparison the most significant number of reports concerning non-ATSI children come from parents or guardians (DCD Initial Submission, 5 April 2002: 35). This is of particular concern to the Inquiry in two regards:

- It appears that Aboriginal people may be unwilling to make reports concerning their own children, which may mean they are not receiving the assistance they require in many instances
- School personnel seem to be significant reporters of allegations regarding ATSI children.

### **2.5.4 Child Maltreatment Allegation/ Child Concern Report**

DCD defines Child Maltreatment Allegation (CMA) as:

*... a report or concern raised with the Department which alleges any evidence or information of significance that suggest a child is at significant risk of harm from neglect or maltreatment or that child has or is being maltreated. (DCD Initial Submission: 23)*

By comparison, a Child Concern Report (CCR) is

*...the concern about a child is expressed but where there is no indication of maltreatment.* (DCD Initial Submission, 5 April 2002: 19)

An initial referral may be classified as a CCR before being reclassified as a CMA after further information is sought or assessment conducted. Where the precise nature of the issue or problem raised by the initial referral is unclear and further assessment is required, a temporary classification is given of a CCR.

Once a classification has been assigned the responsibility of the Duty Officer is to check the Department's Client Information System. If a number of similar CCRs have been received or contacts about a child or family reported the Duty Officer, at his or her discretion, may change the initial classification to a CMA and respond accordingly.

Once an allegation has been classified as a CCR or CMA, a priority is assigned to the response. Priority allocation is discussed below at 2.5.10

#### *2.5.4 (a) Children who fail to thrive*

DCD plays a role in responding to incidences of children who fail to thrive due to non-organic<sup>7</sup> reasons. The failure of a child to thrive is often identified by Community Health Workers. DCD provide services and supports to the parents to better care for the child or the department seeks a care and protection order with regard to the child (DCD Supplementary Submission, 5 April 2002: 32). DCD has advised it is developing a new Director General's Instruction relating to the issue of failure to thrive. To the Inquiry's knowledge the Director General's Instruction was not completed when the Inquiry was finalising this report.

#### **2.5.5 Child protection investigation**

DCD conduct investigations of child abuse allegations, usually classified as CMAs by the department. DCD stated that the purpose of the investigation is to *'gather, and assess, further information about the degree of harm or risk of harm to the child and information about the person believed responsible.'* (DCD Initial Submission, 5 April 2002: 24)

Corroborating evidence, and assistance, is sought as necessary from the WA Police Service (WAPS), health practitioners and other relevant agencies pursuant to a range of joint protocols. DCD also stated that where information received indicates a possible criminal act, the matter is referred to WAPS for investigation or is investigated jointly by DCD and WAPS. DCD advises that this process is similar across all states and territories. (DCD Initial Submission, 5 April 2002: 24)

The Joint Response Protocols were established in 1999 and outline principles of joint response for WAPS and DCD. The protocols are based on the premise that the protection of

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<sup>7</sup> *'The cause of growth failure can be linked to organic/physiological factors and problems (for example serious childhood disease such as cancer) and, non-organic care related factors such as neglect, inadequate feeding patters, inadequate standard of nutrition, medical care and shelter (J.Brody & D. Skuse, Journal of Child Psychology Vol 35, No.3, p401-424)' as cited in the Responses to matters raised by the Gordon Inquiry (21 March 2002)*

children is a shared responsibility between the wider community and government agencies, in particular the two signatory agencies, DCD and WAPS. The Joint Response Protocols also outline the procedures to follow in determining what, if any, joint response is required.

The Inquiry notes the evidence of Julie Newsham, Zone Manager, Kimberley Zone, that DCD staff are not aware of the Reciprocal Child Protection Procedures. (Witness Statement of Julie Newsham, 10 May 2002: paragraph 31)

#### **2.5.6 Support measures for children reporting abuse**

The Inquiry received information from Aboriginal communities and submissions that stated that there were insufficient support mechanisms in place for children who reported abuse. One example of such sentiment was:

*Supporting children who have been abused is a huge but essential task but one which we believe must be improved... Existing services struggle to cope with existing need, notwithstanding increased needs if programs to encourage people affected by abuse to disclose are successful. (Carnarvon/Gascoyne Interagency Committee on Child Abuse 25 June 2002: 6)*

The Inquiry has not had an opportunity to evaluate the extent of counselling, treatment and support services available to Aboriginal children. The final DCD Submission notes that an extra \$1.6 million over four years has been allocated by the government to increase counselling, treatment and support services to Aboriginal people in both metropolitan and country areas (DCD Final Submission, 26 June 2002: 2).

**38. The Inquiry endorses the increase in funding allocated to the Department for Community Development to increase counselling, treatment and support services to Aboriginal people in both metropolitan and country areas. The Inquiry finds that there should be more clarity in the coordination of counselling, treatment and support services delivered to Aboriginal people by the various departments and a lead agency be identified for the delivery of those services.**

#### **2.5.7 Case planning**

The conduct of the investigation, or almost any other response by DCD, is determined during the 'case planning' process. The Inquiry understands that the 'case plan' is developed in consultation between team leaders, case workers and the relevant duty officer. The 'case plan' could also be termed a 'work plan' which directs the manner in which the case worker deals with the child or family, and establishes a set of outcomes for the caseworker to pursue.

The Inquiry notes the type of activities that a case worker may engage in when investigating a CCR or CMA. These include:

- Engaging and consulting with the child and/or his family, seeking their assistance in the planning process
- Decision making to arrive at particular strategies and solutions taking into account all the evidence received to date

- Documenting these strategies and solutions
- Developing intervention goals which create objective outcome measures and provide evidence for decision making
- Reviewing the plan at various stages to ensure it is still current and relevant
- Working in collaboration with Government and non-government agencies. (DCD Initial Submission, 5 April 2002: 26)

During consultations, the Inquiry heard concerns about the level of consultation undertaken by DCD with other agency staff, and the extended family of the child. The Inquiry notes that the case planning process, as described by DCD, would seem to allow for that consultation to occur. Further discussion on case planning will be addressed in Chapter 17.

#### **2.5.8 Characteristics of reports**

DCD provided the Inquiry with an analysis of reports it received regarding child abuse in the ATSI community. The Inquiry notes that where the gender of the victim is known, statistics indicated that the numbers between the two genders were quite even and this was consistent for both ATSI and non-ATSI children. One area of particular concern for the Inquiry is that DCD data show a consistent increase in the number of recorded allegations concerning ATSI children younger than one year old. There is also an upward trend in the number of allegations concerning other age groups, that is marked by fluctuations, but is not increasing to the same extent as allegations concerning children less than one year of age. (DCD Initial Submission, 5 April 2002: 36)

The prevalence of child abuse in Aboriginal communities is discussed at Chapter 4. This prevalence is reflected in DCD figures that show that ATSI children are:

- Four times more likely to be the subject of a recorded allegation of sexual abuse than non-ATSI children
- Seven times more likely to be the subject of a recorded allegation of physical abuse than non-ATSI children
- 15 times more likely to be the subject of a recorded allegation of neglect than non-ATSI children.

#### **2.5.9 Investigation outcomes**

Once DCD has conducted an investigation of a CMA, the officer who conducts that investigation classifies that outcome as either 'substantiated' or 'not substantiated'. 'Substantiated' is defined as *'the evidence available confirms the probability the child is at significant risk of harm or neglect, or has been harmed or neglected.'*

Once an investigation results in a substantiation of the allegation, DCD state that *'an intervention may be needed to protect the child'*. This intervention can be in a variety of forms, and many situations are resolved without the need for an application to be made under the *CW Act* for a care and protection order, which DCD consider are last resort options. However the apprehension of a child, and recourse to the court, can take place at any point during the child protection process (DCD Initial Submission, 5 April 2002: 28) The

Inquiry is concerned by the statement that *'an intervention may be needed to protect the child'*. It is the Inquiry's view that some type of intervention must always seriously be considered when an allegation of child maltreatment is substantiated. (DCD Initial Submission, 5 April 2002: 28)

DCD has provided data concerning the likelihood of substantiation of sexual abuse, physical abuse, and neglect allegations concerning ATSI children. This information shows that non-ATSI children are far more likely to be the subject of substantiated neglect, physical abuse, and sexual abuse reports than ATSI children. The data also shows an increase in the number of ATSI children who are the subject of substantiated allegations, particularly neglect allegations.

#### **2.5.10 Department's response to allegations—time limits**

The Inquiry heard allegations both during consultations with Aboriginal communities and in submissions that DCD did not respond in a timely fashion to reports concerning Aboriginal children. One example of such an allegation is:

*The DCD is slow to respond to reported cases of neglect as it does not appear to be a priority issue, especially where Aboriginal children are concerned.* (Western Australian Indigenous Child Care Agencies Council, 16 April 2002: 5)

In order to determine the speed of response the Duty Officer who receives and classifies the initial report allocates a priority to that report. A priority 'one' is allocated when *'immediate attention is required or a child is at imminent risk of harm'*. A priority 'one' response should occur within one working day. A Priority Two is assigned where the current family crisis or risk of harm requires a response within five working days (DCD Initial Submission, 5 April 2002: 40). A number of factors determine what priority is assigned to a report, for example the age of the alleged subject of the CMA or CCR.

DCD provided the Inquiry with information about the timeliness of their response to reports concerning Aboriginal children. The information provided shows little difference between the timeliness of the response to reports of abuse of ATSI children, compared to non-ATSI children. The main difference is a slower rate of completion of investigations into CCRs and CMAs concerning ATSI children, which require a priority one response. The Inquiry notes that:

- ATSI children are more likely to be subject to a report classified as requiring a priority 'one' response than non-ATSI children
- In the Inquiry's view, there may be higher complexity in reports concerning Aboriginal families than non-Aboriginal families
- One factor, which may contribute to delays in responding is DCD's ability to access remote communities, and Aboriginal individuals.

Given the factors contributing to slower completion of investigations concerning Aboriginal children in some circumstances, it may be that the only way to improve response times is to allocate more resources, particularly in country areas. This is discussed in more detail at 4.4.



### 2.5.11 Mature minors

DCD acknowledged that a young person, depending on his or her age, maturity and circumstances, is able to act independently and is more likely to be able to make decisions about their future than a younger child (DCD Initial Submission, 5 April 2002: 28). Children in this position are referred to as 'mature minors'.

Where a CMA or CCR concerns a young person who could be classified as a 'mature minor', it is important to engage that young person's cooperation in an investigation. Often the knowledge or opinion of the young person subject to the CMA or CCR is pivotal in determining what type of intervention is undertaken.

The determination of when a young person is a 'mature minor' is not easy to make. It may be that a young person may be capable of making decisions about certain matters but not others. Another young person of a similar age may not have sufficient maturity or experience to make decision on any matters concerning their future. The types of decisions that a young person is competent to make may vary with regard to different issues such as sexual assault, child abuse, family violence, contraception, educational decisions or living arrangements.

Given the different decision making capacities of 'mature minors' it is necessary for some kind of evaluation to be made of their capabilities.

#### *2.5.11 (a) Key barriers to investigation and assessment concerning mature minors*

DCD states that particular difficulties impact upon the success of engagement with a mature minor in the assessment and investigation process. In particular they refer to:

- The reluctance on the part of a young person to bring charges against someone believed responsible for harming them
- Reluctance on the part of the young person to add to family conflict
- Substance abuse which can have a significant effect on the young persons behaviour and impair their decision-making. (DCD Initial Submission, 5 April 2002: 28)

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*'If the young Indigenous people go to the Department of Community Development they know they are more likely to become wards of the state than any other ethnic group in Australia.'* Western Australian Indigenous Child Care Agencies Council; 16 April 2002:)

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Through the Inquiry's experience, and own research, it is clear that these barriers are also particularly relevant to young Aboriginal people. In addition to these barriers, the historical relationship between the Aboriginal communities and DCD understandably creates a reticence, on the part of Aboriginal mature minors, to engage with DCD.

Some Aboriginal young people are itinerant, lead a transient lifestyle, move between locations to reside with different relatives, families and other persons. Again this equates with what the Inquiry had already heard from different witnesses, and indeed with the experiences the Inquiry had in trying to contact people on different occasions. Both the Inquiry and DCD are cognisant of the difficulty this presents.

An independent review of mandatory reporting is currently being conducted by the Child Protection Council on behalf of the Minister for Community Development. The review was due to be completed on 19 July 2002. The Inquiry did not have the benefit of the report of that review when preparing this report. It is understood that the Council has considered issues surrounding 'mature minors' and mandatory reporting.

**39. The Inquiry finds that young people who can be characterised as 'mature minors' often need different government responses than other children. The Inquiry recommends that the proposed implementation body consider the issue of 'mature minors', using findings in this Report and the report of the review of mandatory reporting conducted by the Child Protection Council.**

### 2.5.12 Apprehension and Placement of Children

Even when an allegation is substantiated, only a small proportion of children are subject to an application for a care and protection order leading to their apprehension and placement<sup>8</sup>. DCD has standardised approval processes for the apprehension and placement of children. DCD stated that this structure recognises that the decision to apprehend and to place children are two of the most important decisions made in case management. They are subject to a specific Director General's Instruction Number 40, which sets out the processes that must be undertaken before an apprehension can be made. The decisions to apprehend or place children need to be approved by the Office Manager, Level 7 and Zone Manager, Level 8 or the equivalent position in the relevant zone. The Director General's Instruction also states that relevant Aboriginal staff are to be involved in the decision making process which may lead to the apprehension of an Aboriginal child. (Attachment 13 to DCD's Submission, 5 April 2002)

The Inquiry has heard conflicting views in the community about the effectiveness of the process outlined in the Director General's Instruction.

Some comments suggested that there needs to be more discretion on the part of DCD officers and input from community members in the assessment of when a child is at risk and needs to be put into care. By comparison however, one Aboriginal community expressed the view that the power to 'remove' children should be used more often.

It is clear that Aboriginal children are more likely to be subject to care and protection orders than non-Aboriginal children. As at June 2001, an ATSI child was seven times more likely to be subject to a care and protection order than a non-ATSI child and seven or eight times more likely to be in out-of-home care. It is noted that WA has the fourth lowest rate of children in out-of-home care in any state, however without analysis of why children in WA are less likely to be placed in out of home care, useful comparisons cannot be drawn.

<sup>8</sup> Apprehension and placement may also occur, on an interim basis, before the making of an application for a care and protection order is complete.

### **2.5.13 Aboriginal Child Placement Principles**

The Aboriginal Child Placement Principles, which have operated since 1985, advocate the placement of ATSI children with ATSI families when they are placed outside their own family. DCD has advised that the Principles *'firstly focus on the best interests of the child being paramount'* and that it may not be appropriate to place a child with certain carers (DCD Supplementary Submission, 5 July 2002: 2). The principles state that the order of preference, if these options are available, is for ATSI children to be placed with the child's extended family, followed by the child's ATSI community or kin, the third is with other ATSI persons and the last preference, with non-ATSI persons sensitive to the needs of the child.

Aboriginal communities expressed concern to the Inquiry during consultations that the Aboriginal Child Placement Principles were not appropriate and cited examples where the application of the principles had allegedly resulted in children being placed in situations of risk. The Inquiry received advice from DCD on this matter and they acknowledged that a number of circumstances required significant consideration and negotiation which may result in children being placed with non-Aboriginal carers, or carers outside that child's community and kin group. One example was where the alleged perpetrator of the child abuse was a relative or member of the community and the power relationships between the alleged perpetrator, and the victim and his or her carer, were such that the child's safety could not be assured. The Inquiry notes that DCD state that these power relationships may not always be known to DCD officers (DCD Supplementary Submission, 5 July 2002: 2). It is without doubt that the decision to apprehend a child is a difficult one, but the decision as to where to place a child is equally so, and often needs to be done quickly without all the information being available to the decision maker, at least in the short term.

Statistics provided by DCD show that 40 per cent of ATSI children in out-of-home care are placed with ATSI relatives, 32 per cent with ATSI non-relatives, five per cent with non-ATSI relatives and the rest in other types of placements (DCD Initial Submission: 49). This reflects that, at least in part, the goal in implementing Aboriginal Child Placement Principles to increase the placement of Aboriginal children with Aboriginal families has been met. The Inquiry believes that the next step is continuing to improve the level of care offered by those families providing out-of-home care, and increasing the support available to those families to deal with, often troubled children.

### **2.5.14 Aboriginal Placement Project**

The Aboriginal Placement Project is consistent with the Aboriginal Child Placement, but is directed at increasing the number of suitable Aboriginal foster families. DCD piloted the Aboriginal Placement Project in October 1999 in response to an identified concern that Aboriginal children were remaining in institutions and non-relative care for long periods. This was, apparently, of particular concern to DCD given the historical significance of institutional care for Aboriginal children and communities. The initial funding for the 12-month pilot was to be a support strategy to assist case managers find suitable relative carers for Aboriginal children. The availability of suitable relative carers for Aboriginal

children is integral to the successful application of the Aboriginal Child Placement Principles. (Transcript of Evidence by Lew Penny, 6 May 2002: 779)

*The project plays a fundamental role in preventing institutionalisation and assists in breaking the cycle of generational residential care of Aboriginal children. It provides children with an opportunity to be part of their extended family and culture, enhancing self-esteem, developing a sense of cultural identity and providing opportunities to meet their full potential.*

(Witness Statement of Lew Penny, 6 May 2002: paragraph 18)

A review, conducted after its first 12 months recommended the continuation of the project. Information provided to the Inquiry would suggest that the project is likely to continue at this stage. (Transcript of Evidence by Lew Penny, 6 May 2002: 779)

**40. The Inquiry endorses the review which recommends the continuation of the Aboriginal Placement Project. The Inquiry further recommends that consideration be given to expanding the Project to provide additional support to, and monitoring of, Aboriginal foster families in collaboration with other government agencies.**

*DCD recently commissioned CREATE to undertake a consultation of children and young people's views on the quality of care they received. This report was recently released and provides a valuable insight into children's experience whilst in care. It is DCD's intention that children's views and feedback be obtained on an annual basis to help provide feedback to DCD on the quality of care received. The CREATE foundation was established to provide a consumer voice. Most importantly, the direct participation and input by children and young people in care is viewed by CREATE as an opportunity to provide the Government, DCD and other agencies with children and young people's feedback on solutions to problems in the care system. (Counsel Representing Agencies, 22 July 2002: paragraphs 205 and 206)*

#### 2.5.15 Notification of death

As part of the *Reciprocal Child Protection Protocols*, the Office of the State Coroner advises DCD of a child's death in certain prescribed circumstances depending upon the age of the child and the circumstances of his or her death. Recently a review has been conducted of DCD's internal 'Child Death Notification Procedures' and those Procedures have been updated. The Inquiry has not evaluated the new Procedures, but does note that the procedures include a requirement that an internal departmental review be undertaken in the event of a child's death where DCD had some involvement with that child or his or her family. Additionally, in the event of a child's death, where DCD has had involvement with the child and his/her family, the Director General is to be advised and certain procedures in the case manual should be adhered to. (DCD Initial Submission, 5 April 2002: 62)

The Inquiry considers the need for a 'Child Death Review Team', further discussed in Chapter 16. Such a 'Team' would not ameliorate the need for DCD to undertake an internal review in those circumstances.

## 2.6 After hours service provision

The Crisis Care Unit (CCU) provides an after-hours and an alternative daytime response to calls that range from family support assistance to child maltreatment allegations for the whole state. CCU is located in the metropolitan area, operated by paid staff and volunteers, and caters for current clients, members of the public and service providers to access advice and assistance in situations of child protection and domestic violence on a 24-hour basis. Further, it has the names and telephone numbers of zone staff should a client require an immediate response—this includes an on call roster to deal with crises and priority one investigations. (DCD Supplementary Submission 5 July 2002: 2)

The Inquiry has received information during consultations with Aboriginal communities that there is a lack of staff available after hours, and Aboriginal people have problems contacting the CCU or accessing the services it provides. The Inquiry received advice from DCD on the arrangements in place for service provision outside of the metropolitan area. There remain some issues, for example, in some situations WAPS officers cannot contact a local DCD officer during the weekends. DCD are aware of these issues. (DCD Supplementary Submission 5 July 2002: 3)

There has also been some information given to the Inquiry that both the CCU Hotline and the Homeless Helpline do not always collaborate when providing services. The Inquiry has not explored this issue in detail, however it would seem that effective collaboration between these two telephone services would improve service delivery without there being a need to increase funding.

The Inquiry notes, from the Closing Submission of the Counsel representing Government Agencies, that

*(t)he existing (Crisis Care) service provides a comprehensive 24-hour response to emergency situations throughout the State. Obviously in country areas the level of response depends on the number of staff available and on call. It is not financially viable or cost efficient to introduce a full time after hours service. (Counsel Representing Agencies, 22 July 2002: paragraph 187)*

**41. The Inquiry commends the role that the Crisis Care Unit plays in providing after hours response to emergency situations in the community. However, the Inquiry finds that there needs to be a review of the resources, functions and effectiveness of the Crisis Care Unit, particularly with regard to its response times and coordination with other agencies.**

## 3. ORGANISATIONAL ISSUES

### 3.1 Planning

Issues of planning with regard to family violence are discussed in detail above at 2.4.

With regard to child abuse, the planning process appears to be driven out of ad hoc reviews of service delivery, such as the 1996 review that led to the implementation of the CCR/CMA classification system. Significant planning activities also appear to be driven by across-

government coordination bodies. There was no clear evidence of planning for primary or secondary responses to child abuse. It is noted however, that some important early intervention programs have been established, although it is not clear that they fit within a 'framework' other than the stated policy to shift away from welfare and safety net services. (DCD Initial Submission : 7)

### **3.2 Policy and procedures**

The main body of policies and procedures applicable to DCD Officers is the Case Practice Manual. The DCD Case Practice Manual is a reference guide for staff and provides information relating to case practice standards, policies and procedures.

The first edition was released by DCD in 1993. The current edition, 1997, includes amendments made in 1998, and is expected to be continually reviewed and refined to reflect DCD's current practices. Essentially, the case manual aims to:

- Provide advice and direction to case workers in the application of policy and procedures
- Articulate guides to decision making on complex case practice issues
- Foster and acknowledge the critical importance of professional judgement in case practice and in the application of policy and procedures
- Ensure a professional standard of, and approach to, case work with clients
- Identify quality assurance mechanisms, requirements and principles in case practice.

(DCD Case Practice Manual 1997)

The detail of the policies and procedures has been addressed in the other sections of this chapter.

#### **3.2.1 Field Supervision Policy**

DCD 'Field Supervision Policy' was initially endorsed in 1996 and outlines standards for the supervision of all service delivery staff who undertake case-work tasks or community work, and for the staff who provide support services to people undertaking those tasks. The purpose of the policy, and to some extent the Case Practice Manual, is to ensure accountability of departmental staff and to set standards of performance and professional support.

#### **3.2.2 Good Practice Policy for Working with ATSI People**

The key elements of this policy are:

- A community development approach involving collaborative relationships between service providers, individuals, families and communities in ways that build upon the capacities of ATSI people to achieve social well-being.
- ATSI involvement in all facets of DCD's work that impact upon ATSI people, including service delivery and the planning, development and implementation of policy and services.
- *Care and Safety Good Practice Guidelines* for service delivery that requires the involvement and contribution of ATSI staff, service providers or community members in DCD's service response to children, families and communities. (DCD 2002: 1)

The *Care and Safety Good Practice Guidelines* have been developed and are currently awaiting a staged implementation, although the other two elements of this policy are still awaiting development.

### **3.3 Human resource issues**

The Inquiry was provided with statistics concerning staffing levels at DCD. DCD's submission states that the effectiveness of the department's preventative, family support and child protection responses and systems to some extent relies on the availability of resources. The Inquiry supports this position and further stipulates that the effectiveness of DCD's work is highly reliant upon its human resources, given it represents 38 per cent of the expenditure in the last financial year. (DCD Initial Submission: 9)

#### **3.3.1 Recruitment and training**

DCD has advised the Inquiry that the provision of resources to the department has not matched the increasing demand on the department and indeed, departmental staff, in the key areas of family support and child protection. DCD has identified a current need for additional staffing<sup>9</sup>. Further, DCD has proposed certain 'future directions' to the Inquiry which would require an investment by government in additional human resources for the department. This is discussed further at section 4.4 of this chapter.

The need for additional human resources in DCD is supported by the Community and Public Service Union/Civil Service Association (CPSU/CSA), which represents the interests of public sector employees. In its submission the CPSU/CSA stated that while there was an increase in funding for certain areas and projects within DCD, this has not flowed down to where it is most urgently required—staffing numbers (CPSU/CSA 13 June 2002). The CPSU/CSA also stated that the recent loss of contractual positions, increasing staff stress due to other resourcing problems and the increasing complexity of cases, is resulting in higher staff attrition (CPSU/CSA 13 June 2002). Those factors may also reduce DCD's ability to attract more experienced staff.

The Inquiry heard in the closing submission by Counsel representing government agencies, that DCD *'is extremely conscious of the importance of recruiting and retaining qualified and skilled staff and is aware of the need to give particular attention to country areas'* (Counsel Representing Agencies 2002: paragraph 116). DCD identified that to maintain a flexible workforce capable of meeting the range of challenges that DCD staff are required to respond to, the department needs to employ a mix of qualified and skilled personnel. The department also recognises the importance of *'undertaking a skills audit relative to performance requirements ....as part of (its) recruitment, induction, supervision and appraisal processes.'* (Counsel Representing Agencies, 22 July 2002: paragraph 117)

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<sup>9</sup> In its Initial Submission DCD flagged a need for 10 extra FTEs to meet current demand for DCD's services. The DCD Final Submission proposed models for improved service delivery which required significantly more FTEs to be employed. (DCD Initial Submission, 5 April 2002; DCD Final Submission, 26 June 2002)

**42. The Inquiry finds that the tasks undertaken by Department for Community Development staff are becoming increasingly complex. The Inquiry recommends a review be undertaken to determine whether there is parity between formal qualifications and experience and the tasks staff are asked to undertake.**

**43. The Inquiry acknowledges the increasing difficulties faced by DCD in recruiting, remunerating and retaining experienced staff.**

Currently, a joint working party consisting of DCD and CPSU/CSA representatives has been convened to develop a method for assessing workload at an organisational and individual caseworker level to reach consensus on an acceptable caseload limit. The Working Party was expected to provide a report by mid July 2002. The Inquiry has not had the benefit of the report of the joint working party when preparing this report.

**44. The Inquiry commends the joint working party between the Department for Community Development and the Community and Public Service Union/Civil Service Association (CPSU/CSA) to develop a method for assessing workload to determine an acceptable caseload limit.**

DCD identified a number of initiatives it plans to implement, as a result of the recent funding allocation from the 2002/03 State Government budget. These initiatives are aimed at addressing family violence and child abuse where the effects of the initiatives may not be seen for long time. DCD emphasised that *'(t)he effectiveness of DCD's preventative, family support and child protection responses and system, hinges to an extent on the availability of resources to enable DCD's responsibilities to be carried out'* (Counsel Representing agencies, 22 July 2002: paragraph 147). The Inquiry notes from the DCD Closing Submission that there has been no increases in human resources to match the demand on DCD and its staff since 1989. (Counsel Representing Agencies, 22 July 2002)

**45. The Inquiry finds that in order for the Department for Community Development's preventative, family support and child protection responses and system to be effective, DCD must be appropriately resourced.**

### 3.3.2 Aboriginal training and recruitment

DCD states that, since 1997, they have recruited more Aboriginal officers to deliver direct client services and employed Aboriginal officers at a more senior level who are capable of providing advice and direction about culturally appropriate services (DCD Initial Submission, 5 April 2002: 15). As at 30 June 2001, 7.9 per cent of people employed by DCD were Aboriginal; more specifically the percentage of Aboriginal people employed in the delivery of services was 8.6 per cent. The proportion of Aboriginal employees varies between different zones, although the Inquiry notes that approximately one third of DCD employees in the Kimberley zone are Aboriginal. (DCD Attachment 3 FTE Usage and employment levels as at 30 June 2001, 5 April 2002)



According to evidence provided by Mr Mark Crake, Principal Service Design Officer in the Service Development Branch,

*... dynamic Aboriginal and Torres Strait Islander staff (are placed) in positions of influence in the service development, purchasing and support functions ... (to ensure that services provided to Aboriginal people are) relevant and accessible. (Witness Statement of Mark Crake, 11 June 2002: paragraph 14)*

*3.3.2 (a) Aboriginal Service Delivery Traineeship*

The Aboriginal Service Delivery Traineeship is a joint initiative between the Public Sector Management Division of the Department of the Premier and Cabinet, the Department of Employment, Workplace Relations and Small Business and DCD. It commenced in 1998 when DCD sought to recruit and train 22 Aboriginal people over a period of three years. The traineeship provides permanent employment, training and career development opportunities for Aboriginal people, and the trainees are located in various offices throughout the State. (DCD Initial Submission, 5 April 2002: 16)

Under some traineeship schemes the 'career development' of the trainee can be unsatisfactory, meaning that trainees are left in relatively low positions within the organisation, compared to the skills they have acquired. This proposition was put to Mr Danny Ford, Director of Aboriginal Strategy and Policy, during his evidence. He stated that, as far as DCD was concerned, while the number of Aboriginal staff remained fairly constant, the staffing levels or profiles of these staff members have increased reflecting their developing skills and experiences. Natural attrition and attractive opportunities provided by other departments are two reasons for the constant number of Aboriginal staff within DCD, despite strategies to increase that number (Transcript of Evidence by Danny Ford 7 May 2002). The Inquiry accepts this explanation of the career development opportunities offered within DCD. It does however, note that strategies to assist the department in recruiting and retaining staff will also address the attrition rate concerning Aboriginal staff.

**46. The Inquiry supports the Aboriginal Service Delivery Traineeship Scheme that enables a clear career development path for Aboriginal people within the Department for Community Development. The Inquiry recommends that consideration be given to expansion of the Aboriginal Service Delivery Traineeship Scheme and the funding implications of such an expansion.**

*3.3.2 (b) Senior Officer Aboriginal Service*

DCD created 'Senior Officer-Aboriginal Service' (SOAS) positions to oversee case practice concerning Aboriginal children. These officers do not have line management responsibility but rather report directly to the Zone Manager and are responsible for enhancing DCD's responses to individual case issues. There is one officer located in each Zone and two in the Kimberley zone to provide support and knowledge to staff about the impact of decisions on Aboriginal families.

DCD states that the introduction of the SOAS in service delivery ensures that the quality of services provided to Aboriginal children are the same as those provided to non-Aboriginal children. The Inquiry holds the view that the creation of such positions would be of assistance in improving service delivery to Aboriginal people.

### *3.3.2(c) Gender of Aboriginal staff members*

It has been drawn to the Inquiry's attention that DCD has 'too few' male staff members, in particular in the Kimberley zone, to work with young men who are at risk, or a perpetrator of violence. The Inquiry notes that a similar problem is faced by WAPS insofar as it is attempting to recruit more female APLOs.

### **3.3.3 Staff in remote areas**

The Inquiry heard evidence from Aboriginal communities that there was a high staff turnover and that there were innate difficulties in recruiting local people due to complex family relationships. The problem in attracting, and retaining, government staff in remote communities is one that has been identified by both the Inquiry and departments. DCD is of no exception to this overriding theme, noting that,

*currently the Department does not have the manpower or logistical resources to have a presence and respond to the needs of all (the remote and rural communities) to the extent needed to be truly effective. (DCD Supplementary Submission, 5 July 2002: 4)*

Therefore it is not only a matter of attracting and retaining staff in remote Aboriginal communities, but also having the funding to apply human resources to those areas in the state. Proposals for expanding the service to remote communities are discussed in more detail at 4.4.3.

## **3.4 Information collection/sharing, including mandatory reporting**

The Inquiry notes the establishment of the pilot Child Protection Register in 1996, to enhance the DCD system of collecting and sharing of information between government agencies to improve child protection outcomes. In order for this pilot to proceed, and indeed for DCD to require compliance with the Register's protocols by other agencies, it advised that amendments need to be made to the *CW Act* or subsequent equivalent legislation. The pilot Register, which included signatory agencies such as DCD, WAPS, DOE, DOJ, Disability Services Commission (DSC), Alcohol and Drug Authority and DOH, was reviewed in 2001. The review found that participating government agencies were supportive of the developed protocols for the operation of the Register but without the supporting legislative framework, were reluctant to proceed. The Inquiry has not considered this model fully, rather information sharing and mandatory reporting will be discussed in greater detail at Chapter 18.

DCD has a number of protocols and procedures concerning information collection and sharing. Most prominent of those protocols is the '*Joint Approach to Child Abuse Investigations and the Reciprocal Child Protection Procedures*'. The sharing of information is limited by the *CW Act* (as noted above) which makes no provisions for the sharing of information between agencies on child protection matters.

The DCD Initial Submission directly addresses the issue of mandatory reporting and outlines the debate which has occurred on the topic in WA since the early 1990s. In particular the DCD Initial Submission outlines the arguments for and against mandatory reporting of suspected or actual child abuse. DCD finishes that portion of its submission by stating that,

*This issue has been considered periodically and in the past the decision has been to promote the voluntary reporting of child maltreatment. Western Australia has also pursued the strategy of negotiating Reciprocal Child Protection Procedures with key Government Department and working with agencies in development of their child protection policies.*

(DCD Initial Submission, 5 April 2002: 89)

DCD further submitted that, with regard to the mandatory reporting of sexually transmitted diseases (STD's), its preferred approach is for an interagency policy and protocol based reporting of children with sexually acquired STDs under the age of 13 years. DCD notes that it has not reached an 'agreed position' with DOH in that regard. (DCD Initial Submission, 5 April 2002: 90-91)

### **3.5 Coordination**

DCD has acknowledged its role in meeting the need to facilitate effective collaboration within government in order to effectively develop the capacity of individuals, families and communities.

#### **3.5.1 Coordination of the response to family violence**

The Inquiry has discussed, in detail, both inter and intra-agency collaboration concerning family violence, where DCD is the lead, or participating, agency above at 2.4.2, and has made recommendations in that regard.

#### **3.5.2 Coordination of the response to child abuse**

##### *3.5.2 (a) Child Protection Council*

The Child Protection Council was established in 1998 to advise the Minister on child protection matters. Membership of the Council comprises people drawn from government, non-government and community organisations. The council's Terms of Reference include:

*... to promote the coordination and exchange of expertise and information and to provide the Government of Western Australia with advice with respect to prevention and management of child maltreatment.* (DCD Initial Submission, 5 April 2002: 63)

Since its inception, the council has apparently been involved in a number of projects including the development of a discussion paper on *Shaken Baby Syndrome* and a report on the purpose of Child Death Reviews as a mechanism to provide reports and analysis of child deaths. The work of the Council with regard to Child Death Reviews is discussed at Chapter 16.

The Inquiry notes that this Council was established to perform a valuable coordination role, for both government and non-government services.

### *3.5.2 (b) Interdepartmental Child Protection Coordination Committee*

The Interdepartmental Child Protection Coordination Committee has recently been established to develop a strategic approach for ensuring coordination and collaboration in child protection across relevant government agencies and to oversee the ongoing maintenance and future development of interagency child protection intervention guidelines. The committee is currently focussed on updating and strengthening the *Reciprocal Child Protection Procedures*. The Joint Approach to Child Abuse Investigations Protocols also outlined the procedures to follow in determining what, if any, joint response is required. Recently WAPS, through the Child Abuse Investigation Unit, has begun to negotiate amendments to the Joint Response Protocols, which is discussed in greater detail at Chapter 9. The committee intends to consider child death review bodies in other jurisdictions and suitable mechanisms that enable and support the exchange of information, as its next priority. The committee's membership is made up of the key government agencies considered by this Inquiry and nominations have also been sought from a variety of non-government agencies.

### *3.5.2 (c) Joint approach to child abuse*

DCD and WAPS are working together to review the *Joint Response to Child Abuse Protocols*. These joint protocols are discussed in more detail in Chapter 9, but generally provide for the sharing of information between the two departments, and the conduct of joint investigations. Both departments had slightly different views of the benefits of the conduct of joint investigations, depending upon the outcome sought by that department. The key benefits from the perspective of DCD are minimising unintended stress on the child during assessment and investigation, the encouragement of state-wide training and a working understanding on the part of each department as to what each agency does. The key benefits from WAPS perspective are discussed in Chapter 10.

## **3.5.3 Collaboration projects – the Strong Families Project**

DCD has, in recent times, collaborated with other government agencies and community service providers to implement a number of projects aimed at introducing preventative strategies to assist and support families identified as being the most likely to access support services from agencies like DCD. Two particularly important initiatives are the Strong Families Project and the Indigenous Families Project. The Indigenous Families Program is run by the Coalition of Aboriginal Agencies, and is funded by a number of departments through individual funding arrangements. The Indigenous Families Program is discussed in more detail at Chapter 13.

### *3.5.3 (a) Strong Families Project*

The Strong Families Project (also discussed in 1.14 of Chapter 13 'Coordination') is an initiative of SaferWA to address the problems associated with agencies working within their 'functional silos'<sup>10</sup>. DCD is a key contributor to the development and

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<sup>10</sup> Government agencies working in isolation and independently of each other.

implementation of the Strong Families Project. The project has been funded by State Government agencies<sup>11</sup> until June 2002 .

The model of the Strong Families Project is based on the 'Strengthening Families' strategy from New Zealand. The approach recognises the difficulty that families experienced in accessing services from numerous agencies and that assistance provided to these families often cannot be met by one agency alone. The Strong Families Project introduced a collaborative case management approach where agencies and families work collaboratively in coordinating the planning and delivery of services. The difference between this model and previous less successful 'interagency' collaborative efforts is that this model requires *'the consent and participation of family members... a neutral coordinator and the appointment of a lead agency worker.'* (Witness Statement of Rae Markham, 14 May 2002: paragraph 22)

A process evaluation of the project was undertaken in December 2001 which showed that by increasing the capacity of agencies to provide coordinated, integrated and collaborative services to families and by creating a process that draws together agencies and families to address issues of mutual concern, both agencies and families are benefiting.

*The sharing of information and perspectives helped to develop a broad overview and shared understanding of the complexities of individual family situations ... A more general benefit ... is the potentials for the process to help highlight gaps in services, because workers and families are clear about the limitations and boundaries of agencies.* (Lacy 2002: 2-3)

The Review stated, that in the 12 months since its introduction in Midland and Albany, 23 families from Albany and 17 from Midland have participated in the Strong Families meetings. Further funding has been sought in the 2002/2003 budget to expand the initiative. Ms Markham gave evidence that, in the Midland area, whilst agencies that are involved are enthusiastic about the model, referrals are not great and the uptake slow. This could possibly be due to the fact that the project has only been piloted in two areas so that the way that agencies collaborate under the project is not considered the norm (Transcript of Evidence by Rae Markham 14 May 2002). Ms Markham also believed that the lack of referrals could be improved if the project was broadened outside its pilot areas and the principles, at least, were included in departmental procedures. Currently the involvement of agencies is ad hoc rather than sustained which makes it difficult to identify a lead agency to drive the process. (Transcript of Evidence by Rae Markham, 14 May 2002)

The views expressed by the coordinator, above, are consistent with the views of the Inquiry that pilot projects should be undertaken with a view to evaluating the model in order to implement it across the system. Where projects are maintained only as 'pilots' their success is necessarily limited.

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<sup>11</sup> The agencies include the following WA State Government departments – DCD,WAPS,DOE, DIA, the Department of the Premier and Cabinet, DOJ and DOH. The departments are those represented on the SaferWA CEO Working Group.

**47. The Inquiry recognises the complex cases often managed by DCD that require a high level of sustained and coordinated intervention. The Inquiry commends the Strong Families Project which targets these complex cases. The Inquiry recommends serious consideration be given to funding the expansion of the effective pilot projects which deal with complex cases.**

## **3.6 Service delivery initiatives**

DCD has put in place a number of service delivery initiatives which are intended to improve the services delivered by DCD across the whole of the department.

### **3.6.1 Risk analysis and risk management framework**

A pilot project was introduced in early 2001 to assess the risk to children and to ensure that children who required protection received it. This is known as a risk management framework. Guided by the use of professional judgement to assess risk, the framework is being implemented as a tool to assist workers in gathering information, analysing information and determining the level of risk and safety for the child(ren) (DCD Initial Submission 5 April 2002). The Inquiry notes that the concept of 'risk management' is one of the new approaches to best applying resources available in community development departments to minimise the risk to which children are exposed to. The Inquiry has not considered the research, or application, of such approaches to evaluate effectiveness.

### **3.6.2 The Best Practice Consultation Framework for the Provision of Services to ATSI People**

The objective of the Best Practice Consultation Framework for the Provision of Services to ATSI People ('the ATSI Consultative Framework') is to assist DCD to improve culturally appropriate service responses to ATSI children and families receiving family support or child support services.

The ATSI Consultative Framework depends on the involvement of Aboriginal staff and community members at the point of intake for referrals and throughout casework planning, decision making and intervention.

### **3.6.3 Building understandings and partnerships—Memoranda of Understanding**

Memoranda of Understanding (MOU) are currently in place with a number of Aboriginal communities. These documents form the basis for mutual cooperation between communities and DCD and aim to improve and strengthen the general well-being of families and children in the communities. MOUs are used for targeted communities where partnerships do not already exist, where those partnerships need to be strengthened MOUs are also used.

Ms Newsham described the process by which the MOUs are established with communities as very positive. She stated that:

*Without exception we were given a good reception by the councils and each wanted services to be delivered in a way that was more appropriate for their community.'*  
(Witness Statement of Julie Newsham, 10 May 2002: paragraph 10)

DCD also states in its Closing Submission that, the MOU *'further permits DCD access to individuals without the need to filter all such requests through particular community leaders.'* (Counsel Representing Agencies, 22 July 2002: paragraph 217)

She also informed the Inquiry of the key issues which were expressed by the councils and embodied in the MOUs. These included:

- DCD officers attending the community for general visits and not just as a response to a 'crisis event'
- More clarity about the role of DCD and its interactions with other departments
- Clear undertakings of confidentiality, especially where DCD staff are related to members of the community.

The Inquiry notes that these directly correlate with the concerns raised by Aboriginal communities during the course of the Inquiry's consultations. While the Inquiry is supportive of the objectives contained in current MOUs, it also came to the attention of the Inquiry that some Aboriginal communities, who are signatories to the MOU, are not aware of the objectives and practice prescribed in the MOUs.

**48. The Inquiry endorses the initiative currently in place to develop Memoranda of Understanding (MOU's) with Aboriginal communities in the Kimberley as a step in fostering mutual cooperation between the communities and the Department for Community Development.**

**The Inquiry recommends that where MOUs are in place with Aboriginal communities, that the Department for Community Development ensures that the objectives and purpose of MOUs are communicated clearly to these communities and fulfilled.**

Ms Newsham identifies trust as the key to building more effective partnerships with Aboriginal communities. Where that trust was lost, due to any number of reasons, it became very difficult for the DCD staff to work in that community. The Inquiry noted in particular that trust may be lost where DCD is obliged to use statutory powers against the wishes of the community. General comments on barriers to effective service delivery are discussed at section 4.3.2.

## 4. ANALYSIS OF SERVICE PROVISION

### 4.1 Access to services

The access Aboriginal people have to DCD's services are limited in a number of ways:

- The availability of DCD services in remote regions discussed below at 4.3
- The barriers to Aboriginal people making reports to DCD which are discussed above at 2.5.11 especially with regard to mature minors, and below at 4.3.2

- The perception of DCD by some Aboriginal people, and communities, that stems from its days as 'Welfare' and the policies it implemented concerning the removal of Aboriginal children from their families.

## 4.2 Strengths

### 4.2.1 Whole of Government strategic initiatives

DCD has provided advice on a number of strategic initiatives concerning effective provision of services to Aboriginal people. These initiatives are:

- Statement of Commitment to a New and Just Relationship Between the Government of Western Australia and Aboriginal Western Australians
- The establishment of the Indigenous Affairs Advisory Committee. (IAAC) (DCD Initial Submission, 5 April 2002: 57)

### 4.2.2 Director of Aboriginal Strategy and Policy

DCD created the Director of Aboriginal Strategy and Policy position in DCD to improve service provision to Aboriginal people. The incumbent is charged with providing leadership on Aboriginal issues and advises DCD's Executive Committee on policies and programs that *'... (take) into account the needs of Aboriginal people and the requirements in terms of service delivery for Aboriginal people.'* (Transcript of Evidence by Lex McCulloch, 5 March 2002: 32). The strategies and directions which have helped to define and guide the Director's role include the Western Australian Aboriginal Justice Plan, the Action Plan to address the cycle of Aboriginal Offending, the Coalition of Aboriginal Agencies (CAA) and the recommendations of the WA Community Drug Summit. Danny Ford, Director of Aboriginal Strategy and Policy stated in evidence that the creation of this directorial role allowed DCD to present an Aboriginal perspective, at high level cross-agency planning forums where initiatives were developed that affected Aboriginal people. This will be discussed more broadly at Chapter 18.

### 4.2.3 Employment of Aboriginal staff

DCD also states that the employment of Aboriginal staff is a key to effective service delivery and the department has implemented programs like the Aboriginal Trainee Scheme to meet its needs in that regard. An Aboriginal Scholarship Scheme has also been developed which *'allows Aboriginal staff to undertake full-time tertiary study whilst receiving their full salary.'* (DCD Initial Submission, 5 April 2002: 58) The percentage of Aboriginal employees employed at DCD is noted by the Inquiry, as is the provision of training and the scholarship scheme. Whilst this is one of the strengths of DCD, the Inquiry is aware that sometimes Aboriginal staff are assigned tasks which may be beyond their experience or formal qualifications – indeed as are some non-Aboriginal staff. The Inquiry believes the first step in improving this situation is reviewing the parity between an officer's skills and the tasks allocated to him or her. The Inquiry has made a recommendation in this regard at 3.3.2 (a).



#### **4.2.4 Family Information Records Bureau**

The DCD Family Information Records Bureau provides assistance to people affected by separation from their families, particularly Aboriginal people, and Wards of the State. The Bureau allows people to access their family history which may provide that person with links to their family. (DCD Initial Submission, 5 April 2002: 58)

#### **4.2.5 Aboriginal Advisory Committee**

DCD also has an Aboriginal Advisory Committee (AAC) which includes senior Aboriginal staff from across the state as members. It meets regularly to consider the needs of Aboriginal community members, and works together with Aboriginal agencies to involve Aboriginal people in the realm of services. (DCD Initial Submission, 5 April 2002: 58-59)

#### **4.2.6 Statutory powers**

Under the CW Act DCD has statutory powers to apprehend children, and make applications for care and protection orders so that a child may be declared a Ward of the State for a period of time. Specifically, section 146A of the CW Act empowers a Justice of the Peace or Magistrate to grant an order authorising a departmental officer or a police officer to enter a premise and investigate allegations of child abuse, and if necessary, apprehend the child.

There are three factors which temper the potential strength of this statutory power:

- A perceived unwillingness to use this power given the implications of the *'Bringing Them Home Report'* and the *'Stolen Generation'*
- The CW Act, which provides these powers, does not reflect current practices or situations (see section 3.4)
- A conflict between the use of these powers and a move in child protection practice to more family based intervention.

### **4.3 Challenges**

#### **4.3.1 Child protection data and trends**

Whilst the Inquiry does not intend to review the figures provided by DCD concerning child protection data in relation to ATSI children, the figures do provide some perspective on the reports received by the department and the substantiation of those allegations. It can be surmised that:

- Aboriginal children are more likely to be the subject of recorded allegations with the department
- The subject of a priority 'one' (urgent) response from the department
- The subject of report which is 'substantiated' by the department
- The subject of a care and protection order;
- Placed in out-of-home care.

(DCD Initial Submission, 5 April 2002: 30)

Further, the data provided by DCD shows that 24.7 per cent of children subject to allegations of maltreatment or neglect were identified as ATSI; with 12 per cent of children subject to allegations not having an ethnicity recorded (DCD Initial Submission, 5 April 2002: 31). These trends present a significant challenge to DCD.

DCD also provided data concerning CCRs. Of particular interest to the Inquiry in that data is a statement that no clear viable role was identified for DCD in 27.8 per cent of reports made. A significant proportion of those identified with 'no clear role' concerned Aboriginal children (DCD Initial Submission, 5 April 2002: 33). The identification of a role for DCD in situations which do not conform with standard case plans is also a challenge for the department.

#### **4.3.2 Barriers to the provision of services by DCD to the Aboriginal community**

A number of general barriers have been identified by the Inquiry after consultations with Aboriginal communities and indeed government agencies about the barriers to effective service delivery.

DCD has further identified barriers specific to their department. In particular, the history of DCD, and its involvement in the forced removal of many Aboriginal children in what is now known as 'the Stolen Generation' and in subsequent generations. This has led, not only to a deep mistrust but a preconceived notion of the intentions of DCD and its officers which may no longer reflect its role and priorities.

Ms Newsham identified a number of important factors which directly impacted upon the success of DCD service delivery in remote communities. She particularly noted that staff have to be skilled, confident, experienced and well supported. She also stated that the staff required time to identify and speak to all the key people in the community. (Transcript of Evidence by Julie Newsham, 10 May 2002: 1056)

Some officers in the Kimberley area have also reported difficulty delivering both a response to reports of child abuse and family violence, and providing community development programs. There is a natural tension between DCD and community members given these roles. This tension has been acknowledged by DCD and indeed Lex McCulloch noted this problem in his evidence.

## **4.4 Future directions**

DCD provided a Final Submission to the Inquiry on 26 June 2002 after it had '*reflected on its evidence to the Inquiry and the Inquiry's Interim Report*' (DCD Final Submission, 26 June 2002). The DCD Final Submission stated that, '*to address the complex systemic issues, a comprehensive whole-of-government and community approach*' was needed (DCD Final Submission, 26 June 2002: 1). The Inquiry agrees with this proposition.

As a result of its reflection, DCD in its final submission, presented a comprehensive four-tier model of intervention which encompasses the following:

- Community capacity building
- Children's welfare and family capacity building

- Child Protection
- Leadership, collaboration and coordination

#### **4.4.1 Community capacity building and prevention**

DCD stated that coordinated strategies are required which provide a balance between intervening in 'at risk' situations through the provision of culturally appropriate individual and family support, and intervention with strategies that prevent risk and build capacities of communities. These coordinated strategies are essential to achieving sustainable outcomes for, and with, Aboriginal people. *'Critical to keeping visible the needs of Aboriginal children, families and communities and to the building of communities capacities to support the healthy, safe development of children and young people, is the requirement to have a physical presence in communities'* (DCD Final Submission, 26 June 2002: 6).

Recognising that reactive responses do not in themselves prevent sexual abuse and family violence in Aboriginal communities, the Department proposes a *'community development approach that works with leaders and members in communities, and focuses on strengthening families and communities capacities'* (DCD Final Submission: 26 June 2002:6). This proposal requires DCD to work more effectively and to be resourced more appropriately.

To achieve this, DCD recommended that the department have an increased capacity to recruit, employ and support community workers to engage and work with communities to achieve a clear vision of personal, family and community health.

DCD is also recommending that additional dedicated funding of \$400,000 per annum be made available to develop, implement and evaluate targeted statewide Aboriginal community awareness raising and education strategies *'that promote positive images of Aboriginal children, women, men and familial relationships, and reinforce that violence and abuse in Aboriginal communities is not acceptable.'* (DCD Final Submission 26 June 2002: 9)

#### **4.4.2 Community supports for children and young people experiencing abuse and violence**

The second tier described by DCD revolves around recognising that children need to feel safe by knowing to whom they can disclose and knowing that they will be secure when they do disclose. The theme also encapsulates the need for identified safe places within the communities for women and children escaping domestic and family violence.

DCD proposed a number of initiatives which included:

- \$200,000 recurrent funding for Aboriginal communities to identify safe persons and houses for Aboriginal children seeking help and safety
- an additional \$500,000 for rural and remote communities to manage accessible safe places within communities for women and children escaping violence
- Expansion of culturally appropriate 'protective behaviours' programs at schools for Aboriginal children
- The recruitment, training, support and professional supervision of Aboriginal support

workers by DCD's Psychological Services Unit in partnership with a non-government agency and located in each region to provide confidential practical support services to Aboriginal children and youth

- Review of legislation to support the exchange of reports and information between relevant departments and the development of interagency policy and protocol based reporting.

#### 4.4.3 Children's welfare needs, family capacity building and child protection responses to allegations of abuse

DCD's ability to respond to allegations is determined by the definition of 'at risk'<sup>12</sup>. In absence of specific allegations, DCD can only provide voluntary family support, and tends not to be focused on the specific needs of the individual, as highlighted in DCD's handling of the Srat/Mairu family.

DCD's response to allegations of child abuse is, in part, determined by whether there is sufficient evidence to warrant a statutory child protection investigation. *'The Department's current capacity to respond to child protection matters is constrained, particularly in remote communities and those with entrenched intergenerational issues of sexual abuse and violence.'* (DCD Final Submission, 26 June 2002: 18)

Different staffing structures mean that responses to allegations and the way investigations are undertaken vary between the metropolitan and rural offices. A generic model is adopted to allow maximum flexibility in delivering services in the rural and remote areas. Depending on DCD's budget, full-time and part-time workers are, on occasions, contracted to supplement the department's permanent staffing numbers.

In order to build DCD's capacity to respond appropriately to child protection cases and to improve flexibility in the delivery of services, DCD have recommended that the Inquiry support the following additional resources being funded by DCD:

- Twenty five more FTE positions, specifically to undertake child protection assessments and responses, as designated 'child protection officers' and to enable a mobile child protection response capacity in the rural and remote communities
- An additional 15 FTE positions specifically to provide services to meet welfare needs of families where there is no allegation of maltreatment
- Providing operational costs to support this model such as training, communications, travel to remote communities and other miscellaneous practical supports to families and children in the course of service delivery.

#### 4.4.4 Leadership, collaboration and coordination in complex cases

DCD recognises that leadership, coordination and cooperation amongst service agencies is central to integrated service delivery and is important from the perspectives of individuals and communities, DCD, other government and non-government agencies. *'It is important that workers from different agencies come together to address the complex multiple issues evident in the lives of many children and families in need.'* (DCD Final Submission, 26 June 2002: 19)

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<sup>12</sup> This is discussed in Chapter 4.

The 'Indigenous Family Program' implemented under the Coalition of Aboriginal Agencies, coordinates and brokers services to 'high risk' Aboriginal families experiencing multiple problems.

SaferWA introduced the 'Strong Families'<sup>13</sup> Project, a model of coordinated, collaborative and integrated service delivery, of which DCD is one of the participating agencies. A key factor of this model is the nomination of a lead agency by consensus, which oversees the implementation of a unified case plan drawn up with input from all participating agencies and the individual family. To enhance the effectiveness of this model for Aboriginal clients, it was suggested by departmental officers that family group conferencing and community conferencing be integrated and used on a needs basis.

A business case was submitted to the Safer WA CEO Working Group for an expansion of the Strong Families Project of service delivery. In the report, it outlined two possible options,

- a statewide implementation over two years with a coordinator in every WAPS district. The proposal was to have six part-time coordinators in rural regions, four full time positions in the metropolitan area and a Coordination Unit with two positions to manage implementation
- Alternatively, that only areas of high need be targeted over two years; the areas of high need and demand to be identified based on socio-economic factors and agency data.

The SaferWA CEO Working Group favoured the second option due to resourcing issues. However DCD has recommended that the Inquiry endorse the first option and that the part time rural coordinators be made full time due to the distance they will have to cover in fulfilling their duties. DCD further recommended that both the Indigenous Family Program and the Strong Families Project model be further supported and that consideration be given to support and resource the expansion of the Strong Families model across the state, with the inclusion of the family and community conferencing facilitation.

#### **4.4.5 Other strategies and consideration**

DCD has provided a number of more holistic suggestions for the Inquiry to consider which are beyond the scope of this Chapter. The Inquiry has considered these recommendations as part of the processes it has used to reach its findings and recommendations in Section 4 of this report.

## **4.5 Conclusions**

The final DCD Submission makes a number of submissions, which are underpinned by an acknowledgement that a change of focus is needed if true gains are to be made.

DCD also acknowledges that its current approach, as outlined in this chapter is, or could become, dominated by risk management strategies that prevent the department from focussing on working with families and the community and from deploying truly 'preventative strategies' (DCD Final Submission, 26 June 2002: 4).

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<sup>13</sup> Referred to in section 3.5.3

## REFERENCES

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- Barrett, K (2001) *Kimberley Aboriginal Family Violence Community Education Program – Process Evaluation Report*.
- Department of Community Development (1997) *Case Practice Manual*
- Department of Community Development (2002) *Good Practice Policy for Working with Aboriginal and Torres Strait Islander People: Incorporating Care and Safety Good Practice Guidelines*
- Domestic Violence Prevention Unit (2001) *Draft State Action Plan on Family and Domestic Violence – Aboriginal Family Violence Strategy: Developing a Partnership of Community and Government Volume 2*
- Family and Children's Services (2000) *Strategic Plan 2005*, viewed June 2002, [http://www.dcd.wa.gov.au/\\_content/miscellaneous/StrategicPlan/default.htm](http://www.dcd.wa.gov.au/_content/miscellaneous/StrategicPlan/default.htm)
- Lacy K (2002) *Beyond the Front Counter: An Evaluation of the Strong Families Initiative*

## LEGISLATION

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- Child Welfare Act 1947
- Community Services Act 1972
- Family and Children's Services Act 1998



*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • Work and abuse whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse claims mar image of campaigner' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE • The Children's Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## Housing and infrastructure services

### CHAPTER 8

# SECTION 3

*This chapter examines the provision of Housing and Infrastructure services to Aboriginal people.*







## 1. GENERAL OVERVIEW

### 1.1 Department of Housing and Works

#### 1.1.1 Broad intent and mission statement

The new Department of Housing and Works (DHW) is an organisation representing all of the state government's housing and works functions. It provides housing for Western Australians who cannot otherwise afford their own home by arranging affordable home finance, and land. DHW, through Homeswest, provides rental accommodation for more than 39,000 families on low to moderate incomes, assists people with special needs, provides bond assistance and helps long term tenants buy their homes.

In addition, DHW builds homes, develops land and undertakes joint venture projects with other housing providers. It also delivers and manages non-residential buildings and infrastructure assets across the state.

Programs are aimed at low-income homebuyers and renters, disadvantaged groups and people with special housing needs, and government agencies.

The initial submission from DHW, presented on 20 May 2002 and spoken to in evidence by Ms Kerry Ann Fijac, Executive Director of Regional Services, lists, with brief descriptions, the policies and practices which it considers to be of relevance to Aboriginal people.

According to the DHW, approximately 11 per cent of Aboriginal people living in Aboriginal communities reside in temporary dwellings, with 23 per cent of permanent dwellings requiring major repairs and 11 per cent requiring replacement. (DHW Initial Submission 20 May 2002, *Community Housing and Infrastructure Needs Survey 1999*) The latest Community Housing and Infrastructure Survey (2001) for the whole of Australia shows that 30 per cent of permanent dwellings managed by discrete community Indigenous Housing Organisations (IHOs) required major repair or replacement, which is an improvement from 33 per cent in 1999.

While approximately 20 per cent of all DHW customers are Aboriginal, DHW has continually stressed that only a small proportion of its Aboriginal tenants place heavy demands upon the system. The majority of Aboriginal tenants of DHW have intervention-free occupancy and enjoy successful tenancies. (DHW Initial Submission 20 May 2002)

### **1.1.2 Structure and management of DHW**

The Department covers:

- Aboriginal Housing
- Asset Management Services
- Bond Assistance
- Community Housing
- Country Housing Authority
- Government Employees Housing Authority
- Government Projects
- Homeswest<sup>1</sup>
- Keystart Home Loan Schemes
- The Landstart Land in Western Australia.
- The Office of Housing Policy. (DHW 2002)

Those departmental sectors that principally affect Aboriginal people are discussed at length below.

### **1.1.3 Staff, budget and office locations**

DHW currently receives approximately \$40 million per year for Aboriginal Housing programs from Commonwealth and state sources; however, in recent years DHW has seen funding from the Commonwealth decline, with a reduction in real terms of \$70 million since 1996/97.

The Head office of DHW is in Plain Street, East Perth, while a further 42 offices are located in metropolitan and regional areas. Keystart, the Country Housing Authority and Government Employees Housing Authority also have their own offices.

### **1.1.4 Government policy commitments**

#### *1.1.4 (a) Building a Better Future: Indigenous Housing to 2010*

This report was signed in May 2001 by the Commonwealth, state and territory Housing Ministers and the Commonwealth Minister for the Aboriginal and Torres Strait Islander Commission (ATSIC). It aims to improve housing and environmental health outcomes for Indigenous Australians over the next 10 years. In particular, it aims for a better coordination of services through a whole of government approach.

#### *1.1.4 (b) Statement of Commitment to a New and Just Relationship*

This was signed by the Government of Western Australia (WA) and Aboriginal people from WA, represented by ATSIC, in 2001. The commitment involved ATSIC Regional Councils in planning, prioritising needs and decision making, with a commitment to democratic processes and structures.

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<sup>1</sup> Homeswest used to be the trading name of then Ministry of Housing. It now, however, refers only to the section of DHW concerned with public rental property.

*1.1.4 (c) Reconciliation Framework*

The Council of Australian Governments (COAG) in 2000 made a commitment to an Aboriginal Reconciliation Framework. It aims to improve programs and services for Aboriginal people.

**1.1.5 Compliance with legislation**

In performing its functions, DHW administers a variety of Acts, the most significant of which is the *Housing Act 1980*. The Inquiry is aware that some of the legislation governing DHW is currently undergoing, or has undergone, review. DHW also operates pursuant to Commonwealth legislation, including the *Housing Assistance Act 1996*. (DHW 2001)

## **2. SERVICE PROVISION BY DHW**

### **2.1 General service**

#### **2.1.1 Homeswest; Subsidised Public Rental Accommodation**

DHW was previously known as 'Homeswest'. Currently, Homeswest is the arm of DHW that provides rental housing services throughout most of the state to low income families and individuals. Rent charges are based on no more than 25 per cent of income. Aboriginal people make up about 18 per cent of all Homeswest tenants, compared to 20 per cent of all DHW customers.

Where applicants have an urgent need for accommodation and are unable to access other forms of housing, DHW can assist through its Priority Assistance Policy. This enables the applicant to access subsidised rental accommodation ahead of other applicants on the mainstream waiting list.

DHW currently owns 38,688 properties throughout the state consisting of:

- Mainstream - 35,069 (including 2,509 specifically for Aboriginal people)
- Aboriginal Villages - 1023
- Community Housing - 2596

The average waiting time for applicants is 493 days for mainstream accommodation, with applicants for Aboriginal housing waiting around 425 days. Average waiting time for applicants assisted on a priority basis is 73 days for mainstream accommodation and 61 days for Aboriginal housing. The waiting time is due to a lack of housing. (DHW Initial Submission 20 May 2002)

These are average figures, and the waiting time can vary markedly between regions. The Inquiry also notes that these figures are for people actually registered for housing with DHW, rather than those who need housing.

There is a specific need for more housing in remote communities and rural areas, which might be addressed by either the provision of more housing in total, or the reallocation of some housing resources to these regions. (Transcript of Evidence of Jody Broun 10 June 2002)

In 2000/2001, 47 units<sup>2</sup> of Aboriginal housing were completed and 42 units were commenced at a cost of \$5.357 million, most of which was spent in country areas. Minor upgrades to Aboriginal housing rental properties cost a total of \$481,202. (DHW 2001) In 2001/02 \$5.9 million had been allocated to commence 20 units of housing and complete 50 units.

During community consultations, the Inquiry was informed by Aboriginal people that obtaining housing in the private rental market was difficult because of discrimination.

*Two young Aboriginal students told the Inquiry that they were having great difficulty obtaining housing while pursuing their tertiary education. Unlike non-Aboriginal students, they had not been able to obtain a private rental property, and were waiting for Homeswest accommodation. (Community Consultation)*

This need for most Aboriginal people to rely on government provided housing is of concern. This is primarily a result of poverty, and disadvantage within the Aboriginal community, and consequently change is unlikely to be achieved within the mandate of DHW.

**49. The Inquiry finds that Aboriginal people have difficulty in obtaining private rental properties. The Inquiry strongly endorses systems designed to move Aboriginal people into home ownership and mainstream housing rather than state housing.**

**The Inquiry endorses State Homelessness Taskforce (2002) Recommendations**

1.4.4 'Examine options for incentives for private landlords to accommodate people on low incomes; and

1.4.5 'Department of Housing and Works build on the current pilot project with the Real Estate Institute of WA to enable Aboriginal people and young people to access private rental by headleasing private rental stock, underwriting potential damage and the provision of support.'

**Pending a successful evaluation in December 2002, the Inquiry would also endorse the extension of this program. Furthermore, the Inquiry endorses the Government Response (The Government's Response to the Report of the Homelessness Taskforce 2002), in exploring further options for increasing the access of low-income households to the private rental sector.**

### 2.1.2 Supported Housing Assistance Program (SHAP)

This Program aims to provide tenants with access to appropriate skills development and support to enable them to fulfil their obligations and responsibilities as tenants. It is a proactive and strategic approach to the matter of preventing homelessness, rather than merely providing housing. (DHW Initial Submission 20 May 2002)

While this program represents a positive and constructive approach, in the cases examined it appears to mitigate, rather than solve, underlying problems. Nevertheless, it has the

<sup>2</sup> A unit of housing may be a house, duplex, flat or other form of residential accommodation.

capacity to prolong a tenancy and thereby prevent or delay homelessness, which may be the best possible outcome under difficult circumstances. According to Kerry Fijac *'in at least 75 per cent of the cases we have some improvements and stabilizing of the tenancy...'* (Transcript of evidence Kerry Fijac 20 May 2002: 1251)

The state government has recently allocated an additional \$0.5 million towards SHAP. (Transcript of evidence of Kerry Fijac 20 May 2002: 1235) The overall budget next year will be about \$1.5 million. (Transcript of evidence of Kerry Fijac 20 May 2002: 1250)

**50. The Inquiry recommends, pending positive review, an extension of the SHAP program in size and scope. The Inquiry recommends that consideration be given to adding a counselling component to SHAP.**

### **2.1.3 Supported Accommodation Assistance Program**

Formal protocols between DHW and Department of Community Development (DCD) commit both departments to work together to improve the outcomes for people requiring assistance under the Supported Accommodation Assistance Program (SAAP). For DHW this means that referral processes within departments have been streamlined to allow clients requiring more urgent accommodation assistance to be assessed in a more timely manner. This initiative is particularly designed to assist people escaping family violence. SAAP is a Commonwealth-state funded program, with funding provided through DCD. (Transcript of evidence of Kerry Fijac 20 May 2002: 1259)

### **2.1.4 The Homeswest and Department Of Community Development Tenant Referral Program**

Homeswest and DCD work together with tenants who have experienced difficulties with rental arrears, poor tenancy standards, antisocial behaviour and wider social problems, with the intention of stabilising the tenancy. All tenancies, where legal action has commenced and children are involved are referred to DCD, with the intention of saving the tenancy. It is similar, although of a more specific focus to SHAP.

### **2.1.5 Community Housing Program**

The Community Housing Program (CHP) is a DHW funded program. Funds are allocated to non-profit, non-governmental organisations or local government authorities for the purchase or construction of rental housing for people on low to moderate incomes. Funds can also be used for extensions, conversions and upgrades. The community group retains all rental revenue and takes full responsibility for tenancy and property management. Capital contributions from groups are encouraged, but they are not a prerequisite for funding. This program encourages tenant involvement in housing and management. It also encourages responsibility for tenancy and property management. (DHW Initial Submission 20 May 2002)

A proportion of CHP funds are set aside to fund community sector infrastructure such as the development and delivery of training and information resources, and regional

community housing development strategies (DHW 2001). The aim is to achieve a high degree of community involvement in order to increase community 'ownership' and accountability, even if this is not always the most cost effective option initially. This is in line with the Government's new Statement of Commitment. (Transcript of evidence of Jody Broun 10 June 2002: 1556)

CHP also provides funding to build or buy crisis service premises, such as refuges and shelters. Community agencies must provide support service funding sufficient to enable them to effectively manage an appropriate level of crisis service. Such long term support funding is often more difficult to obtain than the outlay for the provision of accommodation.

## **2.2 Aboriginal Housing Board**

The Aboriginal Housing Board is established under the *Housing Act 1980* and is administered by the Aboriginal Housing and Infrastructure Unit (AHIU).

The AHB comprises 10 Aboriginal members, including four Aboriginal and Torres Strait Islander Commission (ATSIC) Commissioners, the Chairperson of the ATSIC State Advisory Committee and five state representatives, who are selected by public nomination.

The AHB's primary functions are;

- to formulate and submit policy to the Minister and DHW
- to allocate funds provided for the housing of Aboriginal people in WA
- to make recommendations concerning dwellings for Aboriginal people
- to liaise with DHW on all aspects of housing Aboriginal people.

### **2.2.1 Aboriginal Housing And Infrastructure Unit (AHIU)**

The AHIU delivers policy advice and implements programs designed by the AHB aimed at improving housing options for Aboriginal people. These programs include supporting tenants who are either applying for Homeswest tenancies or are already in tenancies, supplementing the mainstream Homeswest program with Aboriginal specific housing in urban areas and supporting Aboriginal communities by providing new housing, infrastructure, and management and maintenance programs.

Aboriginal housing programs are designed to provide added support to Aboriginal housing organisations to ensure viability and effective management, maintain and enhance support and education to Aboriginal tenants, foster Aboriginal home ownership (through the Aboriginal Home Ownership Scheme) and to look for more opportunities for joint ventures with Aboriginal groups (DHW 2002). The Inquiry strongly endorses this emphasis on capacity building among Aboriginal people. Aboriginal staff hold 70 per cent of all AHIU's positions at all levels. (DHW Initial Submission 20 May 2002)

AHIU constructs 40-60 houses per annum in remote Aboriginal Communities (Transcript of evidence of Jody Broun 10 June 2002). Houses built in towns are on freehold land owned by DHW. Houses on remote communities are on Aboriginal Lands Trust (ALT) land or reserve

land and the community itself manages that housing. (Transcript of evidence of Jody Broun 10 June 2002) Construction in remote communities goes out to tender, and will go to a project consultant architect, of which there are a sufficient number who are well trained and experienced in Aboriginal housing and associated town planning issues.

According to Jody Broun, then Executive Director Aboriginal Housing Infrastructure at DHW (Transcript of evidence of Jody Broun 10 June 2002), neither the Aboriginal Tenant Support Service nor the Tenant Support Program functions in communities, because they manage their own housing. While it is expected that communities will have their own services in place, many do not, and consequently DHW has identified a need to have housing officers in these communities. (Transcript of evidence of Jody Broun 10 June 2002)

Furthermore, inspections of vacated properties in remote communities can be done on a very ad hoc basis if there is no housing officer. There is a focus in the next 12 months on having housing officers in all regions in which AHU is involved. (Transcript of evidence of Jody Broun 10 June 2002)

### **2.2.2 Funding**

The AHU receives over \$38 million, as a combination of state and Commonwealth money.

ATSIC also provides substantial funding for Aboriginal housing, however its budgets are not provided on a state by state basis, and there has in the past been some discussion as to the total percentage spent in WA. (ATSIC 2002)

According to the DHW submission, Aboriginal communities are eligible to access a wide range of mainstream funding available through existing programs to improve their well being. Assistance to access this funding could be provided through state and Commonwealth departments. Naturally, it would be preferable that government funding arrangements were made easier and more transparent, however this does not seem likely in the foreseeable future. The Inquiry is concerned that progress in clarifying government funding arrangements is slow due to the complexity of the issue.

### **2.2.3 Management Support Program**

This program was established in 1992 to assist Aboriginal communities to address issues relating to the management, maintenance and repairs of housing stock. For decisions relating to the implementation and administration of this program, AHU liaises with other areas of DHW and external agencies. The Management Support Program (MSP) consists of two components. These are the:

- development of skills in repairs and maintenance
- development of appropriate systems and skills to enable the community to manage their houses effectively. (DHW 2002)

According to Jody Broun (Transcript of evidence of Jody Broun 10 June 2002) this program is able to restore unliveable homes for a fraction of the price of building new ones. It is not uncommon for communities to contain significant numbers of houses in need of major

repairs (DHW Initial Submission 20 May 2002, Community Housing and Infrastructure Needs Survey 2001). The MSP is consistent with the '*Statement of New Directions*' from the Housing Minister, which places much stronger emphasis on recurrent housing support for communities to manage and upgrade housing.

**51. The Inquiry supports the Management Support Program and recommends that the Department of Housing and Works consider a multifaceted approach of:**

- **increased maintenance**
- **processes to increase tenant responsibility**
- **greater provision of culturally appropriate housing to address this issue.**

Forty-five Aboriginal communities have participated in the MSP. During the last financial year, the MSP has assisted 31 Aboriginal communities, trained or employed 93 Aboriginal people and upgraded 81 community houses. Total expenditure was \$5.82 million.

Jody Broun (Transcript of evidence of Jody Broun 10 June 2002) emphasises that the program has the advantage of providing work for local communities and traineeships in particular. Formal traineeships are available with funding assistance provided through the WA Department of Training and Employment and the Commonwealth Department of Employment, Workplace Relations and Small business. She estimates that there are about 150 or more trainees going through the program annually, receiving accredited training and employment for up to six years depending on the length of the program.

According to Jody Broun (Transcript of Evidence of Jody Broun 10 June 2002) the Management Incentive Program (MIP) is in the process of being established at DHW, to help communities manage their housing after a major upgrade provided through the MSP. Funding under the MIP is to support housing management, rather than general office running costs or coordinator's wages. To date, 11 Aboriginal communities have received MIP funding, totalling \$367,673.

### **2.2.3 The Remote Area Essential Service Program**

This program provides a repair and maintenance service for power, water and wastewater systems to 71 selected remote Aboriginal Communities (DHW Initial Submission 20 May 2002). Specific funding is provided from Treasury, with a total budget in 2001/02 of \$6.95 million. The Remote Area Essential Service Program (RAESP) is implemented through the AHIU in conjunction with ATSIC under a joint program management arrangement.

Regional Service Providers visit each community monthly to check water quality, and every six weeks to carry out routine services to the power, water and wastewater systems. They also provide an emergency call out service to ensure communities are not left without essential services for any length of time. (DHW 2001)

The RAESP training program is a community based training and employment initiative designed to increase community participation in the project by providing paid employment at the end of the training program. Trainees are selected from nominated communities (Ministry of Housing 2002). The traineeship is nationally accredited, which means that the



qualifications can be transported within Australia. It contains a 'hands-on' element and is focused on specific community needs and utilises community-based equipment. RAESP aims to increase community participation by providing paid employment to Aboriginal trainees from communities when they have completed local RAESP training. As a result, the RAESP does not suit all communities, particularly those where most residents are elderly, and do not wish to pursue traineeships.

Jody Broun stated that the program has been successful, achieving a plateauing of maintenance costs and reducing the regularity of breakdowns. (Transcript of evidence of Jody Broun 10 June 2002)

**52. The Inquiry endorses capacity building in Aboriginal Communities and supports programs, including the Remote Area Essential Services Program and Management Support Program, which foster capacity building.**

#### **2.2.4 The Town Reserve Regularisation Program**

This is a coordinated government response, funded by DHW and ATSIC, aiming to regularise all essential and municipal services (power, water, waste water, roads and street lighting) to town reserve communities in WA. The long-term objective of The Town Reserve Regularisation Program (TRRP) is to transfer responsibility for 'services infrastructure' to relevant utilities or local authorities. (DHW Initial Submission 20 May 2002)

#### **2.2.6 Aboriginal Community Strategic Investment Program**

Aboriginal Community Strategic Investment Program (ACSIP) aims to ensure that remote Aboriginal communities have access to essential, municipal and administrative services of comparable standards to other similarly sized mainstream WA towns. The AHU interacts with Finance and Contract Management, the WA State Treasury Department, ATSIC and various towns and relevant communities to facilitate this program. A particular goal of the ACSIP is to increase the involvement of local governments in delivering municipal services to Aboriginal communities.

The three primary functions of the program are :

- Advisory – the provision of advice to communities, government and other stakeholders
- Coordination – across-government coordination of programs, policies and resources
- Funding – provision of capital and recurrent funds for selected projects. (Ministry of Housing 2002)

ACSIP is designed for communities that require assistance with administration and governance. The program focuses on increasing local government involvement in the delivery of municipal services, improving community management and administration and progressing the normalisation of power, water and sewerage delivery (Ministry of Housing 2002). According to Jody Broun (Transcript of evidence of Jody Broun 10 June 2002), ACSIP is generally used in conjunction with the MSP, if the construction of new housing is warranted.

The program has a budget of \$3 million per annum, but can also draw on funds from other agencies, such as ATSIC or the Lotteries Commission. As the program in itself is designed to assist a community to identify and address its own priorities, the program will also help communities to access or apply for funds to address their needs (Transcript of evidence of Jody Broun of 10 June 2002). The state government committed \$29 million to ACSIP over eight years from 1996. Total expenditure in 2000/01 was \$11 million.

ACSIP assists communities to identify their own priorities, such as a demand for recreational facilities or women's refuges, safe houses and halfway houses. Often, however, such facilities are not constructed because the support funds for their ongoing operating costs cannot not be obtained. (Transcript of evidence of Jody Broun of 10 June 2002)

According to Jody Broun's own experience (Transcript of evidence of Jody Broun of 10 June 2002), community priorities often centre on recreational facilities, rather than, for example, women's refuges. The Inquiry heard evidence that supported this view in Community Consultations and has found that both women's and youth issues can be marginalised at community and regional levels.

**53. The Inquiry recommends a broader whole of community consultation approach to housing and infrastructure provision in communities to be conducted in coordination with Aboriginal and Torres Strait Islander Commission Regional and Community plans.**

### **2.2.7 Community Construction Program**

The main objective of this program is to provide for the design and construction of new housing and selective maintenance within Aboriginal communities with limited opportunities for housing assistance. A large proportion of the housing projects are constructed in communities that receive funding through ATSIC. Communities have major input into the design and siting of their housing. There are also training and employment opportunities for community members associated with the construction, repair and maintenance of buildings (Ministry of Housing 2002). In 2000/01, construction began on 31 homes and 24 were completed and occupied. Total expenditure was \$3.908 million, including \$832,333 for housing maintenance. (DHW 2001)

In 2001/02 64 accommodation units will be built, and training and employment opportunities provided for community members.

During the year, DHW with ATSIC carried out the 'Fixing Houses for Better Health' Program, which targets urgent maintenance to avert life or health threatening problems. The work mainly rectified plumbing and electrical faults, and was delivered to 200 houses in Yunggora, Junjuwa, Bayulu and Looma. (DHW 2001)

### **2.2.8 Aboriginal Urban Construction Program**

This program provides for the construction and purchase of Aboriginal rental housing properties in urban areas throughout WA. These properties are managed through the Homeswest Business Unit.

While the names of Aboriginal applicants are placed on the mainstream waiting list with all other customers when they apply for rental accommodation, they are able to move ahead of the mainstream list if one of the additional homes allocated for Aboriginal housing becomes available in the area they have nominated.

The AUCP is strongly influenced by the number of Aboriginal applicants on the DHW waiting list for housing, however other factors, such as the lack of access to private rental are also considered (Ministry of Housing 2002). The DHW builds this housing, referred to as Fund 6 housing, in metropolitan and rural areas. The Fund 6 Urban Construction program budget is approximately \$6.5 million per financial year. (DHW 2001)

### **2.2.9 Aboriginal Customer Support Officers (ACS Officers) and Tenant Support Program**

Aboriginal Customer Support Officers (ACS Officers) assist Aboriginal families at risk of losing tenancies, assist tenants to manage antisocial behaviour, advise tenants on Homeswest policies and procedures and assist tenants to access appropriate external assistance. Accommodation managers must notify ACS Officers when a termination notice is issued to an Aboriginal person or family to assess the action and consequences.

This program is not restricted to tenants in government housing. Aboriginal people in private tenancies can also access the service. It is, however, only available in the metropolitan area. A similar service is provided in some country areas by the Aboriginal Tenancy Support Service. (DHW Initial Submission 20 May 2002)

### **2.2.10 The Aboriginal Tenants Support Service**

The Aboriginal Tenants Support Service (ATSS) program provides culturally appropriate support and information to Aboriginal tenants or prospective tenants in regional areas of WA, to help them understand their tenant rights and responsibilities, obtain housing and maintain their tenancies. The AHU provides funding to six community organisations to offer an ATSS in country areas. These services are located around the state, including Kununnura, Wyndham, Halls Creek, Carnarvon, Narrogin, Albany, Bunbury and Port Hedland.

The ATSS has been in progress for less than 12 months. At the conclusion of a full year of operation, it will be reviewed and pending a successful outcome, expanded to other locations.

Neither the ATSS nor the Tenant Support Program would deal with issues such as family violence in other than a housing role, as that is not their area of expertise. ACS officers may assist with a priority transfer or direct their customers to other agencies as appropriate, however, there are no particular protocols. DHW is in the process of developing guidelines for both ACS officers and Aboriginal Tenancy Support (ATS) officers, although they are not yet complete. (Transcript of evidence of Jody Broun of 10 June 2002)

### **2.2.11 Aboriginal Housing Forums (AHF)**

Officers from the AHU conduct forums throughout the state to provide an opportunity for Aboriginal community organisations and individuals to raise concerns and have input into

issues relating to public housing. Forums also serve as a vehicle for the DHW to inform individuals and communities about current and prospective public housing policies, products and programs.

This program aims to involve Aboriginal people in the development of DHW policy and broach sensitive issues in a safe environment. (DHW Initial Submission 20 May 2002)

### **2.2.12 Environmental Health Package**

The Environmental Health Package (EHP) is a 'one-off' program designed to alleviate health problems in selected remote Aboriginal Communities. Key initiatives include sealing internal roads for dust abatement and greening communities with reticulation and planting. The program also provides recreational facilities, including swimming pools and basketball courts, primarily for Aboriginal youth. This is done in conjunction with ATSIC Regional and Community plans. (DHW Initial Submission 20 May 2002)

The installation of swimming pools in remote communities is the best publicised initiative of the EHP. Pools have been installed at four communities under the EHP. Other communities already had this facility.

The pools have contributed to significant gains in child health (Transcript of evidence of Jody Broun 10 June 2002) and the 'No School, No Pool' policy, which makes school attendance a condition of entry to pools built under the EHP has significantly improved school attendance (Ministry of Housing 2002). Some communities have refused pools for fears of child safety and an inability to supervise pool use, despite the safety provisions (Transcript of evidence of Jody Broun 10 June 2002). Each pool has a lifesaver employed for six months of the year, and a caretaker for the other six months. This is outsourced to the Royal Lifesaving Society, however the long term aim is of having the community take over management. The current system of direct management by AHU is quite expensive; about \$120-150,000 per pool.

The EHP is jointly funded by DHW, Main Roads WA, DOE, ALT, Healthways, the Lotteries Commission and Wesfarmers. (DHW Initial Submission 20 May 2002)

**54. Following the evaluation of the pool installation program in remote communities, the Inquiry recommends that the program be expanded. The Inquiry suggests that a comprehensive plan for the building of recreational infrastructure will assist in reducing family violence and child abuse.**

### **2.2.13 Aboriginal Home Ownership Scheme**

The Aboriginal Home Ownership Scheme (AHOS) is run by DHW through Keystart and designed to assist Aboriginal people into homeownership. Loans are provided on a minimum \$1000 deposit and an interest rate that commences at 6.5 per cent. A shared equity option is available with DHW purchasing a 30 per cent share in the property, which may be bought out at a later date.

In the financial year 2000/01, 60 loans totalling \$4 million were provided, and since the inception of the scheme, 300 loans have been made, totalling \$26 million. (Ministry of Housing 2001)

**55. The Inquiry supports the maintenance of the Aboriginal Home Ownership Program to encourage home ownership by Aboriginal people.**

### **2.3 Responding to underlying factors**

A lack of adequate housing contributes significantly to the complex and interrelated difficulties experienced by Aboriginal people.

Aboriginal people make up 2.3 per cent of the Western Australian population, but represent 18 per cent of people in public rental housing and 34 per cent of people in SAAP-supported accommodation services (State Homelessness Taskforce 2002). This dependence on public housing and services limits the choices of Aboriginal people in their housing options and has consequences for other aspects of Aboriginal society, such as the maintenance of social support networks.

Aboriginal people represent a large proportion of the hidden homeless, in temporary accommodation or staying with relatives. Overcrowding in particular exacerbates health problems, increases the likelihood of damage to property leading to debt and eviction, and creates social conditions conducive to family violence and child abuse. Many Aboriginal people in remote communities in particular are in insecure or unsafe accommodation. (State Homelessness Taskforce 2002)

A lack of infrastructure in remote communities and amenities such as sewerage, roads and recreational facilities, similarly contributes to poor health and a lower quality of life for Aboriginal people.

On the 5 July 2002 an Indigenous Housing Agreement was signed by the Minister for Housing and Works, Tom Stephens and Mr Geoff Clark, Chairperson of ATSIC. The Commonwealth government will sign the document at a later date. (ATSIC Initial Submission 12 July 2002: Attachment One)

Under this 'Agreement for the Provision of Housing and Related Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia,' the state government will provide additional funding of \$6.289 million over four years, increasing the state's contribution to an average of \$17 million per financial year over the life of the agreement. This agreement will assist in addressing indigenous housing issues in WA. It also includes the coordination of Aboriginal housing and related infrastructure projects, and utilises the expertise of the AHU to program manage all Aboriginal Housing and related infrastructure projects in the state. (DHW 2002a)

### **2.4 Responding to family violence and child abuse (overview)**

DHW has a role in responding to both family violence and child abuse by rehousing or relocating victims or perpetrators. DHW has stated that it considers responding to family violence a priority. (DHW Initial Submission 20 May 2002)

DHW responds to family violence and child abuse through its Priority Assistance Policy (PAP), which accelerates the provision of new housing to allow victims to move away from their perpetrators.

Both these processes, discussed at length below, work well within their particular guidelines. Neither however completely address the complex and interrelated issues faced by some Aboriginal people.

DHW has difficulty in providing housing for tenants who have issues in maintaining their tenancies and who are also the victims of family violence. DHW also finds that victims of family violence who repeatedly allow perpetrators to move into their new tenancies are challenging to house.

Rehousing victims of child abuse and family violence in remote communities can be problematic. It is impossible to rehouse a victim a safe distance from a perpetrator in a small community. Anecdotal evidence and community consultations have revealed that it is generally the victim and victim's family who leave the community.

In community consultations, the Inquiry noted that in at least two separate cases, Aboriginal child victims of sexual abuse from regional and remote communities had to be relocated with their families to other parts of the state. On both occasions the perpetrators remained in their communities, enjoying social acceptance and, in one case, considerable authority. For one child, criminal charges were withdrawn following threats of violence to the victim's family, for the other charges were pressed, but the perpetrator received a suspended sentence.

Research indicates that because of low reporting rates among Aboriginal people, convictions occur in only a small number of cases of family violence and child abuse. Particularly if formal charges have not been made, or an alleged assailant is not convicted, DHW has no recourse to move the perpetrator. It should also be noted that perpetrators of violence and child abuse might not be living in social housing, in which case DHW would have no ability to relocate them. Consequently, the victim must be rehoused in another community, losing the support of family and an established social network.

### **3. ORGANISATIONAL ISSUES**

#### **3.1 Planning**

The primary planning body within DHW is the Office of Housing Policy (OHP), which provides independent policy advice on strategic housing issues to the Minister, and the Director General of DHW.

It is responsible for establishing a clear strategic direction for the future of housing in WA through the;

- Formulation of State Housing Strategy – a strategic plan for housing in the state
- Development of options for the next Commonwealth-State Housing Agreement
- Participation in Future Perth – a strategic plan for the development of Perth.

It also provides a focus for the coordination of the roles and contributions of government, industry and community, as stakeholders of the state's housing agenda. The OHP initiates and evaluates research into housing, assists DHW to work collaboratively with other government, industry and non-government bodies and provides a contact point for interest groups to contribute to government policy. (DHW 2002)

## 3.2 Policy and procedures

### 3.2.1 Priority Assistance Policy (PAP)

Homeswest generally allocates housing to applicants in the order in which they apply. Applicants with an urgent housing need may make an application for assistance on a priority basis. Priority accommodation will be allocated as soon as possible after an application has been approved, depending on the special needs of the applicant.

While every effort is made to locate accommodation for a priority applicant in their most preferred location and of their preferred type, this is not always possible. Applicants may be made an offer of accommodation which fulfils their eligibility criteria and needs, but is outside their zone of choice. This will usually be in another suburb as close as possible to the general locality requested. An applicant declining such an offer without a valid reason will be removed from the priority list.

There are some locations however, particularly in country areas, which experience critical demand and which do not have nearby areas to serve as an alternative. The allocation of priority housing in such areas is extremely limited and approval for priority assistance is granted only to those applicants able to substantiate their claim to having the most critical housing need. For applicants declined priority assistance all available options are examined, including the possibility of accommodation in other regions and branches. (DHW Initial Submission 20 May 2002)

#### *3.2.1(a) Assessment of a priority application*

- Examples of situations that may contribute to an urgent housing need include medical conditions that are caused or aggravated by an applicant's existing housing, family violence, racial harassment, matters associated with child abuse and accommodation to take a child out of state care.
- An applicant for priority assistance must be eligible for assistance in relation to all Homeswest's eligibility criteria. The past tenancy history of an applicant, including any debt to Homeswest, is also a factor in assessing priority assistance. Applicants with a poor tenancy history, including debts, problems with maintenance and antisocial behaviour will have their applications referred to the Regional Manager, Assistant Regional Manager, Manager Rental Service, Manager Customer Service or Area Manager for a decision under the Discretionary Decision Making Policy. They may be refused both priority and 'wait turn' assistance.
- Applications for priority assistance must be accompanied by documentary proof of claims of urgent housing need. This may include medical or paramedical reports detailing health conditions and reasons for the unsuitability of present accommodation, support letters from community or government agencies, and police reports.

- Applicants for priority assistance must be interviewed as soon as possible by a Homeswest Officer, and a decision must be made within two working days as to their eligibility. They will be offered accommodation as soon as possible if their priority status is approved. If no valid offer of accommodation has been made after three months, applicants will have their application reviewed to determine if their needs are still valid.
- In assessing an applicant's priority housing need, consideration is given to other housing alternatives. In some situations a DHW Housing Access Loan (HAL) to assist in securing private rental premises may be considered as an alternative option. Other options which may be considered include sharing with friends or relatives while awaiting an offer of accommodation. Applicants listed on a priority basis and who make other housing arrangements while awaiting an offer of accommodation will have their circumstances reassessed for retention on the priority list. Applicants receiving assistance through SAAP, will be given every consideration for a priority listing for rental housing and if already listed under priority criteria will retain that listing.
- It should be recognised that priority assistance is not crisis accommodation. People requiring immediate help will be given emergency accommodation if it is available. Otherwise, Homeswest staff will assist them to locate agencies offering crisis accommodation. Such individuals may, if required, also apply for priority assistance in the same manner as all other priority applicants.

DHW clearly states that it does not provide crisis accommodation. Priority Assistance permanently rehuses individuals who have a more urgent need than the general wait list can accommodate. Crisis accommodation of various types is provided by a variety of other government organisations and non-government organisations.

PAP appears to function well except when it touches upon one of the most significant issues for Homeswest generally; assisting customers who have significant debt, exhibited antisocial behaviour or poor property standards on a regular basis and are in other ways poor tenants. Lifestyle factors very often result in such individuals suffering abuse and family violence, poor health and homelessness. These individuals may or may not have already undergone tenancy support programs, such as those discussed above.

As Homeswest is obliged to provide public housing from a limited pool of funds, in order to make best use of that capital, it may not house individuals with poor tenancy records regardless of other factors. In some circumstances, under the Discretionary Decision Making Policy, exemptions may be granted, but these cannot be on a regular basis. (DHW Initial Submission 20 May 2002)



**56. The Inquiry finds that there is a need to accelerate the provision of emergency family accommodation suitable for residency of up to three months. The Inquiry also notes that the government is providing \$1 million over the next four years to assist people directly into stable accommodation by by-passing crisis accommodation. The Inquiry notes that this issue has also been partly addressed by the Homelessness Taskforce in Recommendation 1.4.2,**

*'Review and implement changes to transitional accommodation provided through the Crisis Accommodation Program to enable the tenant to take the lease and a replacement property provided'*

**and supports this recommendation. The Inquiry finds that there is an area of need for individuals between the provision of emergency accommodation and the provision of Priority Assistance Housing.**

### 3.2.2 Domestic and Family Violence Policy

DHW has a comprehensive Domestic and Family Violence Policy (DFVP). The DHW indicates that responding to family violence is considered a priority, and every effort is made to assist individuals involved.

The DFVP of DHW is formulated on the basis of a permanent separation of previously cohabiting partners, and a requirement for the ongoing protection of the victimised party. (DHW Initial Submission 20 May 2002)

The Inquiry notes that this is inconsistent with the pattern of family violence commonly seen in Aboriginal households, where women often leave their partners following particular episodes of violence, which may be linked to substance abuse. They may seek Western Australian Police Service (WAPS) assistance and a Violence Restraining Order at this time. They may, or may not, intend to separate from their partner on a long term basis.

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*He was banging on the door in the middle of the night. The Police had to remove him ... I got a Restraining Order, but I took him back out of fear.*  
(Aboriginal woman)

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If the couple reconcile and resume co-habitation, together or individually they may be removed from the Priority Assistance list and subsequent attempts to obtain Priority Assistance through the DFVP are less sympathetically received. It is not uncommon for individuals to be transferred as a result of family violence, and for DHW to subsequently find that the perpetrator is in the new household. (Transcript of evidence of Kerry Fijac 20 May 2002)

This is evident in one particular case where a violent partner damaged a tenancy held in his de facto's name on more than one occasion. While the offending individual admitted liability, no compensation for damages was made. Both victim and de facto continued to cohabit sporadically and subsequent housing was refused on the grounds of debt and poor tenancy.

DHW has a requirement for corroborating evidence of family violence. Some effort has been made to broaden the category of evidence of family violence to include professional agencies, doctors, social workers, and family and friends of the victim. While some families do appear to use claims of violence as a method of facilitating moving house, failure to provide evidence is usually only a small part of an overall problem of disorganisation, debt and continued cohabitation with the perpetrator.

Application of the DFVP, particularly in regard to Priority Assistance, can be restricted in remote and rural areas where accommodation supplies may be limited. Alternative housing may not be available, and cannot be provided both within the same community and at a distance from the perpetrator.

### **3.2.4 Cultural Diversity Policy**

Homeswest recognises that a number of applicants and tenants come from backgrounds which have differing cultural and sometimes religious requirements from the 'mainstream' that may affect their housing needs.

While Homeswest recognises cultural and religious needs and will make every endeavour to meet them, DHW's ability to assist will depend largely on the amount of suitable housing stock in the area required by the applicant.

Approximately 15 per cent of new applicants for Homeswest housing included an occupant who is of Aboriginal and Torres Strait Islander (ATSI) descent. One of the major requirements identified for this group is larger accommodation, specifically 4 and 5 bedroom houses. Homeswest also uses other methods of housing extended families, such as adjoining duplex or medium density housing and the provision of granny flat accommodation.

The Policy also states that Aboriginal customers will be served by Aboriginal employees where one is employed in the office concerned, on request. (DHW Initial Submission 20 May 2002)

The Aboriginal Cultural Awareness Course is mandatory for all staff dealing with customers and all employees must do the 'Focus on Racism' Course (Transcript of evidence of Kerry Fijac 20 May 2002). Retraining occurs every two years. The Inquiry supports the extension and enhancement of Cross Cultural Training and Awareness among DHW officers, particularly those engaged in customer service.

**57. The Inquiry recommends that Department of Housing and Works increases the scope and frequency of its Aboriginal Cultural Awareness Course for all staff dealing with customers. Specifically, the Inquiry recommends that consideration be given to regular up-dating of the course, increasing regionally specific content and understanding of the extended family in Aboriginal society.**

### **3.3 Human Resource issues**

#### **3.3.1 Government Employees Housing Authority**

Government Employees Housing Authority (GEHA) is the Western Australian Government agency responsible for providing housing for employees of most State Government agencies in all parts of WA apart from the Perth Metropolitan Area, Mandurah and Bunbury. This includes housing for some public servants in remote Aboriginal Communities. (DHW 2002)

#### **3.3.2 Aboriginal Police Liaison Officers**

DHW, through the GEHA is working with WAPS to provide accommodation for Aboriginal Police Liaison Officers (APLOs) in a number of communities over the next three years. If WAPS make a commitment to providing a service in remote communities, housing will be provided. (Transcript of evidence of Jody Broun 10 June 2002)

### **3.4 Aboriginal Housing and Infrastructure Unit participation in interagency committees**

The Aboriginal Housing and Infrastructure Unit (AHIU) participates in various interagency committees, specifically;

- The Environmental Health Needs Coordinating Committee (EHNCC)
- The Indigenous Family Program (IFP). This program has been extremely successful in achieving ongoing tenancies for families with tenancy problems and is a good example of interagency collaboration. (Transcript Evidence of Kerry Fijac 20 May 2002)
- The Halls Creek Task Force
- The Roebourne Enhancement Scheme
- Aboriginal Cyclical Offending Program
- Strong Families Program (SFP). This program operates under Safer WA and is being piloted in Albany and Midland. It involves intersectorial collaboration in dealing with families including Homeswest clients who are having difficulties in the community. According to Kerry Fijac (Transcript of evidence of Kerry Fijac 20 May 2002) anecdotal evidence suggests that the pilot of this program has been more successful in Albany than Midland. She believes that this may be due to a more stable staff base of all public sector agencies in Albany.

### **3.5 State Homelessness Taskforce (Taskforce)**

The Taskforce, while not specifically focused on Aboriginal people, has identified many areas of concern also noted by the Inquiry. The Inquiry endorses the *Government's Response to the Report of the Homelessness Taskforce (2002)*.

In particular, the Inquiry supports the government's response to taskforce recommendations 1.1.1 and 1.1.2 to develop a *'State Housing Strategy to include the Development and Retention of*

*Affordable Housing.*' The Inquiry notes that this recognises the particular risks of homelessness among Aboriginal people and the severe overcrowding homelessness causes among Aboriginal people in rural and remote areas of the state.

The Inquiry also believes that Government Response 1.2 *'Increase Government Funding for Social Housing,'* which will increase the overall stock of public housing, and provide funds committed to improving the housing conditions of Indigenous people in remote communities, will significantly improve the living conditions of Aboriginal people.

Government Response 1.3 *'Broaden Opportunities for Increasing the Amount, Durability and Type of Affordable Housing'* is focused particularly on Aboriginal housing needs through building programs in remote communities and increasing the self management of community housing by Indigenous groups. This also receives the endorsement of the Inquiry.

Under Government Response 1.4 *'Optimise the Access and Use of Existing Housing for People on Low Incomes,'* in addition to general improvements to existing mechanisms, such as increasing bond assistance, the DHW has established a pilot project with the Real Estate Institute of WA (REIWA) to assist Aboriginal families into private sector rental accommodation. DHW will underwrite any rent loss or property damage and provide additional support to these tenants where appropriate. The Inquiry considers this a very promising future direction, with the double benefit of assisting Aboriginal people into housing, and introducing Aboriginal people into the mainstream private sector.

The Inquiry also supports the Government Response to Taskforce Recommendation 2.1.3 *'Develop practical in home support services to assist people in gaining the skills to manage in a home. These services to be developed with the Aboriginal communities and migrant communities where appropriate.'* The Inquiry notes that DCD will work in conjunction with DHW to provide these services.

The Inquiry received specific requests from Aboriginal people for such a program in community consultations. Jody Broun informed the Inquiry that the AHU is having ongoing discussions with DCD to provide a joint service of this type, to respond to this identified need. (Transcript of evidence of Jody Broun 10 June 2002)

A lot of people don't want to use the old homemaker terminology, but it has been raised by a lot of communities and in a lot of forums that...it is a priority to have something similar to a homemaker program put back in place (Transcript of evidence of Jody Broun 10 June 2002: 1560)

**58. The Inquiry finds that there is a need for a program dedicated to the lifestyle skills appropriate to maintaining a household. The Inquiry endorses the ongoing discussions between the Aboriginal Housing Infrastructure Unit and the Department for Community Development to provide a joint service to this end. The Inquiry endorses the Government Response to the Homelessness Taskforce, Recommendation 2.1.3,**

*'Develop practical home support services to assist people in gaining the skills to manage in a home. These services to be developed with the Aboriginal communities and migrant communities where appropriate.'*

The Inquiry has found that the implementation of the Government Response to Taskforce Recommendation 2.1.7 *'Increase the amount of financial counselling available to people at risk of homelessness'* will significantly assist Aboriginal people to avoid homelessness. The Inquiry also supports the Government Response to Taskforce Recommendation 2.1.8 *'Develop a system to monitor evictions due to anti social behaviour to identify where they have been racially motivated.'*

The Inquiry has found a need among Aboriginal people for emergency supported accommodation and consequently concurs with the four Taskforce Recommendations listed under 2.4.1 *'Emergency Supported Accommodation.'* The Inquiry supports the Government Responses.

The five Taskforce Recommendations listed under 2.4.2 *'Developing services that assist people into long term accommodation with support,'* including the maintenance of the Homelessness Helpline, have also been identified as significant areas by the Inquiry. The Inquiry has found that the Homelessness Helpline is a particularly important resource for Aboriginal people.

The Inquiry notes Taskforce Recommendation 2.4.3.1 *'Provide additional sobering up shelters for Indigenous people in Perth City and other regional areas where such services are not available,'* and the Government Response. The Inquiry has found that this will address a need among Aboriginal people, as will the Government Response to Taskforce Recommendation 2.4.3.2 *'Increase in services working with the children of people who are homeless as a result of domestic violence and other crises.'*

The Inquiry is also aware that debt is a significant contributor to the homelessness of Aboriginal people and consequently supports the Taskforce Recommendation 2.4.4.2 *'50 per cent bad debt discount scheme implemented to ensure connection of essential services where a person is moving from homelessness into accommodation.'*

**59. The Inquiry endorses the findings of the Homelessness Taskforce and the Government Response to the Report of the Homelessness Taskforce, 'Putting People First.' The Inquiry recommends that priority be given to the provision of additional emergency accommodation.**

## **4. ANALYSIS OF SERVICE PROVISION**

### **4.1 Strengths**

The housing of Aboriginal people has been the subject of extensive public interest, resulting in the 'Homelessness Taskforce' and subsequent 'Government Response to the Homelessness Taskforce,' and the recent 'Agreement for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia July 2002-June 2007.' (ATSIC Initial Submission 12 July 2002)

While sufficient time has not yet elapsed for these major initiatives to be implemented to any serious degree, the Inquiry is optimistic that mechanisms are being established to ensure

significant improvements in Aboriginal housing and infrastructure in the near future.

The Inquiry also notes that while the provision of services and infrastructure to remote communities falls below the national standards, strategies to remedy this have begun. It is recognised that addressing this deficit is a long-term project. (Community Housing and Infrastructure Needs Survey 2001)

## 4.2 Challenges

The issues faced in housing Aboriginal people are diverse and interrelated.

In remote and some regional areas the primary issue is a lack of sufficient housing and associated services, exacerbated by poverty and geographic isolation. The resulting and inevitable overcrowding leads to increased wear and maintenance needs, which are often not met, health problems and further overcrowding as homes become unlivable.

The Commonwealth government is pushing for mainstream programs to pick up the urban Aboriginal housing need, and directing their specific program funds to rural remote communities (Transcript of evidence of Jody Broun 10 June 2002). In urban areas, Aboriginal people have difficulty obtaining housing in the private rental market because of poverty and discrimination, even though only a very small proportion of Aboriginal families could be described as problematic tenants.

**60. The Inquiry finds that it is desirable for Aboriginal people in the long term to be less dependent on government services and to be able to access mainstream private rental and home ownership in the same proportion as the general population, thereby increasing self determination and choice.**

**61. The Inquiry observes that the particular cultural needs of some Aboriginal people are not met by mainstream style housing, and that culturally appropriate housing can diminish overcrowding and maintenance.**

The Inquiry has also observed that there are some practical and logistic limitations on the speed with which housing can be provided. Other service providers need to be aware of these limitations and tailor their assistance accordingly. DHW has stated that they do not provide crisis accommodation, however through facilities such as the Homelessness Helpline and the PAP they coordinate with other government agencies and non-government organisations to provide shelter for at risk people.

**62. The Inquiry finds that the issue of providing crisis care, crisis accommodation and permanent accommodation requires a whole of government approach.**

## 4.3 Future directions

The Inquiry suggests Government Housing Priorities for Aboriginal people as follows:

- Sufficient culturally appropriate housing in remote areas
- Systems designed to move Aboriginal people into home ownership and mainstream housing, rather than state housing

## Chapter 8 Housing and infrastructure services

- Systems to support Aboriginal people who are unable to maintain tenancies
- Support services to assist Aboriginal people in gaining the practical skills to manage a home
- Housing to support the care of children and young people whose parents are unable to care for them

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## LEGISLATION

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Housing Act 1980 (WA)

Public Sector Management Act 1994 (WA)

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## Policing

### CHAPTER 9

## SECTION 9

*This chapter provides a brief outline of the policing services provided that relate to family violence and child abuse, particularly in regard to Aboriginal communities.*







## 1. OVERVIEW OF SERVICE PROVIDERS

The Western Australia Police Service ('WAPS') provides the vast majority of 'policing services' in Western Australia (WA). A very broad interpretation of the term 'policing' would include local Night Patrol groups and the Warden system as providers of policing services.

### 1.1 Western Australia Police Service

#### 1.1.1 Broad intent and mission statement

WAPS was established under the *Police Act 1829*, which remains the fundamental piece of legislation that governs the operation of WAPS. WAPS is also governed by the *Public Sector Management Act 1994* and—whilst it is not an atypical public sector agency—as a department it is a part of the public sector and as such falls within the Terms of Reference of the Inquiry.

WAPS's response to the Inquiry was submitted by Acting Assistant Commissioner Steve Robbins, Traffic and Operations Support on 8 March 2002 ('the WAPS Submission'). Acting Assistant Commissioner Robbins then spoke to this submission before the Inquiry on 26 March 2002. The WAPS Submission addresses the key areas of agency structure and human resources, policies on family and domestic violence, policies and management of child abuse investigations, strategic initiatives and the police investigation into the death of Susan Taylor. Additional submissions were made by WAPS, as well as a Final Submission on 12 July 2002 and Closing Submissions on 23 July 2002.

WAPS describes itself as the only 24-hour service provided in Western Australia. (Transcript of Evidence by John Hart 26 March 2002) The Inquiry notes the presence of other service providers with 24-hour service, but accept that often WAPS are the 'first response' point for the public. Acting Assistant Commissioner Robbins acknowledges this means that issues which may be best dealt with outside the criminal justice system are left to police officers to deal with pursuant to their statutory capacity and role. (Transcript of Evidence by SJ Robbins 26 March 2002)

#### 1.1.2 Structure and management

WAPS was established in 1829 and retains a similar 'paramilitary structure' today as it had then. The service is under the command of the Commissioner of Police, Mr Barry Matthews, and is broadly structured into two main streams comprising frontline policing portfolios and support to frontline policing portfolios.

WAPS currently operates on a devolved model of power, which means operational policing is principally delivered through regional structures that comprise a number of police districts and, within those districts, police stations. There are also specialist portfolios that provide a specialist response to complaints. These specialist portfolios are of particular

interest to the Inquiry, specifically the Child Abuse Investigation Unit, the Aboriginal Affairs Directorate, and the Domestic Violence Policy Unit. (WAPS Initial Submission 6 March 2002)

#### *1.1.2 (a) The 'Delta Program'*

The Delta Program is the key strategy for policing in WA since it was launched on 16 September 1994. The program is intended to manage the WAPS style, standards, system and structures. The implementation of the Delta Program is an ongoing process. In particular, the Delta Program focussed on the professional standards portfolio and a number of strategies have been introduced to improve things such as management ethos. Another example of particular interest to the Inquiry is the decision making process for police stations located in remote areas. Since its implementation, the Delta Program has put in place a structure where the officer-in charge of a police station or unit can communicate directly with their superintendent, who is then in a position to make a decision. This enables WAPS to ensure decision-making for local issues can be undertaken quickly. (WAPS Initial Submission 6 March 2002)

#### **1.1.3 Staff, budget and office locations**

The structure comprises three regions, fourteen districts and 162 stations. WAPS is one of the main government service providers in remote Aboriginal communities. Indeed, it also has responsibility to be the first government response to many reports of family violence and child abuse. In the 2001-2002 budget papers, WAPS has been allocated recurrent funding of \$468 million. (WAPS Initial Submission 6 March 2002)

One of the key elements of the Delta Program was to direct significant amounts of resources to pro-active policing, such as the Aboriginal Police Liaison Scheme and school-based WAPS officers. This area of expenditure represented approximately 40 per cent of the budget for WAPS in the 2001-2002 financial year. (WAPS Initial Submission 6 March 2002)

## **1.2 Community patrols**

A number of Aboriginal communities and community groups drew the Inquiry's attention to the success of community based 'patrols'. The patrol members, usually volunteers, liaise with WAPS, intervene in conflict of a minor nature, assist people under the influence of alcohol or drugs and provide information to WAPS about dealing with potential offenders. Some communities perceived patrols to be essential to their operation of the community. A well-known patrol is the Nyoongar Patrol, which operates in the metropolitan area and is funded by the government to provide a range of services. Acting Assistant Commissioner Robbins keenly supported the use of patrols as an adjunct to the service provided by WAPS, although he did note that problems may arise where there was a conflict between members of the patrol and members of the community. (Transcript of Evidence by SJ Robbins 26 March 2002)

### 1.3 Wardens

Wardens are empowered pursuant to local by-laws made under *Aboriginal Communities Act 1989* to enforce those by-laws but have no generalised policing powers. Wardens are usually elected and act in a voluntary capacity. The role of Warden in many communities is performed by Elders of that community'. Wardens are valuable to WAPS insofar as they provide patrols in communities, in particular remote communities, and address some forms of anti-social behaviour. In one example, the Wardens in a community patrol the area and identify substance abusers who may be dealt with before a serious offence is committed. WAPS assist by removing offending and disruptive substance abusers from the community as a break from the patterns forming in the community. The role of Wardens is discussed in Chapter 12.

### 1.4 Conclusion

A successful Warden system or patrol is reliant on the assistance and support of the community and operates in a different role to WAPS officers. The Inquiry notes that in some instances Wardens systems and patrols are asked to—or attempt to—tackle tasks beyond their resources and competency. It also notes that they are not an alternative to appropriate WAPS resources.

## 2. SERVICE PROVISION BY WAPS

### 2.1 General overview

WAPS provides policing services across WA through the district model, mentioned at 1.1.2 of this chapter. WAPS provide a direct service response to reports of child abuse and family violence, indeed the provision of that service is part of its 'core business'.

In his evidence, Acting Assistant Commissioner Robbins stated that Aboriginal people were over-represented in the justice system and, indeed, in contact with WAPS—both as victims as well as perpetrators. (Transcript of Evidence by SJ Robbins 26 March 2002) This over-representation was acknowledged as a key issue for WAPS to tackle through the implementation of its '2001–06 Strategic Plan', in particular with regard to proactive policing and crime prevention. (WAPS Initial Submission 8 March 2002)

### 2.2 Responding to family violence

#### 2.2.1 Prevalence

The WAPS Submission highlights the fact that domestic violence is a significant and widespread problem in Australia. It provides an exposition on the numerous statistics available on the extent of the problem and the needs of women experiencing domestic violence. In particular the WAPS Submission notes that statistics show Aboriginal people (overwhelmingly women) are 53 times more likely to be the victim of domestic violence

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<sup>1</sup> The Inquiry notes that there are a number of models of 'community policing' through out the world, which vary from being a county police force with full powers, for example the Navaho model to having limited powers. The Inquiry has not conducted further research to evaluate the strengths and weaknesses of these models.

than non-Aboriginal people (WAPS Initial Submission 8 March 2002). Further, hospital admissions for family violence related injuries are 12 times higher for Aboriginal people than for non-Aboriginal people. The Inquiry has previously noted that family violence is often a 'hidden' problem and as such the reported incidents of family violence are likely to be under representative of the scope of the problem.

The WAPS Submission states that unlawful killings between Aboriginal people exhibit the following unique characteristics:

- (a) A high proportion of both men and women are killed by an intimate partner
- (b) Only 15 per cent of Aboriginal female homicide victims are killed by a stranger
- (c) Women are more likely to be killed in a location other than a private residence.

Further, the WAPS Submission points out that 75.4 per cent of Aboriginal female homicide victims are killed by an intimate partner. (WAPS Initial Submission 8 March 2002)

### **2.2.2 WAPS Policy and Commissioner's Orders and Procedures on family and domestic violence**

The WAPS policy and Commissioner's Orders and Procedures on family and domestic violence were written in 1996 and are updated as the need arises. The policy states that family violence is a crime and should be dealt with as such. It further states that the safety of victims and children is paramount and that it is a community problem and not a private matter. (Witness Statement of Rebecca West 22 July 2002)

Senior Constable Rebecca West, Crime Prevention and Community Support Division, states that the issue for WAPS is its ability to implement the policy on the ground and monitor the type of response police provide to victims in the reality of busy general duty stations. (Witness Statement of Rebecca West 22 July 2002)

### **2.2.3 New initiatives**

The Commissioner of Police implemented a 'No Tolerance' Policy regarding family violence in April 2000. The key aspects of that change include an active policy of arresting perpetrators of family violence and, where appropriate, charges being brought by WAPS officers rather than the victim of the violence.

The WAPS Submission states that, in order to improve service delivery in line with this new policy, there has been:

1. The appointment of six dedicated personnel focussing on family and domestic violence at Sergeant rank within each metropolitan police district
2. The establishment of a Family Violence Resource Centre in the inner city staffed by a female Aboriginal police constable
3. The piloting of a Family Violence Investigation Unit in the Joondalup district. This operates in conjunction with the Joondalup Family Violence pilot project. That project, and a recent review are discussed in chapter 10

4. The Aboriginal Affairs Directorate coordinates and assists with training and strategic planning within districts to address long standing and complex family violence matters and disputes in the Aboriginal community with the assistance of the Department of Justice (DOJ) Aboriginal Dispute Resolution Service
5. The upgrading of the WAPS Information Management System (IMS) and the adoption of special software to case manage family violence and child abuse investigations. (WAPS Initial Submission 8 March 2002)

#### **2.2.4 Domestic Violence Liaison Officers**

WAPS has appointed a dedicated Domestic Violence Liaison Officer (DVLO) in each district to provide focus, and specialist advice concerning domestic violence. This is part of the devolution of power to districts as discussed above. The Inquiry has however received evidence that:

*DVLOs have been appointed in country regions usually combining this role with other community policing responsibilities or general duties shift work. Unfortunately it has been shown that a lack of appropriate resourcing of Country DVLOs detrimentally affects their ability to do significant work in that area. (Witness Statement of Rebecca West 22 July 2002)*

The Inquiry understands that the Domestic Violence Policy Unit has also seen a reduction in permanent staffing as a result of this devolution.

#### **2.2.5 Family Violence Resource Centre**

The Family Violence Resource Centre has been established and is currently staffed by Sergeant Grant Fullarton, DVLO, Perth District and a female Aboriginal Police Officer. The centre is centrally located and provides a number of services. In particular, it runs a Police Assisted Violence Restraining Order Program. The Inquiry has been aware that the placement and services provided by the Centre have been the subject of an 'informal review'. It further understands that Central Metropolitan Officer has made a commitment to ensure the centre continues to operate and is negotiating with DCD to look at the possibility of collaboration. (Witness Statement of Rebecca West 22 July 2002)

#### **2.2.6 Family Violence Investigation Unit—Joondalup Pilot**

WAPS created a specific Family Violence Investigation Unit as part of the Joondalup Domestic Violence Pilot Project. This unit was responsible for contacting all potential complainants in the district who were the subject of WAPS 'incident reports'. This more intensive approach resulted in an increase in charges laid relating to family violence from 7-10 per cent to approximately 40 per cent. Perhaps more interestingly, the Joondalup Pilot revealed that at 70 per cent of incidents attended by WAPS officers, children were present at the residence. (Witness Statement of Rebecca West 22 July 2002)

The Review of this Pilot Project is discussed in more detail in Chapter 13; that review also made a number of specific findings concerning the WAPS Unit.

In particular it was recommended that WAPS:

- develop strategies which target recidivism with a focus on the involvement or presence of children
- are responsive to the level of drug and alcohol abuse
- prioritise training and resource support to areas with high incidents of family and domestic violence
- continue to develop and participate in information sharing agreements with relevant agencies
- develop a core of specialisation in districts which focuses on both the prevention and investigation of family and domestic violence
- determine a level of competency for officers working in this field and a human resource structure that will measure and develop relevant skills
- introduce standardised performance instruments for districts, placing family and domestic violence within the corporate planning and reporting process. (Witness Statement of Rebecca West 22 July 2002)

**63. The Inquiry endorses the recommendations of the review of the Joondalup Domestic Violence Pilot Project with regard to the Western Australia Police Force.**

### 2.2.7 Aboriginal Dispute Resolution Service

WAPS access Aboriginal Dispute Resolution Services through DOJ as well as providing services through its Aboriginal Affairs Directorate. The use of the Aboriginal Dispute Resolution Service at DOJ is discussed further in Chapter 11.

### 2.2.8 Information Management System

Currently WAPS have a Domestic Violence Incident Reporting System on the WAPS mainframe computer. This system allows for the collection of statistics which are then used to analyse trends in family violence. This system is reliant on WAPS officers filling out a particular type of incident report. Police attendance at family violence matters is also able to be collected through the statistics created by the WAPS dispatch system. Senior Constable Rebecca West states that:

*It is considered that the submission rates for DVIs (reports of incidents of domestic violence) in country districts is low and not reflective of the incidence, this may be partly because there are not full time DVLO sergeants monitoring their compliance with policy. (Witness Statement of Rebecca West 22 July 2002)*

A new frontline Information Management System (IMS) was mentioned in the WAPS Submission (WAPS Initial Submission 8 March 2002) which has a timetable for implementation between now and 2003. Whilst this will provide a more accurate picture, it will not replace the current family violence reporting system. Rather, a program called 'Protect'<sup>2</sup>, which has already been purchased by WAPS, will be used to replace that system

<sup>2</sup> Protect is also used for the recording of information concerning child abuse and missing persons.

but will not be available to officers until Phase 2 of the implementation of IMS. It has been suggested to the Inquiry that Phase 2 may not commence until 2005. (Witness Statement of Rebecca West 22 July 2002)

**64. The Inquiry finds that the comprehensive collection of data concerning family violence and child abuse is an important element of effective service delivery. The Inquiry endorses the purchase of the 'Protect' data collection program by Western Australia Police Force. Furthermore it recommends that 'Protect' be made available through the Information Management System as soon as possible.**

### 2.2.9 Restraining Orders

There are a number of orders which courts, in particular under the *Restraining Orders Act 1997* may make, which are colloquially known as 'restraining orders'. Of particular significance to the Inquiry are the:

- a. Violence Restraining Orders (VROs), which relate to the commission of a violent personal offence against the applicant or behaviour which would reasonably cause the applicant to fear such an offence may be committed
- b. Misconduct Restraining Orders (MROs) which relate to behaviour that could reasonably be expected to cause intimidation or offence to the applicant, cause damage to property or be reasonably expected to cause a breach of the peace.

Some Aboriginal communities expressed a view that restraining orders are ineffective. It is clear that a restraining order is only as effective as the enforcement both by WAPS officers and by the applicant for the order themselves. Further, in communities where WAPS do not have a permanent presence, it is far more difficult for a restraining order to be effective.

The Inquiry is also aware that victims of family violence are often unwilling, or unable, to complete the process that is required to obtain a restraining order. This issue has been addressed in South Australia, where, under a pilot project 90 per cent of restraining orders are obtained by the state's Police Force. The Inquiry has not had an opportunity to examine this model or evaluate its effectiveness. It notes that the Attorney General is the Minister responsible for the *Restraining Orders Act*.

Counsel for WAPS submitted that;

*The South Australian model for Violence Restraining Orders is currently being evaluated by WAPS and considered for implementation. (Counsel Assisting Closing Submission 24 July 2002: 313)*

**65. The Inquiry recommends that the proposed implementation body, with a view to adapting the model to operate in Western Australia, examine the approach taken in the South Australian Pilot Project, concerning violence-restraining orders.**

### **2.2.10 Issues specific to Aboriginal women suffering family violence**

The Review of the Joondalup Domestic Violence Pilot Project (see chapter 13) also indicated that Aboriginal women were less likely to seek assistance on matters of family violence. The general barriers to Aboriginal people making reports are at least partially applicable to these circumstances. In evidence, Acting Assistant Commissioner Robbins said that WAPS had identified a propensity on the part of some officers in certain metropolitan districts to avoid Aboriginal family violence issues as they perceived the family structures to be complex, racist slurs—against officers—to be made and a low likelihood of 'success' in any type of family violence investigation. (Transcript of Evidence by SJ Robbins 26 March 2002)

In some cases the presence of a female Aboriginal Police Liason Officer (APLO) may assist an Aboriginal woman in making a complaint, or help to resolve the family issues. The role of APLOs is discussed at section 3.3.1 of this Chapter.

## **2.3 Responses to child abuse**

### **2.3.1 General legislative responsibility, definitions and structures**

WAPS is given specific legislative responsibility for the investigation of child abuse under three pieces of legislation:

- (a) *The Criminal Code*
- (b) *The Police Act*
- (c) *The Censorship Act 1996*

Acting Assistant Commissioner Robbins gave evidence that:

*Well the policy is very much that we put a very high priority on it. We are mindful of International Conventions on child abuse... It is certainly required that all police officers reported correctly and there is a high priority on the investigation.* (Transcript of Evidence by SJ Robbins 26 March 2002)

The definitions of child abuse used by the police have three key areas:

- (i) Any sexual act as defined in the *Criminal Code* committed on or with a child;
- (ii) any physical assault of a non-accidental nature or excessive disciplinary action;
- (iii) neglect of a child, that is where there is a disregard by the caregiver of the responsibility to provide the necessities of life. (WAPS Initial Submission 8 March 2002)

As noted previously WAPS has a dedicated Child Abuse Investigation Unit (CAIU). CAIU mainly deals with allegations of child abuse within the metropolitan area. The unit is part of the Major Crime Division and as such is not located within a specific district. The CAIU is located in a separate building to the rest of WAPS. It has 24 sworn staff, two unsworn staff and a crime analyst. It is noted that none of the staff is an Aboriginal officer or APLO. This may be a unit to which WAPS may wish to appoint an APLO. (Transcript of Evidence by Jonathon Adams 9 May 2002)



### 2.3.2 Scope of child abuse in Western Australia

The WAPS Submission states that:

Whilst there has been a great deal of anecdotal and third party disclosure and discussion within this agency and others there has been little open discussion within the Aboriginal community to expose the full extent of the problem or to raise awareness. (WAPS Initial Submission 8 March 2002)

Detective Sergeant John Adams, in his evidence, estimates that only 10-15 per cent of sexual assaults are the subject of complaint. It is anticipated that even fewer Aboriginal people subject to sexual assault are likely to make a complaint. (Transcript of Evidence by Jonathon Adams 9 May 2002)

### 2.3.3 Common sources of child abuse allegations

The most common sources of complaints to the CAIU are:

1. adult complainants regarding abuse they suffered as a child;
2. adult complainants regarding abuse suffered by their child;
3. DCD<sup>3</sup>. (WAPS Supplementary Submission 8 April 2002)

The race and cultural background of a child subject to alleged abuse is not recorded by the CAIU. It is, therefore, not possible for the Inquiry to compare the sources of the allegation for Aboriginal and non-Aboriginal complainants. The recording of information concerning the ethnicity of complainants is discussed further below at section 3.4 of this chapter.

### 2.3.4 Barriers to reporting child abuse

The WAPS Submission also notes that, whilst it has heard of a number of allegations from Aboriginal complainants, in particular from the Swan Valley Nyungah<sup>4</sup> Community (SVNC), that have been investigated over the years, often only a small percentage of child abuse incidents are formally reported. Certain evidence, although unclear as to its source, suggests to the WAPS that there is a greater reluctance within Aboriginal communities to report suspected abuse. (WAPS Initial Submission 8 March 2002)

The WAPS submission suggests the following factors contribute to the reluctance to report:

- The shame felt by victims
- The perceived lack of support
- Fear of the consequences of reporting abuse such as 'pay back'
- Possible imprisonment of family members if convicted of child abuse offences
- The effect reporting may have on the victims family
- The ability of government agencies to protect children that have disclosed abuse. (WAPS Initial Submission 8 March 2002)

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<sup>3</sup> Child Abuse Investigation Unit – Referral Sources, WAPS.

<sup>4</sup> 'Nyoongar' has also been referred to as 'Nyungah' in this report. The Inquiry has used this spelling as per the Terms of Reference. Where 'Nyungah' has been used, this is part of a proper title.

It is interesting to compare these factors with those distilled from consultations with Aboriginal communities (see section 4.1 below). The key factors identified by the communities are the 'shame factor', fear of retribution and payback, the familial relationship with the alleged perpetrator and community structures which may not offer support to the potential complainant. It is encouraging that the factors identified by WAPS are the same as those arising from community consultations.

Detective Sergeant John Adams stated that he believed that the distrust of Police is more of a barrier than fears of violence amongst complainants. (Witness Statement of Jonathon Adams 9 May 2002) Although he does report an increase in the past 15 months of requests from Aboriginal communities to address them on issues of child abuse and related procedural aspects of prosecutions.

Counsel representing WAPS submitted to the Inquiry that:

*It is important to acknowledge that the opportunities to build trust may be further complicated by the nature of previous contacts the complainant may have had with Police.*  
(Counsel Representing Agencies Closing Submission 22 July 2002: paragraph 304).

**66. The Inquiry finds that distrust of Western Australia Police Service (WAPS) officers is a key barrier to Aboriginal complainants coming forward and making complaints of family violence and child abuse, as acknowledged by WAPS witnesses.**

### 2.3.5 Management of child abuse investigations

The current officer-in-charge (CAIU), Detective Sergeant John Adams, gave evidence on 9 March 2002 concerning the operations of the Unit. He stated that the regular office hours of the Unit were 8am to 4pm on Monday to Friday, but either he, or another senior officer from the CAIU, were on call therefore effectively providing 24 hour service.

Where a complainant contacted WAPS out of usual business hours, the WAPS communications centre makes an assessment as to the appropriate response, ranging from sending a patrol car to the relevant address to contacting the Major Incident Squad or calling in CAIU. (Witness Statement of Jonathon Adams 9 May 2002)

Detective Sergeant Adams makes it clear that the primary goal of the investigating officer is to ensure that the child complainant or victim is safe in the short to medium term.

It is at the initial stages that the CCU, or another Police Officer as appropriate, will be in contact with the Crisis Care Unit to arrange care for a child complainant if necessary. The CAIU is careful not to interview a child witness late at night, when the child is in shock due to the incident or when there is no appropriate interviewing officer available. (WAPS Initial Submission 8 March 2002)

WAPS states that:

*It would be impracticable for the Child Abuse Investigation Unit to take carriage of all investigations on a statewide basis due to the size of the state and the resource implications of such a decision.* (WAPS Final Submission 12 July 2002: 16)

**67. The Inquiry finds that the Child Abuse Investigation Unit (CAIU) is an integral part of the across government response to child abuse. The Inquiry endorse the ongoing consideration being given to the role of the CAIU and its resources.**

### 2.3.6 Priorities – Child Abuse Investigation Unit

Obviously delays in the investigation of offences of this nature should be minimised. Aside from the obvious desirability of obtaining evidence—both oral and forensic—as quickly as possible, there is the added advantage of minimising, so far as possible, pressures that may be exerted by the alleged perpetrator, or others with knowledge of the alleged offences. The Coroner made similar observations in his report on the death of Susan Taylor. (Hope 2001: 32)

The Child Abuse Investigation Unit (CAIU) has a priority ratings system to determine how complaints are dealt with. In summary priority one or two investigations are conducted where the child, or other children, are in immediate or short-term danger of being further abused by the alleged perpetrator. Priority one and two ratings are also used where the alleged perpetrator is a person in authority, the child is receiving medical treatment or has died as a result of the alleged incident, or the alleged perpetrator is intending to leave the state. Where an allegation is identified as a priority one or two investigation the response from the CAIU is usually immediate and is intended to ensure that the child is in no immediate danger or potential danger of further abuse.

Priority three investigations are conducted where the child is in no danger of being subject to further abuse, and priority four ratings are given to complaints which are historic<sup>4</sup>. Both priority three and priority four rating investigations maybe disseminated to district officers for further investigation.

Investigations are not usually conducted by the CAIU outside the metropolitan area. In exceptional circumstances the unit will travel outside the metropolitan area. An example of this may be where there are multiple offenders or complainants. (WAPS Initial Submission 8 March 2002)

Counsel representing WAPS stated that:

*Obviously, the capacity to implement various initiatives is limited by finite resources and other pressing corporate demands. Careful assessment is necessary in the implementation of any new initiatives to ensure that the benefits to the community and WAPS can be justified in consideration of the impact on resources. (Counsel Representing Agencies Closing Submission 22 July 2002: 321)*

**68. The Inquiry finds that the assignation of priority to reports of child abuse is integral to the provision of services to those complainants. The Inquiry recommends that Western Australia Police Service (WAPS), or another body as the Premier sees fit, conducts a review of the priority system and, in the course of that review, consider the following issues.**

- **Whether District Offices should undertake priority three and four recommendations which has both advantages and disadvantages**

<sup>4</sup> Historic complaints are complaints of alleged offences that occurred a long time ago. These complainants are usually adults or mature minors.

- **Criteria upon which investigations are conducted in non-metropolitan areas by the Child Abuse Investigation Unit (CAIU)**
- **Pursuant to a proposal currently being considered by WAPS, whether a procedure should be established concerning the rank, gender and training of WAPS officers interviewing vulnerable witnesses**
- **The assignment of priority to cases where a child is itinerant or highly mobile and therefore at a heightened state of vulnerability.**

### 2.3.7 Investigative processes

There are no set guidelines for the conduct of an interview with a child victim, as the main pre-requisite for the conduct of any interview is flexibility, and a list of 'strategies' may detract from this. (WAPS Final Submission 12 July 2002)

#### *2.3.7 (a) Conducting interviews*

A new system is being implemented by CAIU to record interviews with children. CAIU intends to videotape children's initial evidence to be produced as the tape of that child's evidence for examination-in-chief in any subsequent criminal proceedings. The interview is generally conducted in concert with Department for Community Development (DCD), as such protecting the child from having to repeat his/her 'story' to a number of government departments. It also provides for additional expertise when examining the child. Another benefit of video-taping children's initial evidence is where charges remain unresolved for an extended period of time and the child's recollection may fade, a record of the initial evidence is used as evidence. (Witness Statement of Jonathon Adams 9 May 2002).

It has been proposed that a specialist unit be established for the conduct of interviews of this nature. Such a unit would be attached to CAIU and would have carriage of interviews with child victims of sexual assault and physical abuse and be staffed by specialist WAPS officers. (WAPS Final Submission 12 July 2002)

In a slightly different vein, WAPS is currently considering the CAIU taking carriage of all investigations involving children and other vulnerable victims. (WAPS Final Submission 12 July 2002)

WAPS procedures state that a support person may be present when a vulnerable witness is being interviewed. (WAPS Final Submission 12 July 2002) It is not clear how often this facility is used, but it may be of particular benefit to Aboriginal people.

The model used in the WA policing and justice system, has been described as the leading model in Australia (Horin 2002). This has been shown by a recent research paper which stated that;

*Decades of reform had achieved limited gains, except in Western Australia. There, 64 per cent of children said they would report sexual abuse again. That State has dropped committal proceedings, requiring children give evidence only*

once via closed-circuit television. It also has child-friendly facilities. (Counsel Representing Agencies Closing Submission 22 July 2002: 308)

**69. The Inquiry endorses the new system of recording interviews with children. The Inquiry recommends that consideration be given to the extension of the new system of recording interviews to other vulnerable witnesses.**

*2.3.7 (b) Medical examinations*

CAIU investigation procedures regarding medical examination require that, where practicable, the medical examination of child complainants is carried out by experienced staff at Princess Margaret Hospital (PMH) Child Protection Unit. Such examinations conducted outside the metropolitan area are usually carried out in district hospitals. Medical examinations of the nature required to gain forensic evidence of child abuse are quite intrusive, and are only undertaken after assessing the trauma which that examination may cause the child. This trauma may be minimised by having the examination performed under a general anaesthetic. (WAPS Initial Submission 8 March 2002)

*2.3.7 (c) Interpreters*

The Inquiry is aware of the need to use interpreters where English is a second language of the child being interviewed. WAPS did not give evidence that this 'language barrier' had significant impact on their investigation. However, the Inquiry has made some more general comments about the availability of interpreters in section 3.3.3 below.

### 2.3.8 Reciprocal policies and procedures

A number of child protection protocols are in place between agencies, which involve WAPS. Of particular relevance to WAPS are the:

- (1) *Reciprocal Child Protection Procedures 1997*
- (2) *Family and Children's Services, Western Australia Police Service Joint Response to Child Abuse Protocols.*

The 1997 procedures detail how participating agencies are to deal with concerns or allegations or concerns of child abuse. Signatories include DCD, PMH and the Department of Education (DOE) who have supplied the bulk of referrals to the WAPS<sup>6</sup>. Detective Sergeant Adams gave evidence that the relationship between PMH and the WAPS was a good example of how the 1997 procedures enabled information to be shared between agencies. (Transcript of Evidence by Jonathon Adams 9 March 2002)

Acting Assistant Commissioner Robbins gave evidence to the Inquiry that the main barrier to the effectiveness of the 1997 Procedures was the legislative restrictions placed on agencies regarding the sharing of information. In those circumstances an agency may not be willing to refer a mere suspicion of child abuse as that may be considered a breach of confidentiality without a lawful excuse.

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<sup>6</sup> The other signatories are the HDWA, KEMH, DOJ, Disability Services Commission, Coroner's Court, Drug and Alcohol Office (as named at the time of the agreement).

The Joint Response Protocols were established in 1999 and outlines principles of joint response for WAPS and DCD. The Protocols are based on the premise that the protection of children is a shared responsibility between the community and government agencies, in particular the two signatory agencies.

The Joint Response Protocols also outline the procedures to follow in determining what, if any, joint response is required. Recently WAPS, through CAIU, has begun to negotiate amendments to the Joint Response Protocols. Detective Sergeant John Adams stated that, in his opinion, the main issues for review are the timeliness of responses and the establishment of parity in priority afforded to concerns and allegations of child abuse.<sup>7</sup> (Transcript of Evidence by Jonathon Adams 9 March 2002) The Joint Response Protocols will be discussed in further detail in Chapter 13.

## **2.4 Responses to the Aboriginal Community**

### **2.4.1 Aboriginal Affairs Directorate**

The Aboriginal Affairs Directorate (AAD) was established in 1996 as part of the Delta Program and is designed to be both a functional unit, providing direct assistance to Aboriginal people in their dealings with WAPS, and a strategic planning unit providing advice concerning for service design and development for WAPS. (WAPS Initial Submission 8 March 2002)

The directorate is responsible for:

- Developing and maintaining the APLO scheme through out the state. Its role in the APLO scheme will be further discussed under section 3.3 below.
- Maintaining and developing Aboriginal Police Liaison Committees. Its role in supporting these committees will be discussed further below at section 3.1.1 below.
- Providing and coordinating policy advice on matters relating to Aboriginal policing and crime prevention issues. As part of that policy formulation role, the directorate creates, collates and analyses data on issues relevant to the service delivery by WAPS to the Aboriginal community.
- Providing expertise in the management of complex community disputes. The alternate dispute resolution mechanism discussed at section 2.4.2 below.
- The coordination of training of Police Officers around the state in issues effecting Aboriginal communities<sup>8</sup>. (WAPS Supplementary Submission 8 April 2002)

The Inquiry has not had sufficient opportunity to inquire into the effectiveness, or otherwise, of this directorate in great depth. General comments and recommendations regarding 'Aboriginal Specific Directorates' are made at Chapter 18.

### **2.4.2 Alternative dispute resolution**

The Inquiry strongly supports alternative dispute mechanisms being used wherever appropriate. There are examples where Aboriginal elders have requested a meeting be

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<sup>7</sup> This is similar to views expressed by the Coroner (Coroner's Report: November 2001: 32)

<sup>8</sup> Aboriginal Affairs Information Satchel, Police Service

organised to discuss family disputes. The WAPS agreed to that request and it appears that the matter was resolved in that fashion without recourse to criminal charges. (WAPS Supplementary Submission<sup>9</sup> 26 March 2002)

The AAD advised that its personnel are involved in problem solving and complaint resolution. This is described as an unrecognised activity of the directorate as it does not show in statistics and is of a confidential nature. A reference is also made above at section 2.2.3 concerning the use of DOJ Aboriginal Alternative Resolution Services. (WAPS Initial Submission 8 March 2002) The relationship between the departments providing such services is not clear. This is discussed further in Chapter 11.

## 2.5 Responses in Remote Communities

### 2.5.1 Review of remote services

A review of WAPS services to remote communities was conducted by Senior Sergeant Galton-Fenzi APM and reported to the Commissioner of Police on 31 June 2002 (Galton-Fenzi 2002). The report was intended to *'evaluate and assess our current provision of policing services to remote/discrete communities.'* (Galton-Fenzi 2002: i) The Inquiry was provided with a copy of this document in a timely fashion, however has not had an opportunity to fully evaluate its findings.

### 2.5.2 Police response times

A number of Aboriginal communities outside the metropolitan area told the Inquiry they were concerned that WAPS were not responding to requests for assistance in a timely fashion, even where those requests were perceived as urgent. The Inquiry similarly heard requests from some Aboriginal communities that a permanent WAPS station be located in their community.

The Galton-Fenzi report states that:

*There is no real indication of consistent and/or successful police community-based strategies or programs in existence within remote/discrete communities.* (Galton-Fenzi 2002: ii)

Evidence contained in the Galton-Fenzi Report indicates that there is no substantial decrease in populations in remote/discrete communities, contrary to what is a general perception of the effect of 'urban drift' on populations in those communities. (Galton-Fenzi 2002)

The Galton-Fenzi Report identifies a 'vision' for the provision of policing services in remote communities. That is, *'the application of our provision of service to be with complete participation and involvement of the individuals within the communities.'* (Galton-Fenzi 2002: viii)

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<sup>9</sup> Sexual Assault Offence Reports – 1997-2002, Police Service

It also noted the need for WAPS to be flexible, non-discriminatory, culturally respectful, sensitive and in accordance with demands and desires of the people. (Galton-Fenzi 2002)

The Inquiry has not had time to collect or evaluate evidence as to these claims and requests. It can however make the following observations:

- a. The presence of a WAPS station in a community increases the perception of 'safety' in that community to a greater or lesser extent.
- b. Small remote communities that do not have a permanent WAPS station have far longer to wait for WAPS services than people living in a metropolitan area.
- c. Non-metropolitan areas have less WAPS resources and as such may endure longer waiting periods for policing services.
- d. WAPS resources need to be distributed throughout non-metropolitan areas in contemplation of a number of factors, most importantly the number of residents, on average, in a community.
- e. Where reports of family violence or child abuse are made, some kind of service needs to be available to the complainant to ensure their safety. This is discussed further in Section 4.
- f. Response times need to be clearly established for all areas within the State, for non-metropolitan areas that will mean designing response times based upon local resources with contingencies in place.

## **2.6 Responses to juvenile<sup>19</sup> Aboriginals**

Aboriginal communities expressed concern to the Inquiry about the relationships between WAPS Officers and juvenile Aboriginals. The Inquiry is mindful that some elements of this relationship are peripheral to its Terms of Reference, however insofar as that relationship may influence the likelihood of potential complainants coming forward it is relevant.

It is the Inquiry's view that Aboriginal juveniles may be more likely to report allegations of sexual assault or family violence if they have a good relationship with WAPS officers servicing their area. However, the Inquiry is mindful that WAPS officers cannot abandon other policing obligations to create better relationships with any particular section of the community.

Principally, it is important that situations be dealt with as sensitively as possible without causing shame or embarrassment to the juvenile and that Aboriginal juveniles are not treated as potential offenders.

WAPS demonstrated to the Inquiry a keenness to address juvenile justice issues. For example, Acting Assistant Commissioner Robbins discussed his role as the Director of the Police and Citizens Youth Club that is attempting to respond more to young people's needs through adopting a juvenile justice strategy. (Transcript of Evidence by SJ Robbins 26 March)

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<sup>19</sup> The term 'juvenile' may be considered offensive by young people – many other states have changed the name to young people or youth. In view of the legislation in WA the term 'juvenile' is used in this section.



### 2.6.1 Police interviews of juveniles

The interviewing of juveniles by WAPS Officers is governed by the *Young Offenders Act 1994*. The Inquiry has not examined the operations of this Act but notes that Part 4 of the Act concerns detention of young persons and requirements to notify a 'responsible adult'<sup>11</sup> of an intention to question the young person.

The Inquiry notes concerns expressed by Aboriginal communities about the lack of 'responsible adults' for Aboriginal juveniles in custody. The Inquiry understands their eagerness to ensure that 'responsible adults' are with juveniles when they are interviewed.

The Inquiry has also been made aware of the WAPS procedures in place with regard to the interviewing and care of juvenile offenders. It is also noted that WAPS use services such as the Nyungah Patrol to assist in the transportation of juveniles home. (WAPS Final Submission 12 July 2002)

## 3. ORGANISATIONAL ISSUES

### 3.1 Community consultation

#### 3.1.1 Community Police Relations Committees

These committees were mentioned in a number of Aboriginal communities, and described as a valuable forum in which the community could convey its concerns to the WAPS Officers in the area. The specific roles of the committees include establishing strategic direction for the policing of a community, information sharing, and being a venue for pro-active conflict resolution. Examples of specific issues addressed include social events for local juveniles and strategies to address solvent abuse. (WAPS Supplementary Submission 26 March 2002)

It is clear that the success of the committee can often depend on the officer in charge of the Police Station. The job description of Officers in Charge of a WAPS Station include:

*Externally, this position liaises with other Public Sector agencies, private enterprise, Members of Parliament, the media, ethnic groups, service organisations, youth groups, community leaders and members of the public in order to enhance and maintain police/public relations and cooperation and to keep informed of the policing requirements within the specific community.* (WAPS Final Submission 12 July 2002: 18)

The Inquiry understands that committees are established in an ad-hoc fashion, based upon a perceived need and a willingness to participate on the part of both WAPS officers and Aboriginal community members.

The Aboriginal Affairs Directorate administers the committees and a review is apparently being undertaken to consider best practice and to establish practice guidelines. (WAPS Supplementary Submission<sup>12</sup> 8 April 2002). Where committees have not been established,

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<sup>11</sup> Responsible adult means in essence a parent or guardian, or other person having responsibility for the day to day care of the young person.

<sup>12</sup> *Aboriginal Affairs Information Satchel*, Police Service.

committees such as Safer WA or local action groups like the Midland Aboriginal Advisory Group, are used as an alternate forum. One example of a successful alternative forum is the Community Action Groups established in the South West by the Department of Indigenous Affairs (DIA). The WAPS submission states that the committees and alternate forums improve dialogue and encourage WAPS to be more responsible to the Aboriginal community on a local level. (WAPS Initial Submission 8 March 2002) Further comments about the co-ordinated role of DIA can be found at Chapter 12.

**70. The Inquiry finds that Community Police Relations Committees are a valuable tool in facilitating communication between WAPS officers and the Aboriginal community. The Inquiry recommends that consideration be given to Community Police Relations Committees, or similar bodies, to be established and maintained in all areas of the state.**

### **3.1.2 Koodjal Maar Baldja: Reaching Out Together – Police and Indigenous Gathering Against Family Violence (1998)**

The Koodjal Maar Baldja ('the Gathering') used role-plays, guest speakers and discussion forums to reach recommendations on how to improve service delivery and intervention in family violence situations. The particular focus of the recommendations of the Gathering was on WAPS showing respect and altering traditional policing methods so as to deal with issues in a culturally sensitive way. (West & Skesteris 1999)

The Gathering made a number of particularly relevant recommendations that are referred to through out this chapter. The recommendations canvas issues such as:

- (1) Acknowledgment of the effect of violence on children in the community;
- (2) Improvement in the recruitment, training and ongoing management of APLOs including increasing the number of APLOs;
- (3) Focus on the training provided to sworn and non-sworn WAPS employees concerning Aboriginal people and issues. (West & Skesteris 1999)

**71. The Inquiry endorses in principle the recommendations of the Koodjal Maar Baldja: Reaching Out Together – Police and Indigenous Gathering Against Family Violence.**

### **3.1.3 Other reports and recommendations**

The Inquiry notes that there have been a plethora of meetings, conferences and reports which, to a greater or lesser extent, provide recommendations for WAPS. For example, the 'Women Sharing Together' – North West Women's Meeting 1991, the Women's North West Regional Summit 1989; and 'Finding Common Ground' – First Indigenous Women's Conference 1989.

Many of the relevant recommendations, even just of the sample of the conferences and meetings above, are similar to those made by the Gathering. It is also clear that these recommendations are not new, however the Inquiry has chosen to adopt the spirit of the recommendations from the Gathering because:

1. They reflect the general themes emerging from other meetings and conferences
2. They were made in consultation with WAPS, and indeed the recommendations formed part of the information provided by WAPS to the Inquiry
3. They are comparatively recent.

## **3.2 Policy and procedures**

### **3.2.1 Complaints mechanisms**

During the course of the Inquiry's consultations it heard a number of allegations of improper conduct against WAPS officers, some of which would if proven amount to a criminal act, these include allegations of 'racism' and assault.<sup>13</sup>

The Inquiry is not in a position to make findings with regard to these allegations. It has, in one instance, sought further information from WAPS with regard to a specific allegation. WAPS advised that there is no WAPS officer by the name given to the enquiry employed in the state. (WAPS Final Submission 12 July 2002)

The Inquiry has considered the mechanisms available to Aboriginal people who wish to make a complaint against a WAPS officer and why such a complaint may not have been made. As a public sector agency WAPS is bound by the usual range of legislative and regulative compliance requirements, in particular those included in the PSM Act. The Inquiry notes that WAPS provides a mechanism whereby complaints can be made of racial discrimination, improper conduct and criminal conduct. Similar complaints mechanisms are also available through the Ombudsman's Office and the Anti-Corruption Commission.

The Inquiry further notes that the complaints structure is subject to internal review, review by the Anti-Corruption Commission and the Ombudsman's Office. The complaints mechanism is structured to deal with the variety of allegations which may be made which range from allegations of criminal conduct to claims of poor customer skills. The sanctions available to the commissioner include issuing a reprimand, to dismissing an officer and the laying of criminal charges.

Of the allegations made to the Inquiry, it was clear that none had made a formal complaint to WAPS. There is obviously a variety of reasons as to why a potential complainant may not make a complaint. The Inquiry is mindful that it did not speak directly to the alleged complainants, rather the information was provided by a third party.

The Inquiry is of the view that the kinds of barriers described below as to Aboriginal people making complaints of family violence or child abuse. Section 4.3.2 would apply, to a greater or less extent, to the potential complainants discussed in this section. WAPS suggested to the Inquiry that APLOs may play a significant role in encouraging complaints to come forward.

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<sup>13</sup> The Inquiry understands that allegations it has received of 'racism' have also been made to the Equal Opportunity Commissioner (Clth) who has become involved in the situation.

**72. The Inquiry recommends that appropriate strategies be put in place to encourage Aboriginal complainants to use the complaint mechanisms provided by the Western Australia Police Service.**

### 3.2.2 Anunga Rules

WAPS officers interviewing an Aboriginal person must comply with the 'Anunga Rules'. These are rules derived from a decision of the Northern Territory Supreme Court<sup>14</sup> and cover matters such as the framing of questions, language difficulties, and the educational standard of interviewees. WAPS also have procedures concerning 'interview friends' who are persons identified to assist Aboriginal persons being interviewed. (WAPS Final Submission 12 July 2002)

## 3.3 Human Resource issues

### 3.3.1 APLOs and Aboriginal Police Officers

Aboriginal people have been appointed as Police Aides since 1974, and are now employed under section 33A, of the Police Act as APLOs. These officers are not intended to be used as front line WAPS officers, although that has, and quite possibly still, occurs in some Police Stations. As mentioned above, the APLO Scheme is administered by the AAD. The role of APLOs has been reviewed a number of times—most comprehensively in 1985 and again recently. The Inquiry has adopted many of the themes contained in those reviews.

WAPS has 130 Aboriginal employees, of which 94 are male and 36 are female. Currently 109 full time or equivalent APLOs are employed by the WAPS. WAPS has committed to expanding the scheme and funding has been received for a further 30 positions over the next three years. The Gathering also supported an increase in APLO (see 3.1.2) (WAPS Final Submission 12 July 2002)

Some Aboriginal communities suggested that more female APLOs should be employed to interview potential complainants and help to break down the barriers to complaints being made. Currently approximately one third of all APLOs are female and they do not hold any of the senior APLO positions. This is a gender imbalance reflected throughout WAPS and strategies are in place to encourage females to join, and remain in the WAPS.<sup>15</sup> (WAPS Supplementary Submission 5 April 2002)

#### 3.3.1 (a) Role of the APLO

The Inquiry notes that there has been significant levels of debate concerning the roles of APLOs. This includes debates about the requirement to wear uniforms<sup>16</sup>, the design of those uniforms and the cultural appropriateness of employing young APLOs. The Inquiry understands the role of the APLO to be:

- to assist in the manner in which an investigation is conducted, identify witnesses and encourage those witnesses to give evidence to WAPS officers;

<sup>14</sup> R v Anunga (1976) 11 ALR 412, Forster CJ

<sup>15</sup> Additional information provided by the Police Service, Gender Balance received from Karen Roberts, WAPS, 5 April 2002

<sup>16</sup> The debate was resolved and APLOs now wear a 'blue uniform' (WAPS Final Submission: 12 July 2002: p11)

- to advise on protocols and the best way to approach a community;
- a tool in gaining the trust of potential witnesses and encouraging them to make complaints. (WAPS Initial Submission 8 March 2002)

Not only does this 'liaison' role create inherent conflict between an APLOs role as a member of the community and their responsibilities as an APLO, but, in some cases, APLOs are called upon to do policing tasks rather than liaison tasks. The Inquiry has not inquired into the experience of APLOs in regard to these issues. The Inquiry does note that APLOs provide an invaluable service within WAPS and their role needs to be well defined within WAPS to ensure they are as effective as possible.

Recommendations have been made, both from within WAPS (Parkinson 2001) and outside, that APLOs be used to address family violence issues and drug and alcohol abuse. Whilst the Inquiry sees merit in these recommendations it is imperative that APLOs are provided within sufficient training and support to adequately fulfil these roles.

### 3.3.1 (b) APLOs and guns

APLOs were not subject to any particular policy concerning access to carrying firearms until recently. A review of the APLO Scheme determined that it was not appropriate for APLOs to carry firearms, rather APLOs were to carry pepper spray and batons. Various views were expressed by Aboriginal communities, and many were happier if guns were not brought into their community. The risks of APLOs carrying guns was described by Acting Assistant Commissioner Robbins to be,

*That where there is a single officer dealing with a violent situation a gun may be taken from that APLO and used against them if they are not adequately trained and supported. (Transcript of Evidence by SJ Robbins 26 March 2002)*

Ultimately the decision was challenged by the WA Police Union of Workers in the Industrial Relations Commission. In essence, the commission upheld the WAPS decision not to allow APLOs to carry guns. It remains that, where APLOs are the lone representative of the WAPS, the position may need to be reconsidered in light of the fact that the APLOs may no longer carry firearms. (Witness statement of John Hart 26 March 2002)

In a similar vein, WAPS arranged a conference for all APLOs to assist them in refocussing on a more proactive, and liaison role. (WAPS Final Submission 12 July 2002)

**73. The Inquiry find that Aboriginal Police Liason Officers (APLO) play an important role in the provision of service by WAPS to Aboriginal communities, in particular remote Aboriginal communities. The Inquiry endorse the creation of 40 new APLO positions over the next four years. The Inquiry recommend that consideration be given to encouraging more women to apply for positions as APLOs.**

### **3.3.2 Recruitment**

The WAPS submission expresses a commitment to raising the level of Aboriginal employees within its ranks in mainstream WAPS positions. The key strategy in place is the Transitional Model 2001 which provides for APLOs to make a transition to mainstream WAPS positions. Under the model APLOs who join the ranks of sworn WAPS officers are accredited for the years they have served in the APLO scheme. The failure to accredit 'years served' had been a weakness in previous models and strategies. The Transitional Model has not fully commenced, but it is anticipated to become fully functional this financial year with an initial intake of 26 APLOs. (WAPS Final Submission 12 July 2002)

The recruitment of more Aboriginal WAPS Officers and APLOs may allow for an Aboriginal Officer to be appointed to the CAIU to assist with Aboriginal complaints.

### **3.3.3 Training**

WAPS Officers are provided with training in three main ways – through their recruitment training, through introductory detective training and through regular 'in-service' training. Officers may also volunteer, or be selected, to participate in 'one-off' training through both programs and through secondments. (WAPS Final Submission 12 July 2002)

#### *3.3.3.(a) APLO Training*

APLOs are trained in a different manner than other WAPS Officers. APLOs receive recruitment training—albeit for a shorter period of time—but the 'in-service' training is based on a different model. The AAD, who administer the APLO Scheme, runs specialised training programs on issues such as family violence and conflict resolution skills. There is also a program of regional conferences to encourage contact and information sharing between APLOs serving in the same region.

The Gathering (see 3.1.2) recommended that APLOs receive training in family violence issues—it is unclear whether the specialist training programs run by the AAD satisfy this recommendation. Specific training for APLOs in child abuse is addressed below. The Inquiry has not had an opportunity to inquire into the nature of the training offered to APLOs in family violence and child abuse.

#### *3.3.3 (b) Training in Child Abuse Investigation*

Training in child abuse investigation is a component of the training provided to WAPS recruits. That training includes modules such as 'joint approach to child abuse investigation' and 'cultural issues'. Officers from DCD and the Detective Training Unit are responsible for teaching the modules. Detective Sergeant John Adams gave evidence that the lecture on child abuse lasts 40 minutes. He also gave evidence that the training has improved since he was trained. (Transcript of Evidence by Adams 9 May 2002)

WAPS also provided information concerning a more extensive training program on child abuse investigation run by DCD and WAPS. Approximately 40 WAPS officers

participate in this course per year; a small number of places are reserved for APLOs. (WAPS Initial Submission: March 2002)

WAPS states that *'experience has shown that this training has been difficult and distressing and as (a) consequence many APLOs, particularly, females are unwilling to undertake such training'*. (WAPS Final Submission 12 July 2002)

WAPS also provide training relating to sexual assault through the Sexual Assault Investigation Training course and the Introductory Detective Training Course. (WAPS Final Submission 12 July 2002)

CAIU has a number of seconded officers, who work in the Unit for approximately 12 months to learning more advanced interview and investigative techniques particularly in child abuse investigations. These officers then return to operational duties, to provide a higher level of expertise of their station and to be available to conduct interviews for priority 3 or 4 investigations. (WAPS Initial Submission March 2002, Witness statement of John Adams 9 May 2002)

The WAPS expressed a view that *'the delivery of child abuse investigation training across the operational workforce is not considered practicable'*. Rather, WAPS suggests that a pool of suitably trained and experienced officers need to be available in every district. (WAPS Final Submission 12 July 2002)

**74. The Inquiry finds that training is essential for effective service delivery by Western Australia Police Station Officers and Aboriginal Police Liaison Officers to complainants of family violence and child abuse. The Inquiry endorses the current training programs in place. The Inquiry recommends these training programs be expanded to cover more material and to be available to more officers or a more frequent basis.**

### 3.3.3 (c) Training in cultural sensitivity

Training in cultural sensitivity has been provided to police recruits since the early 1980s and has evolved to a four-day training course. There is an additional two-day training course available to all WAPS employees. Completion of the two-day course is a pre-requisite for a promotion to the level of Senior Constable. In 2001, 730 Police Service employees attended the two-day training course (WAPS Supplementary Submission 5 April 2002). The Inquiry was provided with detail concerning the provision of training on cultural sensitivity by WAPS and whilst it did not have an opportunity to examine the material in depth, it notes the scope of the material covered. (WAPS Final Submission 12 July 2002)

**75. The Inquiry finds that policing services should be maintained at all times. The Inquiry recommends that leave and transfer arrangements are managed to ensure the necessary continuity.**

### 3.3.3 (d) Localised training in cultural sensitivity–inductions

Some Police Districts include cultural sensitivity training about local Aboriginal communities in their induction and day-to-day management process. District Superintendents are responsible for planning and implementing 'induction' programs. (WAPS Final Submission 12 July 2002) The Inquiry agrees with Acting Assistant Commissioner Robbins comments that the need for such localised training, or induction, is not limited to lower level Constables but extends to senior WAPS officers and APLOs in communities they are not familiar with (Transcript of Evidence by SJ Robbins 26 March 2002). This type of induction does not detract from, rather it works with, the 2-day training course on cultural sensitivity.

Without an induction, or localised cultural sensitivity training, WAPS officers have to 'pick up' this culture as best they can. Acting Assistant Commissioner Robbins acknowledges that WAPS officers may 'get this wrong', but so long as cultural sensitivity was shown offence could be avoided (Transcript of Evidence by SJ Robbins 26 March 2002). The Inquiry does not disagree with this proposition, however the more skilled the WAPS officer is, the better he or she is able to perform duties.

**76. The Inquiry finds that cultural sensitivity training is imperative for effective service delivery to Aboriginal communities. The Inquiry recommends that in addition to current induction and training, an induction procedure be put in place that provides cultural sensitivity training about, and in conjunction with, local Aboriginal communities when an officer joins a Western Australia Police Service station.**

### 3.3.4 Transfer and leave arrangements

In remote communities the provision of service is reliant on fewer WAPS officers. As such, where an officer is on leave or transferred this has a significant impact on the service delivery in the community. For example, where officers at single officer stations are on leave there is no service delivered in that area.

Problems may also arise where APLOs are on leave or are transferred. The transfer of APLOs itself as an issue given different familial relationships and community traditions. Acting Assistant Commissioner Robbins advised that WAPS were mindful of skin groupings and familiar relationships when placing APLOs, particularly in remote communities (Transcript of Evidence by SJ Robbins 26 March 2002). WAPS does not have a tenure policy concerning the transfer of APLOs and as such APLOs may be moved between communities after having served a minimum of two years at their initial posting before being transferred. There was some suggestion that APLOs should not be moved, due to the value of their 'local knowledge'. WAPS state that all APLOs are allowed to apply for positions state wide as equal opportunities are provided to APLOs to apply for a position and that WAPS are seeking 'the best person for the job' when fulfilling a position.



With regard to transfers, WAPS submitted that;

*Usually the transfer of incoming and outgoing officers is a seamless process. However, in some locations where it may be difficult to attract staff, or staff have been transferred at short notice due to compassionate or operational reasons, there can be delays in filling vacancies. (Counsel Representing Agencies Closing Submission 22 July 2002: 350)*

**77. The Inquiry recommends that the Western Australia Police Service develop a policy concerning the transfer of Aboriginal Police Liaison Officers.**

### 3.4 Information collection/sharing, including mandatory reporting

The WAPS Submission states that race and cultural background of a child subject to alleged abuse is not recorded (WAPS Initial Submission 8 March 2002). WAPS have recently put in place an Indigenous Data Collection and Reporting Project to improve the collection of information concerning Aboriginal people. This Project includes:

- The incorporation of an 'indigenous status'<sup>17</sup> field in the Electronic Court Briefing System for Offenders. This Court Briefing System for Offenders takes the usual system of providing a set of papers as the 'brief' to the Office of the Director of Public Prosecutions and creates data to form a database for the extraction of specific and statistical information.
- The incorporation of an ethnicity field<sup>18</sup> in the IMS (see section 2.2.8) to record greater cultural information. The IMS also uses a very broad definition of 'victim' to allow WAPS to evaluate who is effected by crime and trends in a specific age group, ethnicity or region. (Witness Statement of Rebecca West 22 July 2002; WAPS Initial Submission)

**78. The Inquiry commends Western Australia Police Service (WAPS) for improving its data collection system. The Inquiry recommend that WAPS be sufficiently resourced to ensure that the data collection system is maintained and updated as required.**

'Statutory restrictions' on the exchange of information was described by the Police witnesses before the Inquiry and by communities as a key barrier to more effective service delivery (Witness Statements of Jonathon Adams 9 May 2002 and John Charles Hart 26 March 2002). WAPS acknowledges that a large number of government and non-government agencies have developed protocols to respond to child abuse allegations and the suspicion of child abuse. In some cases these protocols are more effective than others. In its Final Submission, WAPS notes that the experience of other jurisdictions is to create a 'flood' of reports that were unsubstantiated. The Final Submission notes the concerns of other agencies with regard to the potential number of reports and differentiating between urgent matters and those requiring a different type of intervention. (WAPS Final Submission 12 July 2002)

More comments concerning mandatory reporting and information sharing are included at Chapter 18.

<sup>17</sup> This 'indigenous status' field is based upon the national standard for the collection of such data.

<sup>18</sup> This ethnicity field is based upon the national standard for the collection of such data.

## **3.5 Coordination**

WAPS and its officers participate in a number of coordination bodies. These include the Aboriginal Cyclical Offenders Pilot Project, Domestic Violence Councils, and the Interdepartmental Committee on Sexual Assault. These are discussed in more detail at Chapter 13.

WAPS also performs a 'coordination' role in regard to night patrols and wardens. These other service providers have not informed the Inquiry that coordination is lacking, rather the Inquiry has heard only positive comments about the interaction between the services.

Previously WAPS also participated, as lead agency, in the Police Minister's Council on Aboriginal, Police and Community Relations. The council provided a high level forum for communication between the Minister, government agencies and the community on policing issues. This council was disbanded in 1999 and to the best of the Inquiry's knowledge, no body was established to take on its functions (WAPS Supplementary Submission 8 April 2002).

### **3.5.1 Coordination with Victim Support Service and Child Witness Service**

#### *3.5.1(a) Child Witness Service*

Detective Sergeant John Adams said that the Child Witness Service (CWS) provided a good service in his experience in particular when pre-recording interviews with child witnesses. He also stated that the CWS does not have the resources to meet the demand of all child witnesses, rather it only deals with witnesses appearing in cases of sexual assault. (Transcript of Evidence by Jonathon Adams 9 May 2002) This is dealt with in detail in Chapter 11.

#### *3.5.1(b) Victim Support Service*

In addition to the significant amount of victim support provided by WAPS officers, the WAPS Victims of Crime Unit made referrals to the Victim Support Service (VSS) located at DOJ by way a daily bulletin. Legal issues attending the provision of the 'daily bulletin' have been raised and the practice has been suspended. The VSS is dealt with in some detail in Chapter 10.

## **4. ANALYSIS OF SERVICE PROVISION**

### **4.1 Access to service by Aboriginal communities**

Access to WAPS services is influenced by a number of factors. Most significantly is the provision of services in non-metropolitan and remote communities. This is discussed above at section 2.5. The provision of service is also limited by the barriers felt by the Aboriginal community when deciding whether to make a complaint to WAPS about family violence or child abuse. These barriers are discussed below at section 4.3.2.

## 4.2 Strengths

The evidence presented to the Inquiry indicates that WAPS has considerable strengths, and indeed resolve, to respond to complaints of family violence and child abuse in Aboriginal communities. Particular strengths of WAPS identified by the inquiry include:

- A knowledge and understanding of the nature and scope of the issues involved;
- A presence in most metropolitan, non-metropolitan and remote Aboriginal communities;
- A positive relationship with other service providers, in particular communities patrols and wardens;
- Specific structures in place within WAPS to address family violence and child abuse;
- A strong commitment to, and progress with regard to, implementing an efficient information management system;
- Specific procedures in place to deal with reports of family violence and child abuse;
- Reciprocal protocols and procedures with other departments, which they describe, in many cases, as being effective;
- Access to services provided by other departments such as alternative dispute resolutions services and victim support services;
- Significant legislative powers to deal with reports of family violence and child abuse;
- Involvement in the community through bodies such as the Police and Citizens Youth Clubs and local sporting groups.

## 4.3 Challenges

### 4.3.1 Trends in Offending and Challenging Factors

#### 4.3.1(a) Trends in Offending

The Inquiry analysed some offence and incidence reports provided by WAPS and identified key trends as:

- The majority of family violence offences occur between de facto partners.
- Multiple assaults regularly occur within the same family group—often over the same day or week.
- Alcohol or solvent abuse is regularly associated with family violence incidents—both on the part of the perpetrator and the victim.
- Assaults often occur in front of a number of witnesses, and are not 'hidden' in the same way that family violence is often hidden in non-Aboriginal families. (WAPS Supplementary Submission *Offence Reports: Esperance Laverton Police District*<sup>19</sup> 26 March 2002)
- Sexual offences are often committed when the complainant is not residing at home or is vulnerable due to his or her, or his or her guardian's, alcohol or substance use

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<sup>19</sup> This is the date received by the Inquiry, however the information was prepared some time prior to that.

- Charges often cannot be laid after an offence report is made due to withdrawal of the complaint by the complainant. (WAPS Supplementary Submission Sexual Assault Offence Reports – 1997-2002, Police Service<sup>19</sup> 26 March 2002)
- Aboriginal people living in country areas are more than twice as likely as those living in the city to be victims of reported family violence.

#### **4.3.2 Barriers to service delivery**

Aboriginal communities have identified a number of barriers which they face when considering making a complaint to WAPS. The barriers are both emotional and physical. Discussed below are some of the key barriers that have been raised during consultations relating to WAPS specifically. Discussed at Chapter 4, at more length, are barriers such as emotional issues experienced by the *Stolen Generation* and their kin and Aboriginal cultural factors. These barriers are common to a number of departments, but are particularly relevant to WAPS, given previous roles undertaken by police including exercising powers to remove children from Aboriginal families.

##### *4.3.2(a) 'Shame' Factor*

A key barrier that has been brought to the attention of the Inquiry, and indeed was known to it earlier, is the 'shame' factor. This sense of shame makes it far more difficult for Aboriginal people to report abuse and family violence, and indeed makes it more difficult for them to assist their children to deal with these kinds of issues.

##### *4.3.2(b) Fear of Payback and Retribution*

A number of submissions and Aboriginal communities stated that reports of sexual abuse, including rape, are unreported because of fear of retribution and 'pay back', or some distortion of these traditional law concepts.

##### *4.3.2(c) Family Relationships*

Some Aboriginal people have found it difficult to pursue a complaint where the alleged perpetrator was a family member or a member of a family who lives near them. If offenders are incarcerated, 'blame' can sometimes fall on the complainant who put the offender in jail.

##### *4.3.2(d) Community Structures*

Some communities had a view that they could not expect government departments to effectively deliver services when the community structure is not in place to adequately support the delivery of those services.

##### *4.3.2(e) Police Station Aesthetics*

Some Aboriginal community members expressed a view that Police Stations are not a welcoming or even open environment for Aboriginal people to attend to make a complaint, particularly where that potential complainant is unsure of making the complaint or is a child. In particular, stations were described as felt it was too open, without privacy and intimidating.

WAPS advised the Inquiry that a balance needs to be achieved between maximising the aesthetics of a WAPS station and competing demands for operational funding. Further, many of the initial reports are made 'in situ', that is the place of the incident, rather than in at a WAPS station. (WAPS Final Submission 12 July 2002)

#### **4.3.3 Perceived 'Lack of Action'**

Throughout the state the key issue raised by Aboriginal communities concerning WAPS was when complaints of sexual assault and family violence was made to WAPS '*nothing was done about it*'. In some instances, after further inquiries were made, it became clear that this was not entirely correct. Regardless of the veracity of some of these claims, even the simple perception that WAPS are not acting on complaints of child abuse and family violence is a significant issue for WAPS. This perception is a particular problem insofar as it may discourage potential complainants from coming forward. The Inquiry acknowledges that this perception may extend from 'confidentiality' associated with complaints and the processing of offenders.

#### **4.3.4 Complaints made by individuals other than victims**

Individuals other than the victim often provide WAPS officers with information. Detective Sergeant John Adams gave evidence to the Inquiry that complaints would be pursued where the initial complainant was not the victim if the evidence met a certain threshold. (Transcript of Evidence by Jonathon Adams 9 May 2002, WAPS Final Submission 12 July 2002). A complaint might reach that threshold where the initial complainant is a medical worker and can provide evidence of the alleged assault such as a young child carrying a sexually transmitted disease. Of course, the Inquiry is cognisant that without evidence from the alleged victim the likelihood of a successful prosecution is minimal in many cases, particularly where the alleged victim is a mature minor.<sup>20</sup> An example of where a complaint may not meet the threshold is where a disclosure is made by an intoxicated juvenile to a third party and that juvenile will not repeat the disclosure to WAPS. WAPS officers face a challenge in explaining this to the third party who made the complaint to them in the first instance.

#### **4.3.5 Non-custodial options**

The WAPS statistics show a sharp drop in apprehensions for alcohol related matters resulting in police custody where conveying the alcohol affected person to a sobering up shelter is an option. (WAPS Supplementary Submission 8 April 2002) In addition, WAPS witnesses, and a number of Aboriginal communities described substance abuse as the leading cause of justice related issues. (Witness Statement of John Hart 26 March 2002, Witness Statement of James Clarysse 8 March 2002) The provision of non-custodial options, such as safe houses and sobering up shelters, are not within the core business of WAPS, however WAPS is reliant upon the provision of those services by other government agencies.

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<sup>20</sup> The definition of mature minor is discussed in chapter 8 but essentially a 'mature minor' is a minor aged between 12-16 years who has the capacity to make decisions which otherwise may be within the purview of a parent or guardian.

The absence of such services, particularly in remote areas, reduce the options available to WAPS officers. WAPS officers pursue the provision of such services with vigour in what ever forum is available. The Inquiry commends them for their advocacy.

#### **4.4 Future directions**

WAPS has provided the Inquiry with significant amounts of information concerning future directions, it particularly identifies the future directions as:

- Improved services to remote communities – Galton-Fenzi Report
- Outcomes from the Review and Evaluation of the Joondalup Family Violence Project
- Enhancement of current examples of specific WAPS initiatives. (WAPS Final Submission 12 July 2002)

An improvement to current programs, which is included in this chapter in the relevant sections. In addition to that information there are also a number of additional, and new, directions that WAPS are pursuing. WAPS identified training as one of the keys to the provision of better services for victims of family violence and child abuse in Aboriginal communities, in particular with regard to APLOs and other service providers such as wardens. (WAPS Final Submission 12 July 2002)

##### **4.4.1 Protective Custody Act 2000**

*The Protective Custody Act 2000* (the PC Act) provides for 'authorised officers' to seize intoxicants from juveniles, to apprehend intoxicated people and directs the authorised officer in dealing with them. An 'authorised officer' is defined in section 3 of the PC Act to be a person declared to be an authorised officer under section 27 of that Act or a police officer. Section 27 of the PC Act gives the Commissioner of Police a discretion to appoint a person to be an 'authorised officer'; it also outlines the process by which such an appointment is made and the status and protections for an authorised officer.

The powers under the PC Act assists WAPS officers, and others, to deal with intoxicated people without resorting to criminal charges. The Commissioner of Police has advised that the power to appoint a person to be an authorised officer has not, as yet, been utilised. It is his view that the powers under the Act should be used if, and when, a number of approved facilities are available to accommodate intoxicated juveniles. Currently one facility has been approved and that is located in Kelmscott and can cater for up to four intoxicated juveniles at one time. (WAPS Supplementary Submission 7 June 2002) The Inquiry respects that view. The Kelmscott facility is a 'Time Out Centre' which is funded by the Commonwealth government. It has stringent processes in place to ensure the safety of young people delivered into its care. (WAPS Final Submission 12 July 2002)

#### **4.4.2 Education**

The Inquiry received evidence from WAPS officers and Aboriginal communities that education programs about family violence, positive relationships and child abuse are required to improve the reporting and reduce the incidence of, family violence and child abuse, and reduce the incidence of such. This evidence supports a finding by the Gathering of a similar nature. The provision of such education is discussed further in Chapter 12.

#### **4.4.3 Attendance of DCD**

It has been suggested to the Inquiry that the attendance of officers from DCD, in particular the CCU, would provide a better service to victims of family violence and child abuse. Currently WAPS officers do make a referral to CCU when they believe a need is established. The services provided by the CCU is discussed in Chapter 7.

### **4.5 Conclusions**

WAPS is the main provider of policing services throughout WA and is one of the key agencies which provides responses to family violence and child abuse in Aboriginal communities. The WAPS Final Submission acknowledges *'the serious nature of family violence and child abuse in the Aboriginal community and the need to improve and change service delivery for improved outcomes'* (WAPS Final Submission 12 July 2002: 19)

The Inquiry has been able to gather significant amounts of evidence concerning the manner in which WAPS provides its services. The Inquiry notes that many of the issues described as WAPS as 'barriers' to effective service delivery fall outside the responsibility, and indeed authority, of WAPS. This highlights that the effectiveness of the provision of policing services is, not surprisingly, reliant upon effective service delivery by other government agencies. It is also true that other government agencies are reliant on WAPS in a similar manner. As such the service delivery by WAPS will benefit from the implementation of both recommendations contained in this Chapter, recommendations contained in Chapter 13 concerning collaboration and co-ordination between government agencies and, indeed, recommendations to improve service delivery in other agencies.

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## LEGISLATION

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- Aboriginal Communities Act 1979 (WA)
- Police Act 1829 (WA)
- Public Sector Management Act 1994 (WA)
- Restraining Orders Act 1997 (WA)
- The Censorship Act 1996 (WA)
- The Protective Custody Act 2000 (WA)
- Young Offenders Act 1994 (WA)





*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • 'Black sex-abuse whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse campaigner' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## Justice services

### CHAPTER 10

# SECTION 3

*This chapter provides a brief outline of the justice services that relate to family violence and child abuse, in particular with regard to Aboriginal communities.*



CHAPTER 10 – JUSTICE SERVICES

Department of Justice



## 1. OVERVIEW

### 1.1 Department of Justice

#### 1.1.1 Broad intent and mission statement

The Ministry of Justice was established in July 1993 to make the justice system more efficient and responsive to the needs of the community. The Ministry of Justice was renamed the Department of Justice (DOJ) in 2001. DOJ's mission statement is to:

*... Provide quality, co-ordinated and accessible justice services, which contribute to a safe and orderly community. (MOJ 2001: 5)*

The DOJ emphasised to the Inquiry the breadth and scope of its role, which includes eleven functional areas and the administration of some 284 pieces of legislation.

#### 1.1.2 Structure and management

Given the scope of the roles undertaken by the DOJ, the Inquiry has identified seven key areas of interest within the Department which are particularly relevant to the Inquiry's Terms of Reference. Those sections are:

- Prison Services
- Juvenile Custodial Services
- Community and Juvenile Justice Services
- Health Services
- Office of the Director of Public Prosecution
- Court and Court Support Services
- Aboriginal Policy and Services.

The Inquiry notes that the Office of the Director of Public Prosecutions is an independent office holder<sup>1</sup> and as such information was provided to the Inquiry directly from that office rather than through DOJ, and is treated separately under this chapter, in section 2.8.

#### 1.1.3 Staff, budget and office locations

DOJ spent approximately \$433 million in the 2000/2001 financial year (actual rather than estimated). This funding is directed to the provision of a variety of services, from prison (custodial based) services, to court services. (MOJ 2001) The current focus of DOJ in the application of its budget is shifting toward the provision of diversion services and services to offenders in the community.

<sup>1</sup> Section 4 of the *Director of Public Prosecutions Act 1991* creates an office of the Director of Public Prosecutions. Section 25 of the *Director of Public Prosecutions Act* states that the Director of Public Prosecutions is generally free from directions from the Attorney General (as the responsible Minister) and any other person in the exercise of his functions, subject to specific exceptions contained in that Part.

DOJ offices are located across Western Australia (WA) to provide services, although some 'offices' do not provide all the services of DOJ, such as prisons or court facilities. DOJ facilities, of one form or another, are available as far north as Kununurra and Halls Creek, or as far south as Esperance.

#### **1.1.4 Submission made on behalf of DOJ**

DOJ provided a submission to the Inquiry in March 2002 ('the DOJ initial Submission') which was spoken to in evidence by Mr Robert Carter, Director, Community Corrections. The Submission identified, correctly, the functional areas that are of particular relevance to the Inquiry's Terms of Reference.

The Submission acknowledges that approximately a third of the prison population in 2001 were Aboriginal, and Aboriginal people also represent a very significant proportion of the client base for the other services provided by DOJ. As such, the Inquiry is particularly interested in the services provided to Aboriginal offenders, insofar as that is a key component of the government's responses to child abuse and family violence in Aboriginal communities. (DOJ Initial Submission March 2002)

## **1.2 Other service providers**

Justice Services are provided by DOJ and the Office of the Director of Public Prosecutions. To some degree 'justice services' are provided by WAPS, however these have been addressed under 'policing' at Chapter 10.

Justice Services are not often provided by other service providers, save as to when contracted to do so by DOJ. Examples of such contracts are the prison management contracts and the contracts for provision of 'through care' in the Broome area. These contracts are discussed below insofar as they are relevant to the Terms of Reference.

The prosecutorial services provided by the Office of the Director of Public Prosecutions are discussed below at Section 2.8.

## **2. SERVICE PROVISION BY DOJ**

### **2.1 General services**

The Terms of Reference require the Inquiry to consider government responses to complaints of family violence and child abuse. One such response is the incarceration of perpetrators of family violence and child abuse for associated criminal offences. As such the effectiveness of that incarceration, in particular in prevented re-offending, is of concern to the Inquiry.

Similarly, the Inquiry notes that incarcerated persons may have been subject to family violence or child abuse and that the offending, which led to them requiring justice services, is part of a cycle. As such the provision of services to offenders by DOJ is of interest to the Inquiry pursuant to its Terms of Reference. The correlation between child abuse and offending is discussed at Chapter 4 of this report.

DOJ provides two distinct streams of services. They provide 'custodial' services insofar as they manage incarcerated offenders whilst they are in prison. They also provide more 'restorative' services, such as the programs offered to offenders and victim support services. The Inquiry acknowledges that the provision of 'custodial' services can significantly impact upon an offender's experience whilst incarcerated and therefore the behaviour of that offender when he or she is returned to the community. It is noted that this has a merely peripheral relevance to the Inquiry's Terms of Reference. A number of studies and examinations of the quality and impact of 'custodial services' have been undertaken, in particular the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The Inquiry does not propose to revisit the work previously undertaken, rather it is focused on the 'restorative' services offered by DOJ.

## 2.2 Prison services

Currently two separate divisions of DOJ provide services to offenders:

1. Prison Service Directorate (Offender Management)
2. Community and Juvenile Justice Services Directorate

The services provided by the Community and Juvenile Justice Services Division are addressed below at 2.1. The Inquiry notes that, in some instances, there is a cross over of service provision where the client is primarily serviced by the Prison Service Division whilst incarcerated then, upon their release from prison, are supervised by Community and Juvenile Justice Services.

The Inquiry is aware that, in response to the State Government Budget 2002-2003, DOJ has reallocated resources to the management of more adult offenders in community based services. This seems to represent a reduction in the expenditure on programs for incarcerated offenders. (DOJ Initial Submission March 2002)

**79. The Inquiry finds that sex offender programs should be available to all incarcerated persons, including juveniles, convicted of child sex offences, subject to the availability of sufficient funding.**

The Inquiry has had an opportunity to briefly consider the Prison Division Strategic Plan for Aboriginal Services – 2002-05. The plan addresses issues such as the diversity of Aboriginal culture, the high level of incarcerated Aboriginals, the special needs of Aboriginal women in prisons and the ratio of Aboriginal staff to Aboriginal clients. The plan would seem to provide a valuable framework for the delivery of services to Aboriginal incarcerated prisoners. (Prison Division 2001)

### 2.2.1 Integrated Prison Regime

DOJ has developed the 'Integrated Prison Regime' (IPR), which is a new initiative to assess offenders' needs during incarceration. The IPR is aimed at integrating and maximising services provided to incarcerated offenders with a view to reducing recidivism (MOJ 2002). The IPR replaces a previous assessment process for the intake of prisoners which did take into account scheduling for treatment programs and regular reviews to monitor the progress of the offender. DOJ has advised that the IPR will allow for treatment programs to be offered to prisoners earlier in their sentence. (DOJ Initial Submission March 2002)

Case Management is also being piloted in five prisons and is intended to complement Individual Management Plans to prepare offenders for a successful return to the community.

The IPR allows for an individual assessment of incarcerated offenders leading to the development of an Individual Management Plan. For metropolitan males this is conducted at Hakea Prison. DOJ advises that IPR will be 'rolled out' to all prisons in the next twelve months. (DOJ Initial Submission March 2002)

The IPR is based upon a move to 'case management' principles. In practice this entails the assignment of a designated 'case officer' to each prisoner to monitor the implementation of the Individual Management Plan and maintain regular contact with the prisoner. (DOJ Final Submission 16 July 2002)

DOJ provided further advice that, the IPR, when fully implemented, will mean that incarcerated offenders will not be 'wait listed' for programs. It does note, however, that where a program is longer than the term of imprisonment, it may mean that programs cannot be completed. (DOJ Final Submission 16 July 2002) The terms of incarceration is a matter for judicial discretion which is not within the Terms of Reference of this Inquiry.

**80. The Inquiry endorses the Integrated Prison Regime (IPR) and supports its implementation in prisons across Western Australia. The Inquiry recommends that the Department of Justice incorporate the principles underpinning the IPR, in particular meeting individual needs, through the services it provides in the prison service division.**

### 2.2.2 Offender's Program Branch

The DOJ Initial Submission states that the Offender Programs Branch of the Prison Services Division is an amalgam of services which were previously provided in an ad-hoc fashion. The offender programs offered by the Branch relate to substance use, violence, sex offending and programs specifically for people with disabilities. The Branch is also responsible for providing advice on the management of offenders. (DOJ Initial Submission March 2002)

According to the Department's *Program Directory January-June 2002* the following programs are available:

- 7 sex offender programs
- 11 addictions programs
- 2 cognitive skills programs
- 3 violent offender programs
- 3 external programs – NASAS Substance Abuse Program, Health Education and Living in Harmony.

The Inquiry has established that, during 2000, approximately 50 per cent of Aboriginals in prison and subject to community orders participated in treatment programs. The Inquiry notes that:

1. All programs are voluntary
2. All programs may incur waiting lists
3. It may be that participants will be prioritised. (Baker, personal correspondence 31 May 2002)

The Inquiry also notes that 41.7 per cent of Aboriginal sex offenders on the Indigenous Medium Program (discussed at 2.2.4(a) below) were illiterate and 92.1 percent had a history of substance abuse. It is clear to the Inquiry that Aboriginal sex offenders often have attendant literacy and substance abuse issues. (DOJ Initial Submission March 2002)

DOJ advised the Inquiry that 56.3 percent of Aboriginal sex offenders had offended against children aged 16 years or less. (DOJ Initial Submission March 2002) This statistic was of particular concern to the Inquiry.

### **2.2.3 Consultations with Aboriginal Communities**

The Inquiry notes that the majority of Aboriginal communities strongly support Aboriginal offenders receiving help with offending behaviour, particularly in regard to sex offences. During consultation many communities indicated that, in their opinion, the effectiveness of the programs provided to Aboriginal offenders depended upon the programs being widely available and culturally appropriate.

Remote Aboriginal communities told the Inquiry that, in their opinion, due to a lack of community-based sex offender treatment programs in their area, prison-based treatment is the only option currently available which both assists the offender and protects the victim. It is noted that, even within prisons, attendance at a sex offender program is not compulsory.

The Inquiry also notes the community perception that perpetrators of child abuse and family violence were returned to their community after incarceration without 'treatment' being provided for their offending behaviour. The provision of transitional services by DOJ for offenders released from prison shall be discussed below at 2.4.1(c). The supervision of offenders subject to a non-custodial sentence will be discussed below at 2.4.

### **2.2.4 Sex Offender Programs**

#### *2.2.4 (a) Indigenous Medium Program*

DOJ has operated one program targeted at Aboriginal sex offenders, the Indigenous Medium Program, which is conducted at the Greenough Regional Prison. The Program was developed for, and targets, Aboriginals who commit repetitive sex offences with a significant level of aggression. The Program runs for 75 hours. (DOJ Initial Submission March 2002)

After assessment, described briefly at 2.2.1 above, targeted offenders were strongly encouraged to relocate to Greenough Prison to facilitate participation in the program.

This program is currently not available due to the resignation of the presenter. DOJ advised that a review of the program is being conducted by a small team of staff, including an Aboriginal Officer, with a view to preparing a manual to educate future presenters, and to encapsulate the program in writing rather than relying on the 'corporate knowledge' of a single presenter. (DOJ Final Submission 16 July 2002)

DOJ has advertised to recruit a new presenter for the program – however has advised that it does not have the resources to train additional staff to present the program where the designated presenter is absent or ceases their employment with DOJ ('succession planning').

The Inquiry is pleased to note that, whilst the course ran, 94.9 per cent of those offenders who commenced the program completed it. No data was available concerning the rate of recidivism amongst offenders who completed the course – in any event such data would rely upon subsequent convictions to determine recidivism which may not be the most accurate reflection given the likelihood of a complaint being made.

Counsel for DOJ made a submission to the Inquiry that:

*In recognition of the importance of retaining and planning its service delivery effectively, DOJ commenced a range of initiatives in planning its workforce to work towards DOJ becoming an employer of choice. These activities will include strategies to address the loss of knowledge and skill which occurs when employees depart. (Counsel for Represented Agencies Closing Submissions 22 July 2002: 70)*

The Inquiry notes this Submission.

**81. The Inquiry finds that programs should not place excessive reliance on any single officer or employee and accordingly risk the program lapsing when that person ceases employment. The Inquiry recommends that more focus be given to professional development and succession planning when programs are being planned by the Department of Justice.**

#### *2.2.4 (b) Other Sex Offender Programs*

Aboriginal offenders are also able to participate in other programs available to incarcerated sex offenders.

These are:

1. The intensive high-risk sex offender program conducted at Casuarina and Bunbury (450 hours)
2. The medium-risk program at Karnet (192 hours)
3. A program for medium risk intellectually disabled prisoners (170 hours).



**82. The Inquiry endorses the review of the Indigenous Medium Program**

**2.2.5 The Greenberg Report**

The Evaluation of the Western Australian Sex Offender Treatment Unit 1987-1999: A Quantitative Analysis ('the Greenberg Report') included some analysis of the Indigenous Medium Program.

The Greenberg Report noted that the definition of 'Aboriginality' used for the purposes of the assessment of offenders for potential participation was not a definition used by the state or Commonwealth governments, nor was it comparable to those definitions. (Greenberg et al 1999) The Inquiry notes, as did the Greenberg Report, that the standard definition used for 'Aboriginality' is the one promulgated by ATSIC.

The Greenberg Report concluded, in essence, that the Indigenous Medium Program didn't prioritise the offender's particular treatment needs for sex offending. It should be noted that the Greenberg Report was not, nor did it purport to be, a full assessment of the sex offender programs available to incarcerated Aboriginal offenders. (Greenberg et al 1999) DOJ has advised that, of the recommendations contained in the Greenberg Report, some have been incorporated into current practice, some are rejected and some require additional funding to be implemented. (DOJ Supplementary Submission 5 July 2002) The Inquiry has not revisited DOJ's decisions with regard to implementing the recommendations in the Greenberg Report.

The Inquiry was particularly concerned to read the statistics contained in the Greenberg Report concerning the management of data concerning sex offenders. For example, 26 per cent of treatment completion reports were missing from the files of surveyed sex offenders who had completed programs provided by DOJ. The Inquiry is of the view that accurate record management and data collection is vital for the effective provision of services. (Greenberg et al 1999) See section 3.3 for further comments on record management issues.

**2.2.6 Other Offender Programs (Prison Based)**

*2.2.6 (a) Male Offenders*

Male prisoners are offered a further six programs focusing on anger management, substance abuse, and preventing further offending behaviour. The length of these programs range from five to 100 hours, the average being 20 or 50 hour programs.

The Indigenous Men Managing Anger/Substance Abuse Program is run at the Roebourne, Broome, Greenough and Kalgoorlie Prison. This program has superseded a previous program, the Kimberley Offender Program. (DOJ Initial Submission March 2002)

A complementary program is also offered to Aboriginal men on remote communities called the Broome Men's Outreach Service which is discussed below at 2.4.1(d).

*2.2.6 (b) Female Offenders*

Female prisoners are offered three programs focusing on addiction, the programs range from 10 to 20 hours in length.

Two new initiatives will be offered to Aboriginal women offenders, namely:

1. A Sexual Health and Safety pilot program, conducted in partnership with Derbarl Yerrigan and Yorgum, which incorporates modules which aim to explore past sexual abuse and assist women in breaking the cycle of abuse.
2. Anger Management pilot program.

The Inquiry also notes the findings of the recent study of trends in the WA female prison population. The data collected, and findings made, in these kinds of studies are important to informing policy decisions in departments like DOJ.

*2.2.6 (c) Reasoning & Rehabilitation Program*

The Reasoning and Rehabilitation Program<sup>2</sup> was introduced in the WA justice system during 2001. The DOJ Submission states that the program is based on a substantial body of research indicating that many offenders have deficits in a number of such 'cognitive skills'. (DOJ Initial Submission March 2002) The issues addressed in the program include self-control, inter-personal problem solving skills and controlling emotions. The program is used as an alternative where sex offenders refuse to participate in a sex offender program.

DOJ has advised that a review was commenced in March 2002 regarding the participation of Aboriginal prisoners in the program. The review aims to provide comments and recommendations that will ensure that the program is presented to Aboriginal offenders in a 'culturally responsive' manner. The Inquiry notes that the issues addressed in the program are key issues for a significant number of incarcerated Aboriginals. It is also clear that programs which delivery the best outcomes for a target group are best designed with the guidance of that target group.

The Inquiry notes that there are some human resource issues concerning the delivery of this program.

**83. The Inquiry endorses the review of the Reasoning and Rehabilitation Program. The Inquiry recommends that the review be completed expeditiously and its recommendations, where accepted by the Department, be implemented as a matter of priority. The Inquiry also recommends that the review vehicle evaluate the specific cognitive patterns of Aboriginal offenders.**

<sup>2</sup> Also known as T3, the Canadian company who developed the program.

### 2.2.7 Relapse Prevention Strategies

Prior to their release, incarcerated offenders are encouraged to complete Relapse Prevention Strategies. The Relapse Prevention Strategy is a plan developed with an individual prisoner, detailing a means for discussion of issues and thought processes when offending behaviour is contemplated. It also includes mechanisms to cope with the pressure of release from incarceration and returning to the community.

Once released (either to Work Release or Parole) the Community Based Maintenance Program (run at Perth Community Justice Services office) is offered to the offender to facilitate maintenance and monitoring of Relapse Prevention Strategies. A copy of the offenders Relapse Prevention Strategies, or plan, are provided to Community Corrections Officers (CCO) as part of 'through care' (discussed below). CCOs are not specially trained in relapse prevention with regard to sex-offending. (DOJ Final Submission 16 July 2002)

The Inquiry understands that, due to confidentiality, it is unlikely that Aboriginal community members would have knowledge of a specific offender's Relapse Prevention Strategy. The Inquiry also notes that, from consultations with Aboriginal communities, it is probable that these communities are not aware of the existence of Relapse Prevention Strategies in general, and, in turn, their potential for reducing offending.

### 2.2.8 Prisoner Work Camps

Aboriginal communities visited by the Inquiry made reference to the use of 'prison work camps' as a possible diversion for Aboriginal prisoners during incarceration; some prison work camps are already specifically targeted at Aboriginal incarcerated offenders. Work camps usually involve minimum-security prisoners, undertaking environmental, recreation/tourism, heritage and disaster relief work and may include some accredited training courses through TAFE. The participation in the camps is voluntary and prisoners are expected to do their own cooking and cleaning. DOJ consulted with local shires, Aboriginal elders and community organisations to establish prisoner work camps. (DOJ website)

Counsel for DOJ submitted that *'The Young Offenders Act 1994 prevents contact between juvenile and adult offenders in custody'*. More appropriate options for sentencing juveniles from remote locations are under consideration. (Counsel for Represented Agencies Closing Submission 22 July 2002: 72)

**84. The Inquiry supports the use of work camps as an example of an alternative to the traditional incarceration of Aboriginal adult offenders. The Inquiry recommends that more appropriate options for sentenced juveniles from remote locations be considered as a matter of urgency.**

## 2.3 Juvenile Custodial Services

Juvenile Custodial Services operates two detention centres, Rangeview Remand Centre and Banksia Hill Detention Centre<sup>3</sup>, to cater for youth between the ages of 10 and 18 years who have become involved in the criminal justice system. The focus of Juvenile Custodial Services is, 'to provide quality, co-ordinated and accessible justice services which contribute to a safe and orderly community'. (DOJ Initial Submission March 2002: 58) During 2000/2001, approximately 61 per cent of the average daily population of juveniles in custody were Aboriginal. This represents 73 Aboriginal juvenile offenders on average incarcerated in Western Australia. (DOJ Initial Submission March 2002) This leads to the contemplation of why there is such a high rate of offending in the Aboriginal community and whether DOJ services offered to juveniles meet the needs of incarcerated Aboriginals.

Counsel for DOJ submitted to the Inquiry that 'The vision statements for each of these divisions provided in the DOJ submission are to be replaced in the near future'. (Counsel for Represented Agencies Closing Submissions 22 July 2002: 72-73)

**85. The Inquiry finds that the Mission Statement of Juvenile Justice Services-custodial does not adequately represent its role in rehabilitating juvenile offenders. The Inquiry recommends that the "Mission Statement" of the Juvenile Justice Services division be amended to include a reference to the rehabilitation of juvenile offenders.**

### 2.3.1 Individual Case Management Plans

DOJ has advised the Inquiry that all long-term juvenile remand prisoners, high risk re-offenders on remand and sentenced juvenile offenders from across WA have individual Case Management Plans. These juveniles participate in education, vocational training, work, therapeutic and health programs for a set period each weekday. (DOJ Initial Submission March 2002)

DOJ also operates a 'Through care' model to manage young offenders' transition back into the community. DOJ have advised that 'through care' is a useful structure for transition from prison to the community but is dependent on funding. (Counsel for Represented Agencies Closing Submission 22 July 2002) Under the model each juvenile offender has a Juvenile Justice Officer (JJO) assigned to manage the juvenile's transition to the community, in particular to maintain contact with families.

### 2.3.2 Programs Available Through Juvenile Custodial Services

Of the programs offered by Juvenile Custodial Services, of particular interest to the Inquiry are the following programs.

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<sup>3</sup> The Inquiry visited the Banksia Hill Detention Centre during consultations.

2.3.2 (a) *Promoting Adolescent Sexual Health (PASH)*

The PASH Program addresses key issues such as sexually transmitted diseases, appropriate sexual behaviour, family violence and speaking out about sexual assault. The PASH Program is delivered to both male and female incarcerated juveniles and consists of 10 sessions over five weeks. The program was developed by Family Planning WA. Referrals to the program are made through the Case Management Planning process or through DOJ Psychological Services.

2.3.2 (b) *Young Offender Personal Development Program*

This program has run for two years and aims to *'introduce juvenile offenders to ideas and skills that may help them in breaking offending cycles and coping with the challenges they face in the community.'* (DOJ Initial Submission March 2002) Participation in the program is voluntary and forms part of the Case Management Plan. Detention centre staff delivers the program. It includes topics such as victim awareness, relapse prevention, assertiveness skills and anger management.

There has been no evaluation or review of the program and the DOJ submission states that the program should *'do no harm...[but at least] to provide most detainees with something meaningful to be applied to their own lives.'* (DOJ Initial Submission March 2002: appendix 9)

2.3.2 (c) *Adolescent Sex Offender Intervention Program*

The Adolescent Sex Offender Intervention Program has been provided to incarcerated juveniles for nearly 10 years. The program is conducted on an individual basis to avoid contamination, labelling, and disclosure issues. Juvenile Justice Psychological Service staff advised the Inquiry that the success of the adolescent sex offender program was limited because:

1. offenders have cognitive limitations due to drug and substance abuse
2. Aboriginal juveniles represent 32 per cent of juvenile sex offenders, however there is not a culturally specific program
3. there is a relatively short time frame to in which deliver programs (average sentence for juveniles is 15 weeks).

The recidivism<sup>4</sup> rate of detainees completing the program is 9 to 11 per cent, however, this data reflects all participants and not Aboriginal specific re-offending.

DOJ have submitted that, rather than the Adolescent Sex Offender Intervention Program, intensive individual counselling has been preferred as it allows for addressing individual needs. (Counsel for Represented Agencies Closing Submission 22 July 2002)

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<sup>4</sup> 'Recidivism' is here defined as convicted of further offences in the nature of sexual offences.

**86. The Inquiry finds that the Adolescent Sex Offender Intervention Program, or a similar program, is a necessary part of the service provided by the Department of Justice. The Inquiry recommends that the program, or intensive individual counselling, be available to all incarcerated juvenile sex offenders.**

### 2.3.3 Disclosures of Child Abuse by Incarcerated Juveniles

A DOJ 'Director General's Instructions' refers to inappropriate sexual contact between detainees and between staff and detainees. In evidence from the Juvenile Justice Psychological Services, they reported to the Inquiry that disclosures of sexual abuse in detention are 'rare'. In responding to disclosures the young offender has access to the regular psychological services within Detention.

DOJ advised that it relies upon the terms of the reciprocal arrangements between DCD and DOJ (July 1998) which state that, when certain disclosures are made, the child should be referred to DCD. It further states that 'current practice' is that:

*Officers becoming aware of such allegations would refer to the departments Juvenile Psychological Services, or at least consult the detention centre Psychologists before making a report or assisting the young person to make a complaint to the Department or Community Development or the Police. (DOJ Final Submission 16 July 2002: p4)*

The Inquiry was also provided with advice from DOJ with regard to the 'practices' usually adopted by Juvenile Psychological Services.

**The Inquiry finds that the Department of Justice does not have a clear policy for receipt of disclosures of family violence or child abuse by clients of the Department. The Inquiry recommends that such a policy be put in place as a matter of urgency.**

DOJ advised the Inquiry that additional supports could be put in place for juveniles revealing abuse. It noted that protective behaviours and domestic violence programs operating in juvenile custodial facilities would help to develop a sense that the juveniles had a right to feel 'safe' and provide a positive climate for disclosures. DOJ further stated the juveniles may be more likely to disclose abuse if they felt their safety was ensured in the community. DOJ suggested it may be able coordinate with DCD to improve the perception of safety. (DOJ Final Submission 16 July)

## 2.4 Community And Juvenile Justice Services (Community Based Services)

The Community and Juvenile Justice Service division operates outside the custodial setting. The Community Justice Service provides services to adults and is primarily staffed by Community Correction Officers (CCOs). The Juvenile Justice Services branch of the division provides services to juveniles and is staffed by JJOs.

There is a body of research that suggests that community-based offender programs are more effective to reduce re-offending than institutional based programs. (DOJ Initial Submission March 2002)

A key theme of the DOJ Submission, and other material provided by the Department to the Inquiry, is a shift of focus from incarceration to 'prison-reduction'. To that end, DOJ intends to appoint 16 more CCOs and three extra community work groups. This shift in focus relies on the effectiveness of diversionary strategies and services available, both before and after offences have been committed. The Inquiry notes that DOJ is currently undertaking research as to the most effective model for adult diversion. (DOJ Annual Report 2001-02)

#### **2.4.1 Community Based Programs (Adult Offenders)**

The CCOs supervise the performance of Court Orders by offenders which do not include incarceration. These include Work and Development (fine default) Orders, Community Based Orders, Intensive Supervision Orders, Home Detention (either as a condition of bail or an early release option for eligible prisoners), Work Release, and Parole.

The Inquiry note that Court Orders may also require offenders to attend counselling and other support services to address issues such as addiction. Aboriginal offenders in the metropolitan area may use services such as the Nyungar Alcohol and Substance Abuse Service (NASAS). Offenders may also access services, of their own volition, such as *SafeCare* which provides a sex offender treatment program.

##### *2.4.1 (a) Sex Offender Program*

The Directorate conducts a community based sex offender program through its Perth and Bunbury Offices. The Program focuses on relapse prevention for men on community based orders. The Inquiry notes that this Program is not delivered outside the metropolitan and Bunbury areas. There are also:

- A stand alone community group for offenders considered at the lower end of the risk scale, comprising one group session per week for six months
- A maintenance group for offenders who have been through the prison programs and are still considered a 'risk'. The group can occur throughout their order if need be, with one session per fortnight
- A group for offenders with an intellectual disability which occurs over 12 weeks with day long sessions. (DOJ Supplementary Submission 10 July 2002)

##### *2.4.1 (c) Through Care Officers*

In an effort to better coordinate the collaboration between Community and Juvenile Justice Services and Prison Services Directorates, Prison Based Senior CCOs, known as Through Care Officers (TCOs) are situated at some prisons to provide through care for prisoners returning to the community. These TCOs are involved in pre-release plans for offenders. (DOJ Initial Submission March 2002)

The Inquiry notes that there are no TCOs at Broome Regional Prison. Rather the Broome Community Justice Office has four Aboriginal Community Development Officers whose role is to educate and advise the relevant Aboriginal communities on DOJ systems, and assist in the process of releasing convicted offenders back into the community.

The Inquiry notes that often a TCO will contact the Aboriginal community to ascertain whether the offender is permitted to return to that community and if there are any concerns about the risk to children. During this communication with the Aboriginal community the TCO must be satisfied that due process has been followed and a democratic decision made to allow for the offender to return. Once the TCO has this decision it can be included in the report to the Parole Board. DOJ provided additional information to the Inquiry that, on release offenders have similar rights to other members of the community and it is doubtful that the department has the authority to prohibit an individual choosing where to reside. (DOJ Supplementary Submission 10 July 2002)

The Inquiry also notes that, on occasions, a message conveyed to DOJ Officers, may not represent the views of every member of the community, but rather the majority views of the elders and the advisors. (DOJ Supplementary Submission 10 July 2002)

#### *2.4.1 (d) Through care – Broome Men's Outreach Program*

One of the main programs funded through the Kimberley Regional Justice Project is the Broome Men's Outreach Program (BMOP). The BMOP is provided by a contracted service provider and creates a physical link, that is 'through care' between the prison and the Aboriginal community. Further discussion of the BMOP can be found at section 2.6.2.

### **2.4.2 Juvenile Justice Services**

#### *2.4.2 (a) Juvenile Justice Teams*

Juvenile Justice Teams were established to divert minor offenders from the formal court processes and to heighten the opportunity for parents of offenders and victims to be involved in the determination of penalties. The standard Team consists of a police officer, DOJ officer and a cultural or ethnic group representative. Teams are currently based in six metropolitan areas, but the DOJ advises that an amendment to the *Young Offenders Act 1994* is being drafted to allow for approved remote Aboriginal communities to operate Juvenile Justice Teams. DOJ advised it anticipates providing advice to Cabinet in the near future. (DOJ Final Submission 16 July 2002) The DOJ also advises that it is planning a pilot project to expand the range of offences in the Schedule of the *Young Offenders Act 1994* that can be dealt with by Juvenile Justice Teams.

The Juvenile Justice Team allows the offender to choose to participate in mediation with the victim of the crime. The mediation relies upon the young offender accepting responsibility for their actions and preparing an 'action plan' for discussion with the victim during the mediation.

Since the implementation of the Juvenile Justice Teams through the legislation, the number of individuals dealt with by the Children's Court has approximately halved. (DOJ Initial Submission March 2002)



**88. The Inquiry recommends that necessary amendments to the Young Offenders Act 1994 be expedited to allow Juvenile Justice Teams to operate in remote Aboriginal communities.**

An independent evaluation in 1998, by the Crime Research Centre, noted that Aboriginal referral and retention rates are *'lower than would be expected in relation to the number of Aboriginal juveniles charged with offences'* (DOJ Initial Submission; March 2002: 43) The Inquiry further notes that, in accordance with the state government plan for Young People Outcomes (DOJ Annual Report 2000-01), an Aboriginal Juvenile Justice Team coordinator has been appointed to raise the rates of diversion of young Aboriginal offenders. The Coordinator is responsible for preparing an induction manual for four part-time Aboriginal Case Support Officers who are currently being recruited.

#### 2.4.3 Mentors

Mr Robert Carter, Director, Community Corrections, gave evidence that, in the early 1990s, DOJ consulted with the Aboriginal community and noted the particular importance of family connections. The Aboriginal Family Supervision Program, a mentoring program, was the by-product of those consultations and it encourages family members to become mentors. (Transcript of Evidence of Robert Carter 23 May 2002)

DOJ's Annual Report 2000/01 states that:

*The mentors program is particularly important because, historically, Aboriginal offenders have a lower completion rate of community supervision orders than other offenders. This is partly because cultural differences have not been given enough consideration – something the mentor's program addresses.* (MOJ Annual Report 2000/01:38)

DOJ operate two mentoring programs to service youth, the 'Aboriginal Family Supervision Program' for youth aged 16 to 21<sup>5</sup> years and the mainstream 'Mentor Program' for juveniles under the age of 16 years. The aim is to provide positive role models, guidance and support to an offender to complete the requirements of his or her Order. The mentors play a different role to a JJO or CCO. It should be noted that where a mentor has been appointed by DCD then an additional mentor will not be appointed by DOJ and vice versa. (Transcript of Evidence by Philip Narkle 7 May 2002)

Susan Taylor was being mentored under the Aboriginal Family Supervision Program, this is discussed in more detail in Chapter 2.

##### 2.4.3 (a) Appointment of Mentors

Mentors are engaged as contracted service providers, although DOJ does include Aboriginal mentors in their statistics for Aboriginal employees. There are currently 33

<sup>5</sup> There is discretion for the Program to be extended to offenders over the age of 21 years.

contracted mentors, the contracts are of an ad-hoc nature based on the assessed needs of the client often for a period of one month subject to review at the end of that period.

The mentor is contracted to provide services for 10 hours per week, with additional hours available on request at the discretion of the relevant officer.<sup>6</sup> A mentor may service more than one client at a time, but not more than two. A mentor also may claim up to \$50 mileage per week as expenses, which anecdotal evidence indicates may form a barrier for more economically disadvantaged mentors to have contact with their mentee(s). (DOJ Final Submission 16 July 2002)

Some mentors see a strong element of community service in the role they play, and provide a level of service beyond their contract for service at their own cost.

A recent review of completion rates for community based orders showed that WA had the lowest completion rate in Australia. In response to that review, community work supervisors were moved from contracts for service to contracts of service with DOJ. The contracting process for mentors did not change, although it is currently subject to review. (DOJ Supplementary Submission 10 July 2002)

#### *2.4.3 (b) Work Undertaken by Mentors*

In practice the mentor based programs are designed to meet the needs of the specific young offender and, as such, the role of the mentor may vary according to the needs of the mentee. Mentoring tasks may include some after hours work, taking the juvenile to appointments, responding to a young offender's need to participate in recreational activities on weekends, and meeting with the young offender if they wanted to talk or seek support. This service is designed to assist the juvenile to the extent necessary and work with the family to help fulfil the juvenile's needs.

Given the role of the mentor, it is likely that he or she may receive disclosures of family violence or sexual abuse from young offenders. The Inquiry is not aware of any written policies or procedures that DOJ has in place to direct staff to deal with these disclosures. (DOJ Final Submission 16 July 2002)

#### *2.4.3 (c) Interaction between Mentors and JJOs or CCOs*

Mentors provide written journal notes to either the JJOs or CCOs to report on the progress of the individual. In evidence, Mr Robert Carter stated that mentors involved in '*highly vulnerable cases*' would have ongoing direction from the assigned officer, and the senior JJO would be consulted on professional practice issues. (Transcript of Evidence of Robert Carter 23 May 2002) Otherwise, the mentor is supervised by the Coordinator of the relevant mentoring program. DOJ advised that mentors are required to report any allegations of family violence or child abuse to the JJO or CCO holding case responsibility. According to DOJ, in future, mentors will be offered 'basic' training, and CCOs and JJOs will be offered training in the mentor programs. (Represented Agencies Closing Submissions 22 July 2002)

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<sup>6</sup> Either the Juvenile Justice Officer's senior officer or Community Correction Officer's senior officer.

An evaluation of the mentoring program was conducted, and it made significant recommendations concerning policy guidelines clarifying the responsibilities of the case manager, Co-ordinator and mentor and the relationship between them. The evaluation also recommended an improvement in case planning, data collection and changes to the staffing arrangements for Coordinators of the Aboriginal Family Supervision Program. (An Evaluation of the Aboriginal Family Supervision Program: 1998: iii-iv)

The relationship between mentors and the department is a contract for service. This creates a relationship whereby the contractor, the mentor, undertakes tasks independently of supervision by DOJ. The problems in the way this relationship currently operates has been brought to the Inquiry's attention.

**89. The Inquiry finds there is a lack of clarity concerning responsibility for the supervision of mentors. The Inquiry recommends that clear reporting and supervision mechanisms be established for mentors.**

#### *2.4.3 (d) Conclusions*

Former Aboriginal Family Supervision Program Coordinator, Mr Philip Narkle, and Mr Robert Carter, Director, Community Corrections, both reiterated the importance and potential for the mentoring program. DOJ has advised that the additional funds are to be allocated to mentoring programs to expand the programs. (Transcript of Evidence of Robert Carter 23 May 2002)

#### **2.4.4 Killara Youth Support Services**

Killara has been operating since the early 1990's and is a diversionary and support service for people up to the age of 18 and their families. Originally the service was provided by the Department of Community Development (DCD).

The Inquiry heard evidence from Mr Michael Davies, Acting Casework Coordinator as to the nature and scope of the service provided by Killara. The Service has a staff of 12 caseworkers, one of whom is a designated Aboriginal officer and is on call between 8am and 1am. The Service receives a copy of all juvenile cautions issued by WAPS (and Railway Police) which are followed up with a letter, phone call or visit. They also provide some assistance with returning juveniles home, or to a safe place, after they have been detained by WAPS. The Service also receives referrals from DCD and HDWA. (Transcript of Evidence of Michael Davies 27 March 2002)

The main feature of Killara's service is that it is not compulsory. Mr Davies noted that Aboriginal families, who made up approximately 13 per cent of their initial contacts, were often difficult to make contact with, and a home visit was seen as the most effective form of contact by Killara staff. This contact usually would be made by the Aboriginal officer at the Service, and in any event his or her advice was sought where the caution issued indicated that the juvenile was Aboriginal. (Transcript of Evidence of Michael Davies 27 March 2002)

The Service is only for people who request its assistance and are willing to work with Killara. Case officers offer some short term counselling and mediation and provide referrals to specialist mental health providers.

During his evidence, Mr Davies identified three key difficulties in providing the service:

1. The difficulties in recruiting employees to the Service given the nature of the work to be undertaken
2. The difficulties in reaching juveniles and families, which he suggested may be addressed by more funding for education about the Service
3. The lack of on site counselling and mediation services, which may be addressed by the employment of a psychologist. (Transcript of Evidence of Michael Davies 27 March 2002)

DOJ state that:

*'It is considered that the Unit (Killara Service) would not require the services of one full FTE (Psychologist).'* (DOJ Final Submission 16 July 2002: 12)

**90. The Inquiry endorses the work of the Killara Youth Service. The Inquiry recommend that the Department of Justice consider providing additional funding to address the issues identified by Killara Youth Support Services.**

#### **2.4.5 Drug Court Pilot Program**

The Drug Court Pilot Program ('the Drug Courts') is aimed at breaking the cycle of substance abuse and offending. The program commenced in December 2000 and will be evaluated for the first time in December 2002. The Drug Courts operate in the Perth Children's Court, the Perth Court of Petty Sessions and the District Court in Perth. The Inquiry does not intend to examine the program in detail. (DOJ Initial Submission March 2002)

Current statistics for the Drug Courts show that there is a relatively low uptake by Aboriginal people where referral to the Drug Court is an option<sup>7</sup>. This is supported by the 1997 evaluation of the then 'Court Diversion Services' Division of DOJ which stated that there is a low rate of participation by Indigenous people in specialist drug and alcohol treatment services. (DOJ Initial Submission March 2002)

The Inquiry notes that an Aboriginal person has been employed to market the program to the Aboriginal community and to increase referrals.

#### **2.4.6 Geraldton Alternative Sentencing Regime**

The Geraldton Alternative Sentencing Regime (GASR) offers both juvenile and adult offenders holistic rehabilitation programs and assistance to address the underlying issues in their offending. It is conducted by a Magistrate in the Geraldton region. The type of programs on offer are psychological counselling, stress reduction, substance abuse programs, financial planning, vocational guidance, anger management and medical

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<sup>7</sup> Of the 31 juveniles referred 11 (35%) are Aboriginal, of the adults, only 6% are Aboriginal.

referrals. The stress reduction program focuses on transcendental meditation, which is used on a trial basis to assist in the treatment of substance abuse. (Community Drug Summit 2001: Rec 28). The transcendental meditation element of the GASR is perhaps the most unusual element of the Regime, to date 19 offenders and 11 CCOs and JJOs have been taught transcendental meditation. Of those 19 offenders, seven are Aboriginal, with a majority of the remaining ten places being offered to Aboriginal offenders<sup>8</sup>.

The GASR operates as an alternative prior to sentencing, similar to the Drug Court. The GASR may be a short or medium term intervention, and the results of the offenders participation are considered during sentencing.

The Inquiry notes that the GASR has recently been extended to offenders who commit assaults against family members. Whilst there is some anecdotal and raw statistical data suggesting the GASR is having some promising results, the Inquiry notes that an evaluation has not yet been conducted given that CIASR has only been running for a short period time.

#### **2.4.7 Aboriginal Cyclical Offenders Project**

The Aboriginal Cyclical Offenders Project is funded through an arrangement between DOJ, DCD, Department of Education, WAPS, HDWA and DHW. The Project was a result of the work done in association with the Aboriginal Justice Plan (discussed below at Section 3.1.1). Pilot Projects were then commenced in Midland and Geraldton. Committees with both government and non-government representatives govern the Projects. The Business Plan for the Project acknowledges that child abuse and family violence are intrinsically linked to a failure to meet the needs of offenders. (Transcript of Evidence by Philip Narkle 7 May 2002)

The Inquiry heard evidence from Mr Phillip Narkle, Coordinator of the Midland Project, who explained that the Project focuses on primary crime prevention as the means to reduce the over representation of Aboriginal juveniles in the criminal justice system. (Transcript of Evidence by Philip Narkle 7 May 2002)

Mr Narkle explained that there were seven 'portfolio areas' within the Project, which represent different areas of government responsibility such as justice, policing and health. These portfolio areas are managed by an officer from the relevant department. Each portfolio then addresses specific issues as they arise, and are given an opportunity to address the underlying causes as well as the presenting issue. Currently the Project is finalising local service agreements with service providers which will embody a number of specific strategies to be put in place by the Project. (Transcript of Evidence of Philip Narkle 7 May 2002)

Mr Narkle notes that the Project is in its infancy and is operating on a 'trial and error' basis. The Inquiry notes that this approach, whilst possibly a more lengthy way of developing the model, allows the Aboriginal community to have more influence over the creation of the model which should ultimately mean it is more effective in dealing with the Aboriginal community it is servicing.

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<sup>8</sup> The Regime is funded by the Midwest District Committee of Safer WA

As both projects are in their infancy, the long-term benefits will come to fruition 5–10 years after implementation. A review of the Geraldton Project was undertaken in October 2001, with a full evaluation currently being completed. The funding for the Project is committed on a yearly basis by the relevant departments, Mr Narkle notes that this short budgetary cycle meant some resources were directed to retaining funding rather than providing services. (Witness Statement by Philip Narkle 27 May 2002)

## **2.5 Health Services**

DOJ employs approximately 147 FTEs in 2001/02 in the provision of Health Services to incarcerated offenders. The health services are provided through two main streams – prison nurses and the Forensic Case Management Team (FCMT).

The Health Service division is also responsible for the design and delivery of specific programs, such as sexual health programs for women, and those programs have been addressed in the relevant sections above.

A recent review of the operation of the FCMT recommended that the structure be changed so that the FCMT reported directly to the Director of Operation Services and Sentence Management rather than the Director of Health Services. This is to allow the FCMT to become a more integral part of the prison management team.

The Health Services division also runs specialist care units, such as an infirmary and crisis care facility, which are attached to the health centre at each relevant location. There is also a secure forensic in-patient facility located at Graylands Hospital. (DOJ Initial Submission March 2002)

The Inquiry notes the changes currently being made to the provision of adult psychological services, in particular the creation of a Programs Director to develop community based therapeutic services and programs for juveniles and adults. A key aspect of the new services is the delivery of counselling services to adult offenders, similar to those now provided to juveniles. Given that these programs are proposed and have yet to be implemented, the Inquiry is making no finding in this regard. (DOJ Final Submission 16 July 2002)

### **2.5.1 Psychological Services – Juvenile Justice Custodial Services**

The psychological services provided to juveniles are provided by nine psychologists with four of those based in the community to assist juveniles and their families. Referrals are accepted from a variety of sources including the juvenile themselves and their families.

They conduct assessments, intervention, training for JJOs, staff debriefing and support and research.

**91. The Inquiry finds that juveniles in custody should have ready access to psychological and psychiatric services.**

### **2.5.2 Psychiatric Services – Juvenile Justice Custodial Services.**

#### **2.5.3 Prison Counselling Services**

Incarcerated offenders may be referred to Prison Counselling Services (PCS) by officers during initial intake procedures, or may request the service. The majority of PCS services are aimed at crisis intervention although some long term counselling is available. The PCS also runs a Peer Support Program where offenders provide support to their peers. (DOJ Final Submission 16 July 2002) The Inquiry has not considered the provision of this service in any detail.

#### **2.5.4 Disclosures of Sexual Assault**

If a recent sexual assault has been reported then the Sexual Assault Resource Centre (SARC) is available for phone contact, and a medical examination will be arranged if necessary. Young offenders who self-report symptoms of a sexually transmitted disease are offered medical treatment. (DOJ Initial Submission March 2002)

Counsel for DOJ submitted to the Inquiry that

*DOJ recognises the importance of having a Family and Domestic Violence Policy and some progress on the development of a whole of department policy on Family and Domestic Violence has already been made. Any response to disclosure will necessarily lead to a complexity of responses depending on such factors as whether the disclosure is made by a child, an adult, a victim, a perpetrator or interested party, degree of injury etc. DOJ will continue to progress this policy. (Counsel for Represented Agencies Closing Submission 22 July 2002: 302)*

## **2.6 Court And Court Support Services**

DOJ provided information about recent Court upgrade, both within and outside the metropolitan area, to allow vulnerable witnesses to give evidence via remote video link so that they did not have to travel to court to give evidence. This is of particular benefit for Aboriginal witnesses living in remote communities, where travelling to the nearest court facility, let alone the metropolitan area, is onerous.

### **2.6.1 Education**

Some Aboriginal communities stated that they did not receive information about Court processes. Both the Victims Support Service (VSS) and the Child Witness Service (CWS) discussed below, provide information concerning court proceedings and outcomes. (DOJ Final Submission 16 July 2002) It should be noted, however, that if no complaint is made, or charges laid, then VSS and CWS do not have a role.

DOJ provided a significant amount of information concerning strategies and programs that have been put in place as a result of the Law Reform Commission's Recommendations concerning the development of services and facilities which meet the needs of Aboriginals, as well as providing all court users with a better understanding of the court system (DOJ Final Submission 16 July 2002)

The Inquiry has not had an opportunity to examine all these programs and strategies but does note that DOJ is considering the concept of 'Aboriginal Court Days', similar to those used in South Australia. This is part of the Magistrates' Courts and Tribunal Business Plan, and would be particularly beneficial in the Kimberley region. (DOJ Final Submission 16 July 2002)

The Inquiry also notes the recent pilot project to create an Aboriginal Benchbook for Western Australian Courts. That Project has produced a Benchbook which has been disseminated to judicial, and relevant court officers throughout the state. The maintenance and updating of the Benchbook is understood to be an ongoing project.

**92. The Inquiry finds that both victims and offenders are better equipped to access the court system and court services when appropriately educated about that system.**

### 2.6.2 Joondalup Family Violence Court

The Joondalup Family Violence Court was piloted in December 1999 to provide a collaborative approach to issues of family violence. The aims of the pilot were not only to improve the criminal justice response to family violence, but also to support the victims and reduce the incidence of family violence in the pilot area.

Given these aims, the Court is of particular interest to the Inquiry. Each Department who has participated in the Court has provided some information to the Inquiry on its role. Given the collaborative nature of this pilot project it is addressed under Chapter 13 and Chapter 10.

### 2.6.3 Review of the Victims of Crime Act 1994

The *Victim of Crime Act 1994* requires that public officers and public bodies are to have regard to the guidelines contained in Schedule 1 where it is within, or relevant to, their functions or is practicable to do so. The guidelines in Schedule 1 to the Act contain principles such as treating victims with compassion and advising them of their rights. Nothing contained in the guidelines or the Act, provides any person with a legally enforceable right or entitlement. The effect of the guidelines as discussed in some detail in Section 3 of the Act.

Section 6(1) of the *Victims of Crime Act 1994* requires that an annual review of the operations of the operations and effectiveness of the Act be conducted and that a report be tabled before Parliament. The 2002 report has yet to be tabled in Parliament. (DOJ Final Submission 16 July 2002)

Annual reviews since the inception of the *Victims of Crime Act 1994* have indicated that the needs of victims of crime have been increasingly acknowledged by DOJ, and indeed the government. However, since 1997, the reviews conducted have highlighted that '*services, policies and procedures are fragmented*' (Review: 1997). Indeed nine different divisions within DOJ provide services to victims. The 2001 review states that there is a fundamental change required to the whole of the issue of victims services, not just within a division or, indeed, a department. (McGuigan 2001)



The 1998 review raised significant concern about the need for Indigenous issues to be given 'significant attention'. (Review 1998) Later reviews have identified ongoing improvements in service delivery, however recommend that the *Victims of Crime Act 1994* be strengthened to make it more effective, in particular it was recommended in the 1999 review report that the definition of victim be extended and the guidelines contained in Schedule 1 to the Act be changed to a 'Charter of Rights'. (Review 1999)

The Inquiry does note that Kay Benham, Director, VSS and CWS, states that the term 'victim' is broadly interpreted by that service. (Transcript of Evidence of Kay Benham 6 June 2002)

Counsel for DOJ submitted to the Inquiry that:

*The new Victim Notification Register (VNR) was located with VSS. Services provided by the VSS and CWS were integrated to ensure that key resources were being provided in the most accessible way. It has been found that the VNR co-location has assisted in the ease of access by victims. Another positive outcome has been the effect of improving service integration across Divisions.* (Counsel for Represented Agencies Closing Submission 22 July 2002: paragraph 279)

**93. The Inquiry endorses the amalgamation of all victims' services into one victim service body and recommends that further strategies be put in place to improve the knowledge of both Public Sector employees and the community about the purpose and spirit of the Victims of Crime Act 1994.**

#### 2.6.4 Victim Support Services

The VSS operates through out the state. VSS has four counsellors available in the metropolitan area, and funds part-time regional services in 13 regional centres. The metropolitan centre has a staff of nine in total, and has a budget of \$1.3 million per annum.

VSS is a relatively new service provided by DOJ and has been running for less than 10 years. Given its relatively low budget and the high demand for its services, it appears the VSS has moved rapidly to create a strong service with appropriate policies and procedures and ongoing strategic planning to improve its service delivery.

VSS and CWS both have strategies to target Aboriginal victims of crime which focus on personal visits with victims and networking with Aboriginal organisations. (Transcript of Evidence of Kay Benham 6 June 2002)

Some Aboriginal groups state that they are not aware of VSS being available in their area. In non-metropolitan areas, non-government service providers are contracted to provide victim services. The figures provided by DOJ show a similar take-up rate by Aboriginal people offered services by VSS as compared to non-Aboriginals. (DOJ Initial Submission March 2002)

*2.6.4 (a) Referrals to VSS*

Until recently, the WAPS Victims of Crime Unit was responsible for 60 to 70 per cent of the referrals to VSS. Once WAPS had received a report of a 'serious crime', the victim's details were automatically forwarded on to the VSS within 24 hours of the report.

Recently, the legality of this referral arrangement with the WAPS has been questioned, including in the 2002 review of the *Victims of Crime Act 1994*. The referral process is under review (see Chapter 10).

Ms Kay Benham, Manager, VSS, gave evidence that the VSS does not have an 'advertising' budget, and additional funding might increase both referrals and the 'take up' of the services offered. (Transcript of Evidence of Kay Benham 6 June 2002).

*2.6.4 (b) Service delivered*

After a referral is made, DOJ has advised that, in the first instance, a volunteer attempts to contact the people referred to the Service by telephone after which a follow up letter is sent. The VSS relies on 40 trained volunteers to make contact with victims and assist people in Perth. Ms Benham, Manager, also gave evidence that volunteers were rigorously screened and given extensive training before being utilised by the Service. She added that some of the volunteers were Aboriginal. It is a credit to these volunteers that they give freely of their time to assist in the court process in such a meaningful way.

Ms Benham acknowledged, nevertheless, that volunteers were not trained in cultural awareness or sensitivity to Aboriginal people, however they did receive additional training on this from other areas of DOJ, such as Court Services, during their work. (Transcript of Evidence of Kay Benham 6 June 2002).

Services provided include free counselling, information about, and referrals to other services, assistance in writing victim impact statements, witness preparation, support during court cases, providing information on the status of police investigations and the nature of court proceedings, and assisting with enquiries about criminal justice compensation. In regional areas, assistance is also provided to assist people in preparing affidavits in support of Violence Restraining Orders<sup>9</sup>.

In addition, a duty counsellor is available each day from 8am – 5pm in Perth, and home visits are offered to those unable to attend the Perth office. VSS advised that, on average, clients receive five counselling sessions and are then referred to other services as necessary. (Transcript of Evidence of Kay Benham 6 June 2002).

**94. The Inquiry recommends that any necessary legislative amendments be made to allow ongoing referrals to be made from the Western Australia Police Service Victims of Crime Unit to the Victim Support Service.**

<sup>9</sup> Violence Restraining Orders are discussed in more detail in Chapter 10

**95. The Inquiry finds that no training in cultural awareness or sensitivity to Aboriginal people is provided to volunteers working for the Victim Support Service or Child Witness Service upon their commencement. The Inquiry recommends that funding be made available for cultural awareness and sensitivity to Aboriginal people to be provided to volunteers upon induction into both those services.**

### 2.6.5 Child Witness Services

The Child Witness Service (CWS) was established in 1995 after significant amendments were made in 1992 to the *Evidence Act 1906*. These changes allow for the use of pre-recorded video taped evidence and the introduction of the use of closed circuit television facilities. (Transcript of Evidence of Kay Benham 6 June 2002).

The WAPS observed that, whilst they had an effective relationship with the CWS, there was a lot of pressure on the Service and it was now only available to child witnesses who had suffered sexual assault.

A Coordinator and four Child Witness Preparation Officers work in the metropolitan office, and there are part-time regional services located in Bunbury and Geraldton. Metropolitan staff may travel to other regional areas to prepare children where necessary. (Transcript of Evidence by Jonothan Adams 9 May 2002)

Referrals may be made to CWS by WAPS, or CWS may independently identify children who may require their services. Referrals are reliant on consent being given by the parent or caregiver of the child. In 2000/01 approximately 477 referrals were made to CWS which has increased significantly in the first six months of this financial year. (Transcript of Evidence of Kay Benham 6 June 2002).

#### *2.6.5 (a) Service delivered*

CWS offers:

- Emotional and practical support to the child and their families
- Information about the legal proceedings and the courtroom environment to minimise the trauma associated with giving evidence
- Support before, during and after the child gives evidence.

CWS does not offer therapeutic or counselling services although referrals to other agencies may be made. (DOJ Initial Submission March 2002).

#### *2.6.5 (b) Aboriginal Liaison*

The Inquiry notes that CWS does not employ an Aboriginal worker in the metropolitan area. An Aboriginal employee can assist to establish networks in the Aboriginal community and can create with more meaningful service delivery to Aboriginal children. The Inquiry again notes the evidence of Ms Benham, Manager of both the VSS and CWS, that there is no training provided to the Service's workers regarding sensitivity to Aboriginal culture.

**96. The Inquiry finds that Aboriginal people do not respond as often to typical methods of initiating contact as non-Aboriginal people. The Inquiry recommends that a policy be developed to address different mechanisms of contacting Aboriginal people.**

**97. The Inquiry finds that services provided by Child Witness Service could better reach Aboriginal people with the employment of an Aboriginal worker. The Inquiry supports the creation of an Aboriginal specific position to work predominantly in the metropolitan area.**

**98. The Inquiry recommends that the Child Witness Service be resourced to provide services to all child witnesses to indictable offences should those resources not already exist.**

### **2.6.6 Victim Notification Services**

Victim Notification Services established a register in October 2001 ('the Register') which provides information about issues such as an offender's sentence, appeal rights and, where applicable, the outcome of those appeals, and the offender's release or return to custody. (DOJ Initial Submission March 2002)

The Service provides information from the Register to relevant victims via mail. The Inquiry notes that this method of contact may not suit the needs of the Aboriginal community where families move regularly and illiteracy can be an issue. Similarly, victims of family violence are more likely to be itinerant and less likely to provide their personal details to such a service.

DCD and DOJ are working together to develop protocols concerning notification of impending release of sex offenders, associated training, updating and staff instructions. (DOJ Final Submission 16 July 2002)

Whilst the Victim Notification Service provides a valuable service, the issue of offenders returning to discrete Aboriginal communities where the victims, or their families, still reside is a complex issue. Indeed, it is not a problem that is susceptible to an easy resolution. The work of the Victim Notification Service cannot and does not address this vexed issue in its entirety.

### **2.6.7 Victim – Offender Mediation Unit**

The Victim–Offender Mediation Unit was established in July 1992 as part of a shift in policy direction to recognise victims' rights. The service has been expanded over the past decade and now offers 'protective mediation' services to offenders and juveniles and their victims, as well as 'reparative mediation' to juveniles and their victims. DOJ states that the unit provides an impartial service which may only occur when both parties enter the process voluntarily.

'Protective mediation' occurs when the offence is more serious and relates to the level and nature of contact (if any) between the offender and the victim. Protective mediation is usually done indirectly with the mediator acting as a go-between. (DOJ Initial Submission March 2002) This kind of mediation may be of benefit to Aboriginal families given it is

focused on situations where the victim and offender are likely to have ongoing contact, either as cohabitants, residents of the same town or as family members.

The Inquiry notes that offenders on parole or community-based orders are not permitted to contact their victim(s) under the DOJ's victim-offender contact policy without the approval of the unit. This policy applies even if the offender is related to the victim.

Notwithstanding these policies and the work of the unit, consultations with Aboriginal communities suggests that contact between victims and offenders in the Aboriginal community is ad hoc and relatively untouched by the unit.

The agreements arising out of protective mediation and 'no contact' conditions are both monitored by the unit. Again, it is not clear how this operates where the offender and victim are resident in remote communities. The Inquiry also notes that the unit contacts victims and offenders, presumably by mail, to advise them to contact the unit should any problems arise.

Where a major breach is determined, a report is submitted to the Parole Board; however when a minor breach is ascertained, the offender is instructed, in writing, by the manager of the unit to cease contact.

**99. The Inquiry supports the expansion of the Victim Offender Mediation Unit to regional and remote areas to enable more Aboriginal people to access the service.**

The unit advises that, in cases where the victim is a child, DCD is contacted to ascertain whether they have had involvement with the case and/or wish to raise any concerns or other issues. Both the offender and the victim are advised that DCD will be contacted. Where the victim is in the care of DCD, the responsible DCD officer conducts any mediation.

## 2.7 Services to Country and Remote Communities

DOJ provided the Inquiry with information regarding a visit by DOJ officers to Warburton. Notably the Director of DOJ, Mr Alan Piper, stated that *'clearly we need a collective re-think of the ways in which we work together to ensure that these communities are empowered and provided with equitable access to government services.'* (DOJ Final Submission 16 July 2002: Attachment 1)

DOJ has provided the Inquiry with some information concerning the provision of services to country and remote communities. For example the Commonwealth government's proposal to establish a digital network in the Kimberley and Pilbara regions to improve communication between Aboriginal communities and the public and private sectors. DOJ has been asked to provide a submission to the responsible Commonwealth agency, this however has not been finalised. DOJ have advised the Inquiry however that this may assist the Department in facilitating communication between incarcerated offenders and their families and monitoring compliance with community based orders. (DOJ Final Submission 16 July 2002)

### 2.7.1 Aboriginal Community Supervision Agreements

Rather than have a presence in all remote Aboriginal communities, the Community Justice Services Directorate supervise Aboriginal offenders on community-based supervision orders living in remote areas of WA through the use of Aboriginal Community Supervision Agreements (ACSA). DOJ states that without these agreements community based supervision orders may not be available to Aboriginal offenders living in remote communities. MACSA cannot be made with regard to juveniles, however there are amendments proposed to the *Young Offenders Act 1994* to allow for the development of ACSA concerning juveniles. ACSA are currently held with 40 Aboriginal communities in the Kimberley and Eastern Goldfields regions. DOJ states that training in supervisory requirements is followed by contractual arrangements so communities can supervise adult offenders on community-based orders. (DOJ Initial Submission March 2002) These Agreements usually require the community to provide a supervisor to oversee completion of community work and to collect and document information about any breach of orders pertaining to the offender. (DOJ Final Submission 16 July 2002)

The Inquiry notes the advice from DOJ that *'the level of training given varies according to region and community'*. Similarly, the advice provided to communities about the offender being placed under their supervision is negotiated with the offender, and in some cases, where the release of information cannot be negotiated, DOJ rely on the community already being aware of the offenders personal circumstances. (DOJ Final Submission 16 July 2002)

It should be noted that initiatives such as ACSA are in line with the desire expressed by Aboriginal communities to manage offenders within the community, however the effectiveness of such initiatives is dependant upon the training and assistance provided to the community to assist in the delivery of the supervision.

**100. The Inquiry endorse the provision and expansion of the Aboriginal Community Supervision Agreements providing that:**

- appropriate supports are in place for the community
- appropriate community members are given access to offender's criminal records
- appropriate training is provided for community members to manage offenders

### 2.7.2 Kimberley Regional Justice Project

The Kimberley Regional Justice Project is a pilot project that aims, in part, to enhance the safety of the communities in their region. It is intended to provide a comprehensive program to research, and address community concerns in relation to justice issues. (Transcript of Evidence of Robert Carter 23 May 2002) The Kimberley region was chosen due to the 'extremely high levels' of Aboriginal prisoners and the growing need for a new custodial facility in the region – which the Project would seem intended to avert.

The Project is intended to:

1. Attempt to reduce the representation of Aboriginal people in prison
2. Divert offenders from imprisonment to appropriate alternatives in the community. (DOJ Initial Submission March 2002)

The Project is currently in its first phase of consultation and is inviting submissions from individuals and communities in the region. The Project is only relatively new but is already responsible for a number of diversion programs such as a video for Aboriginal offenders to reduce re-offending. The Project also funds the BMOP's through care service and anger management and substance abuse programs. The BMOP provides services to incarcerated offenders, community based offenders and remote Aboriginal communities. (DOJ Initial Submission March 2002)

## 2.8 Aboriginal Policy & Services Directorate

DOJ describes this division as an, expert group within the organisation with whom we can relate and who can help us in turn in interpreting justice issues back with the Aboriginal communities. (DOJ Initial Submission March 2002)

### 2.8.1 Aboriginal Alternative Dispute Resolution Service

The Aboriginal Alternative Dispute Resolution Service (ADR) is available to those who wish to deal with conflict and inter-familial issues, including feuding, and is purely voluntary. Currently the Service has a caseload of 80 cases. DOJ plans to extend the service as the result of a recent review. (DOJ Initial Submission March 2002)

Counsel for DOJ submitted to the Inquiry that:

*The Aboriginal Alternative Dispute Resolution Service has developed an accredited training package for mediators working with Aboriginal people. The service will commence delivering the training to a range of government agencies and community groups working with Aboriginal people in July 2002. DOJ is currently considering the use of a conferencing model for persons suspected of committing minor offences. This will incorporate alternative dispute resolution processes. DOJ believes that alternative dispute resolution processes work effectively in achieving DOJ's goals and have the potential to be used in other areas where disputes arise, particularly with regard to reducing the problem escalating to the detriment of the community and its members. It is suggested that the issue of a whole government alternative dispute process be taken up by the Social Policy Unit and the Social Policy Standing Committee of Cabinet (Counsel for Represented Agencies Closing Submission 22 July 2002: 292-293)*

**101. The Inquiry supports the use of Alternate Dispute Resolution Services. The Inquiry recommends consideration be given to the creation of an Alternate Dispute Resolution Services Unit to service the whole of government.**

### 2.8.2 Aboriginal Visitors Scheme

The Aboriginal Visitors Scheme was developed in 1988 in response to the RCIADIC recommendations. The scheme provides for Aboriginal community members to provide counselling and support to detainees and prisoners in police lockups, prisons and juvenile detention centres throughout Western Australia. The Aboriginal Visitors Scheme was

allocated just over \$1 million for the 2001/02 financial year. In that period approximately 50 visitors had 7800 contacts or interviews with Aboriginal detainees or prisoners. (DOJ Final Submission 16 July 2002)

DOJ advised the Inquiry that a Customer Satisfaction Evaluation was undertaken in July 2001, surveying stakeholders in the service, and found an overall satisfaction rating of 71 per cent. DOJ were to undertake a survey of clients of the Aboriginal Visitors Scheme however did not proceed due to difficulties in developing an appropriate approach and methodology for conducting the survey. It still intends to conduct such a client survey. (DOJ Final Submission 16 July 2002).

### **2.8.3 Kimberley Interpretation Service**

On 11 July 2002 the Attorney General announced a \$90,000 funding boost for the Kimberley Interpretation Service, which is one of only two indigenous interpretation services in Australia. The Kimberley Interpretation Service has some 40 interpreters and provides interpreting services to a range of government and non-government agencies in the Kimberley, and throughout Western Australia. The additional funding was provided by DOJ, DIA and DOH. Prior to this increase in funding the Kimberley Interpretation Service was in significant budgetary difficulty. (McGinty [DOJ] media release, 11 July 2002)

### **2.8.4 Cultural And Resource Materials**

DOJ had developed a 'pack' to guide Departmental staff who work, or have contact with, Aboriginal people. DOJ acknowledge that there is no provision for a specific training session to impart this knowledge to staff outside the metropolitan region, rather it is envisaged staff will gain this knowledge from practical, 'hands on' contact with elders. It is noted that the 'pack' is not specifically designed for specific regions or communities. The concept of 'local relevance' in cultural training has been consistently raised with the Inquiry during consultations with Aboriginal communities.

In the Geraldton region, the Local Service Agreements for the Aboriginal Cyclical Offenders Project, makes cross-cultural training available to Department staff. (DOJ Initial Submission March 2002)

The Inquiry has also viewed the Court Benchbook recently produced for the use of judicial officers by DOJ.

## **2.9 Prosecutorial Services**

Prosecutorial Services in Western Australia are provided by the Office of the Director of Public Prosecutions (DPP), WAPS Police Prosecutors and Barristers engaged by the Office of the DPP to provide specific prosecutorial services.

It is outside the scope of the Terms of Reference of the Inquiry to address issues concerning the judiciary, the penalties attached to different offences and the application of those penalties to offences.



During consultation with Aboriginal communities, it was suggested that Crown Prosecutors, and the Office of the DPP, did not adequately explain court processes nor effectively de-brief victims and their families. This role is really the purview of the VSS and the CWS who are in a far better position; indeed they are trained in that regard, to provide services to victims of crime. These are discussed in further detail at 2.5.4 and 2.5.5.

The Inquiry notes the review conducted of services to victims and crown witnesses provided by the Office of the DPP. The recommendations of the review are being implemented by the DPP. (DPP Letter: 25 July 2002).

### **2.9.1 Evidentiary issues**

The Inquiry received allegations that prosecutions were unsuccessful due to 'technicalities' or 'mistakes by the prosecutor'. Upon examination of these issues, and seeking information from the DPP in that regard, it became clear that a number of issues influenced the outcome of a prosecution.

#### *2.9.1(a) Burden of proof*

It is the basic premise of the Western Australian criminal justice system, and indeed the common law, that the burden of proving the offence falls upon the state – in this case through the appointed Crown Prosecutor.

#### *2.9.1(b) Standard of proof*

The standard of proof required for a judge or jury to convict a defendant of a criminal charge is, in most cases, 'beyond a reasonable doubt'. Whilst there is much judicial consideration of what exactly 'beyond a reasonable doubt' means, for the Inquiry's purposes, it is sufficient to say that it is a very high standard of proof.

It is therefore open for a judge or jury to find a defendant non-guilty without actually disbelieving the complainant or considering him or her to be a 'liar' or untruthful. Often, although not necessarily, it is corroborating evidence that proves, beyond a reasonable doubt, the offence was committed.

As such it may be that a judge or jury do not convict a defendant, who on any lower standard of proof, may have been found guilty without the Crown Prosecutor having made 'a mistake' or the matter having been decided on a 'technicality'.

#### *2.9.1(c) Forensic evidence*

Forensic evidence can be strong corroboration allegations of assault and sexual assault. This is particularly so where the complaint is made very soon after the assault is committed. It is noted that in many cases of family violence and child abuse complainants do not make a complaint until some time after the assault has occurred. It is noted that in some country areas access to forensic evidence is not available. Further, even where some services are available in regional centres, it takes a significant amount of time to reach them from remote communities.

#### *2.9.1(d) Independent witnesses*

Whilst evidence from an independent witness supporting a complainant's evidence is not required for a conviction it is often strong corroboration of the complainant's evidence. The Inquiry notes that child abuse and family violence are often not perpetrated in front of witnesses. As such, it becomes comparatively more difficult to collect evidence than other forms of assault, for example a fight in a bar.

#### **2.9.2 Prosecutorial services outside the metropolitan area**

Submissions made to the Inquiry refer to a need for Prosecutors to be located in country regions to enable them to better proof witnesses, oversee Police Prosecutions and take over those prosecutions as necessary.

Time has not permitted the Inquiry to examine this issue in depth, however it does note that:

- The same, or similar, submissions have been made to the Attorney General.
- There appears to have been ongoing expansion of the prosecutions undertaken by the Office of the DPP. Indeed, since 1 July 2002 the Office of the DPP has taken over the prosecution of all indictable offences<sup>10</sup> in the Children's Court.
- Witnesses usually benefit from extensive proofing sessions, which enable that witness to put his or her evidence to the courts with more clarity.
- Where witnesses may have language differences, as is the case for many Aboriginals living outside the metropolitan area, they may benefit from more contact with prosecutors prior to giving evidence.
- Similarly, where that witness is a complainant who has been subject to family violence or child abuse, the witness may benefit from forming a closer relationship with the relevant prosecutor.

#### **2.9.3 Training available to Crown Prosecutors**

The Inquiry notes the recent appoint of a coordinator, Training and Development to the Office of the DPP to commence on 30 July 2002. One of her tasks is to develop training generally about victims and witnesses, with particular attention to Aboriginal issues (DPP Letter: 25 July 2002).

#### **2.9.4 Conclusions regarding prosecutorial services**

An integral part of the government's response to family violence and child abuse is the prosecution and conviction of offenders. There are many reasons that convictions are not obtained, ranging from a reluctance to report to a fear of giving evidence.

It is not within the purview of the Inquiry as defined in its Terms of Reference and as defined by the *PSM Act* to give further consideration to the prosecution of offences related to family violence and child abuse.

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<sup>10</sup> Offences under the Criminal Code, and other relevant legislation, distinguish between indictable and summary offences. In essence, the difference is that indictable offences are more serious, with more serious penalties available that need to be dealt with in a different manner.

### 3. ORGANISATIONAL ISSUES

#### 3.1 Planning

The Inquiry has considered many of the planning mechanisms used by DOJ, in so far as they are relevant, in Section 2. However, there are two more general 'plans' that are of particular relevance to the Inquiry.

##### 3.1.1 Aboriginal Justice Plan

The Aboriginal Justice Plan (A Partnership between the Aboriginal Justice Council and the Justice Coordinating Committee) was developed in 2000. Mr Robert Carter, Director, Community Corrections, gave evidence that *'the function of the plan, of course, is to focus on prevention and early intervention.'* (Transcript of Evidence of Robert Carter 23 May 2002) He also stated that the plan is a framework for collaboration between agencies concerning justice. Initially the plan was implemented through the Aboriginal Justice Council (AJC), however that has been abolished. DOJ advises that the plan will now be implemented through, Multi-disciplinary focus groups that have been established in the areas of policing and family to advise the government on the best mix of services to achieve better outcomes for Aboriginal people. The Focus Groups were expected to report in early 2002. An Education Focus Group is to be developed in 2002. (Transcript of Evidence of Robert Carter 23 May 2002)

The Aboriginal Cyclical Offenders Project is the key example of the plan being implemented. It is examined above at (section 2.4.7).

##### 3.1.2 Prison Division Strategic plan for Aboriginal Services

As discussed above at section 2.2, the *'Prisons Division Strategic Plan for Aboriginal Services'* (2002-05) identified a number of key issues for the Division and proposed strategies to address those issues. The plan is based on the over representation of Aboriginals in the prison population, and acknowledges that they may have different needs, particularly cultural and spiritual, than other incarcerated offenders. (Prison Division 2001)

##### 3.1.3 Disability Services Plan

DOJ states that it developed and endorsed a disability services policy and guidelines in 2001/01. (DOJ 2001) DOJ state, however, that there is no current process to identify prisoners who have an intellectual disability. The Inquiry agrees with the DOJ proposition that *'there is a greater incidence of intellectual disability than reported'* amongst prisoners and supports DOJ in developing an assessment/referral process and database. (DOJ Final Submission 16 July 2002)

##### 3.1.4 DOJ Drug Action Plan

DOJ advised the Inquiry that it was currently developing a Drug Action Plan. The proposed plan is to be consistent with the Western Australian Drug Strategy 2002-2005. (DOJ Final

Submission 16 July 2002) It is understood that the WA Drug Strategy arose out of the Western Australian Drug Summit, which, as discussed in Chapter 7, did not address solvent abuse.

## **3.2 Policy and Procedures**

DOJ has a number of policies and strategies relating to both Aboriginal employees and the treatment of Aboriginal clients. Their Aboriginal employment policy is aimed to increase recruitment, job satisfaction and retention of Aboriginal employees. (DOJ Final Submission 16 July 2002) These issues are also addressed in the Prison Division Strategic Plan for Aboriginal Services with regard to that particular Division. The Inquiry has not reviewed the strategic plans of all divisions within DOJ but notes that the issue of both Aboriginal employees and Aboriginal clients is often addressed.

## **3.3 Human Resource Issues**

The diverse range of services offered by DOJ require it to employ a broad range of employees, from court staff, to psychologists to custodial service officers. Also, given the shift in focus to diversionary services, the need to recruit or reskill employees is currently an issue for DOJ.

DOJ are implementing a 'significant workforce reform package', and that implementation is nearing completion. This reform package includes the appointment of new supervisors in some areas, restructures of certain positions, and the development and expansion of training programs. (DOJ Final Submission 16 July 2002) The Inquiry has not examined this reform package in any detail.

**102. The Inquiry supports cultural training for Department of Justice officers. The Inquiry recommends that cultural training be extended to ensure that staff working outside the metropolitan region obtains training appropriate for that region.**

## **3.4 Information Collection/Sharing – Mandatory Reporting**

The Inquiry notes that DOJ did not appear to collect or analyse a significant amount of data concerning victims, offenders and offender programs. Further, the Inquiry noted the findings in the Greenberg Report concerning the maintenance of records within DOJ concerning offenders and offender programs. Often a paucity of resources require those funds available to be directed to providing services rather than collecting data. However, the Inquiry believes that adequate data collection is necessary both to evaluate the services delivered by a department, and to enable that department to interact effectively with other bodies concerned with service delivery to the same clients.

**103. The Inquiry finds that the maintenance of adequate records and the collection of statistics is important to the service delivery of the Department of Justice. The Inquiry recommends that such resources be provided as is necessary to meet a reasonable information collection and management standard.**

It is the Inquiry's impression that DOJ is cognisant of the role that information sharing plays in the provision of services. Indeed, it is the lead agency for the Aboriginal Cyclical Offenders Programs and the Joondalup Domestic Violence Court Project. DOJ is also a participant on a number of other interdepartmental committees.

Further, DOJ stated that it has strong collaboration with DOH in the provision of Health Services in its facilities. This is facilitated through the Joint Justice Health Interdepartmental Council. (DOJ Initial Submission March 2002) The Inquiry has been made aware of issues concerning the access available to incarcerated offenders to mainstream DOH services insofar as DOH professionals are unwilling to visit incarcerated offenders to provide services.

DOJ stated that *'should any staff member become aware of abuse of children they are obliged to report the matter'*. As a result, it is DOJ's view that any legislative scheme of mandatory reporting would only underpin the existing practice. (DOJ Final Submission 16 July 2002) The Inquiry also notes that participants in the adult offenders programs are advised that staff will report any identified offence which arises during the course of discussion. DOJ has identified the requirements to implement for a mandatory reporting regime. Whilst no clear funding implications were identified, some of the implementation requirements may require the diversion of resources or additional funding.

## **3.5 Coordination**

### **3.5.1 Aboriginal Justice Issues Senior Officers Group**

DOJ has also undertaken to establish an alternative structure for collaboration between the Aboriginal community and the government concerning justice issues. Part of that new structure is the Aboriginal Justice Issues Senior Officers Group (AJISOG). AJISOG has been established to lead and coordinate action on priority issues to reduce the involvement of Aboriginal people in the criminal justice system. Senior officers on AJISOG represent DOJ, WAPS, DCD, DIA, Department of Education and the ATSIC State Policy Centre. (DOJ Initial Submission March 2002)

AJISOG reports to the Cabinet Standing Committee on Social Policy which is discussed in Chapter 13. Where appropriate AJISOG also reports to the Indigenous Affairs Advisory Council and the Safer WA CEO's group.

The priorities developed by AJISOG are:

- RCIADIC reporting and monitoring
- Further development and implementation of the Aboriginal Justice Plan
- Community management of Aboriginal offenders
- Provision of services to remote Aboriginal communities.

AJISOG is also discussed in Chapter 13.

## **4. (ANALYSIS) OF SERVICE PROVISION**

### **4.1 Access to Services**

Particular issues concerning access by Aboriginal people to services have been identified by the Inquiry with regard to:

- The provision of services to Aboriginal child witnesses and victims of crime, particular where he or she resides outside the metropolitan area. This is discussed in detail in Section 2.5.4.
- The provision of diversion and bail services and alternative sentencing options in remote communities. This is discussed in more detail in Section 2.6.
- The provision of 'culturally responsive' treatment programs for incarcerated Aboriginal offenders. This is discussed in further detail in section 2.24.

The Inquiry acknowledges the comments received from DOJ concerning the provision of services by government agencies in remote communities. This is discussed in detail in Chapter 13.

### **4.2 Strengths**

DOJ has a number of strengths with which to address the provision of services:

- The clients of DOJ are often the subject of court orders, and as such they are compelled to accept services from DOJ in some respects. This compulsion also removes the need for DOJ to conduct 'investigations' of family violence or child abuse as such.
- DOJ already have a significant network of service providers, both from the Department and from non-government agencies throughout WA.
- The increased focus on the provision of victim support services is a clear strength, and achievement of the Department. Indeed, it is also a strength that both DOJ and the Inquiry have identified which can be built upon.
- DOJ has demonstrated a willingness to review programs that it offers with a view to improving service delivery. Whilst the Inquiry does make some recommendations concerning the conduct of such reviews generally, the willingness to acknowledge that programs can be improved is a significant strength.

### **4.3 Challenges**

DOJ faces a number a challenges with regard to the provision of services which include:

- The 'clients' of DOJ, be they incarcerated or otherwise, are usually compelled to be a client for a particular reason and period of time. As such, the services that DOJ provide to that client is limited as it needs to fit within the term that the client is compelled to participate. Indeed, there is also a number of philosophical issues about the effectiveness of programs or activities where the participant is compelled to attend rather than choosing to.

- Similarly, the services offered by DOJ to its clients are often confined by the terms of a court order. As such, the ability of DOJ to implement the outcomes of its own assessment procedures is limited.
- The roles undertaken by DOJ staff is often a dual one, that is they provide both services and supports to the client as well as performing a custodial function. The clearest example of this duality is in the variety of services that custodial officers provide in the Prison Services Division, which extend beyond maintaining custody and control of the incarcerated offender. Similar comments were made to the Inquiry by JJOs (Witness Statement of Rhona Haining 22 July 2002) and would seem to apply to CCOs as well.
- The services provided by DOJ are usually provided 'after the event'. DOJ are moving to create a stronger focus within the Department on primary and secondary responses to issues. (See sections 4.4.1 and 4.4.2)

## **4.4 Future Directions**

The Inquiry requests further information concerning DOJ's approach to improving service delivery based upon a primary, secondary and tertiary framework for responding. DOJ provided a comprehensive response to the request, and outlined DOJ's commitment to change on all three levels of the framework. (DOJ Final Submission 16 July 2002: 14)

### **4.4.1 Primary Responses**

DOJ identifies the need for 'better outcomes for victims' and suggested that outcome could be achieved by:

- Improved links between victims of crime, referral services and victim services
- Legislative amendment to allow for information sharing
- An interagency committee to oversee provision of services to victims of crime
- More provision of services in 'local' areas. (DOJ Final Submission 16 July 2002)

Further, and more generally, DOJ intends to provide more 'front end' services to adults, similar to those provided to juveniles. The Inquiry understands this to mean the provision of more diversionary and early intervention services (like the Killara Service) to adults. The example given by DOJ is the Kimberley Regional Justice Project. This is discussed further at section 2.6.2.

DOJ also makes mention of the commitment of long term funding to services such as the Aboriginal Cyclical Offenders Pilot Project. (DOJ Final Submission 16 July 2002) The ACOP is discussed at section 2.4.7.

### **4.4.2 Secondary**

DOJ submitted to the Inquiry that it is currently exploring the potential to expand 'diversionary services' to provide a secondary response to family violence and child abuse. The DOJ submission notes six areas for potential to increase diversion. Of particular interest to the Inquiry is '*Diversion of Intra-familial Child sex offenders*'. (DOJ Final Submission 16 July 2002)

#### 4.4.3 Tertiary

DOJ point to the extension of ACSAs and Juvenile Justice Teams and the provision for early release of juveniles serving detention sentences as ways to improve the tertiary response to family violence and child abuse. (DOJ Final Submission 16 July 2002)

DOJ also outlined a number of strategies to improve its delivery of existing services, including strategies to improve the Department's human resource, better provision of services in remote communities and expansion of through-care for recently released offenders. (DOJ Final Submission 16 July 2002)

A key future direction is the establishment of a 'programs' branch to ensure a planned and coordinated approach across government for the delivery of programs and services to adult and juvenile offenders. (DOJ Final Submission 16 July 2002) Recently the Community Justice Services division appointed an Acting Manager of Programs. The Inquiry has not had an opportunity to examine the effectiveness of this change to the Departmental structure.

## 4.5 Conclusions

DOJ offers a broad range of services, in some respects more than most, of the other departments considered by the Inquiry. It also faces significant challenges in the delivery of services, given that its role, in most instances, commences after incidences of family violence or child abuse have occurred and, indeed, after other departments have also delivered services.

The Inquiry acknowledges, and supports in principle, the shift in focus within the Department to the provision of diversionary and early intervention services. Indeed many of the more successful programs run by DOJ considered by the Inquiry provide such services to juveniles already.

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## **ACTS**

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Victims of Crime Act 1994 (WA)

Young Offenders Act 1994 (WA)

Evidence Act 1906 (WA)

*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • Sex-abuse whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse claims mar image of campaigner' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## Education and training

### CHAPTER 11

# SECTION

# 3

*This chapter examines the provision of education and training services to Aboriginal children.*



CHAPTER 11 - EDUCATION AND TRAINING

General Issues Concerning Nature and Function of the Department of Education

## 1. GENERAL- BROAD INTENT AND MISSION STATEMENT

### 1.1 Department of Education

The Department of Education (DOE) is one of the largest government departments in Western Australia (WA). Its purpose is to ensure that all government school students develop the knowledge, skills and confidence to achieve their individual potential and contribute to society.

It seeks to ensure that all students:

- *Are able to communicate effectively in English*
- *Are able to apply mathematical concepts and processes*
- *Are able to find and use information*
- *Are able to use technology*
- *Work independently as well as cooperatively*
- *Approach learning in a manner which is both receptive and critical*
- *Are able to apply problem-solving skills*
- *Understand their society and environment and have the skills necessary to be informed responsible citizens*
- *Understand the natural world and are able to apply scientific concepts and processes*
- *Appreciate the arts and are able to express their creativity*
- *Have the understanding and skills necessary to achieve health and well-being*
- *Are able to communicate in a language other than English*
- *Respect the rights of others*
- *Value themselves as learners. (DOE 2001: 15)*

An Initial Submission was submitted on 25 March 2002 by DOE and Kevin O'Keefe, acting Executive Director of 'Teaching and Learning,' spoke to that document in evidence.

DOE's aim is to implement the government's guidelines to *'introduce a range of reforms to ensure that our public schools offer a world-class education to all Western Australians.'* (DOE Initial Submission, 25 March 2002: 1)

The Robson Report *'Investing in Government Schools: Putting Children First'* (2001) identified improvements in the public perception and quality of government schooling through a range of structural and cultural reforms. With reference to the education of Aboriginal children, the State Homelessness Taskforce (2002) reported that schooling is essential to overcome the social disadvantage faced by a large number of Aboriginal people. Improving outcomes for Aboriginal students is a priority for the department.

### **1.1.1 Structure and management**

The existing organisational structure of DOE was put in place in March 2001 following the work of the *Robson Report (2001)*. It links each executive director to central operational areas and districts. Under the supervision of the Director General of Education there are five executive directors. Their specific areas of responsibility are:

- Business and Resource Management
- Education Programs
- Human Resources
- Policy and Planning
- Schools

There are 16 district education offices, managed by 23 district directors, who administer a total of 771 schools.

### **1.1.2 Staff, budget and office locations**

DOE presently employs the equivalent of approximately 25,000 full-time staff and educates about 258,000 students at 771 schools (of which 557 are primary schools).

DOE has 16,736 Aboriginal students. To assist with the 'pastoral care' (DOE's words) of students (with a particular emphasis on the needs of Aboriginal students), there are some 97 school-based Community Nurses, 95 Chaplains, 27 Police Officers, 18 Coordinators of Aboriginal Education, 19 Aboriginal Liaison Officers and 480 Aboriginal and Islander Education Officers.

In addition, there are 250 'district-based' staff comprising school psychologists, welfare officers and social workers. (DOE Initial Submission, 25 March 2002)

### **1.1.3 Funding**

DOE had an estimated budget in excess of \$2 billion for the financial year 2001-02. In the previous year 2000-01, DOE provided \$54,400 to the then Ministry of Justice Truancy Program, \$35,000 for professional development to address Otitis Media (Conductive Hearing Loss), \$68,000 to the Indigenous Family Program and approximately \$692,800 to other Aboriginal-specific programs.

The Commonwealth Budget Allocation for supplementary assistance for Indigenous education was \$8,843,509. The Aboriginal Support Network cost \$5.2 million, while the remainder was allocated to other Aboriginal-specific initiatives. (DOE Initial Submission 25 March 2002)

### **1.1.4 Legislative framework**

The *School Education Act 1999* and *Public Education Endowment Act 1909* provide the statutory framework for the operations of the DOE. The other Acts listed are relevant to the work of the government education system.

- *Curriculum Council Act 1997*
- *Equal Opportunity Act 1984*
- *Financial Administration and Audit Act 1985*
- *Occupational Safety and Health Act 1984*
- *Public Sector Management Act 1994*
- *Vocational Education and Training Act 1996*  
(DOE 2001: 12)

## **2 SERVICE PROVISION BY DOE**

### **2.1 General service**

Under the provisions of the *School Education Act 1999*, every person living permanently in WA and aged between six and 15 years must be enrolled at a government or non-government school, or alternatively receive appropriate home tuition.

Government schools provide access to a comprehensive general education, comprising pre-primary, primary and secondary schooling.

The Inquiry is mindful of the special relationship between teachers and their students and conscious of the great authority teachers may have in influencing the lives of young people in their care. The nature of this influence must affect the role of teachers which may have ramifications beyond that of the school or the curriculum.

The DOE perceives curriculum (the teaching and learning program) as exposing children to values, education and protective behaviour strategies that enable ethical and moral dilemmas and situations that may confront them throughout life to be discussed in a supportive situation.

One mechanism through which schools provide services to students is direct access to a school psychologist who works in a district-based 'Student Service Team'. School psychologists may provide counselling services to students on a range of issues. School psychologists have been trained in Child Protection Procedures and can assist by providing appropriate advice to teachers in cases of suspected abuse.

### **2.2 Responding to underlying factors**

The factors affecting the educational achievements of Aboriginal students are multiple, complex and interlinked. Against a general background of poverty and family dysfunction, particular cultural and social issues emerge. Substance abuse, early pregnancy, shame (falling behind due to absence, lack of appropriate clothing and equipment), homelessness, cultural factors such as greater independence and responsibilities at home, low familial experience of education, family violence and interfamily feuding all significantly affect a student's educational performance.

While many of these issues are beyond the mandate of DOE, significant efforts have been made to address certain underlying issues. Individual schools and school regions have specific drug policies, programs to assist Students at Educational Risk (SAER) and programs to engage pupils

from particular backgrounds, such as Aboriginal students. These vary according to the needs of the specific school or region. DOE has provided some information on widespread underlying factors affecting Aboriginal students that are within the province of the educational system. (DOE Initial Submission 25 March 2002)

### **2.2.1 Conductive hearing loss**

The Inquiry notes that the inability of a child to hear properly could have significant impact on his or her language, literacy and emotional development. Research provided by DOE shows that up to 30 per cent of children in Australian classrooms have impaired hearing and, in the case of Aboriginal children, 70 to 80 per cent may be experiencing conductive hearing loss. (DOE Initial Submission, 25 March 2002)

This issue is a major priority for DOE, through its Aboriginal Education Operational Plan, '*Creating the Vision*', as well as the Commonwealth's Indigenous Education Strategy Initiatives Program (IESIP) and the National Indigenous English Literacy and Numeracy Strategy (NIELNS) (DOE Initial Submission, 25 March 2002: attachment 4 and 5). Schools and their communities will participate in awareness-raising sessions and key teaching strategies will be implemented. (DOE Initial Submission, 25 March 2002; Transcript of evidence, Kevin O'Keefe 28 March 2002)

### **2.2.2 Non-attending or truanting students**

Information provided by DOE has indicated that non-attendance at school is a significant issue in the education of Aboriginal students (DOE Initial Submission, 25 March 2002; Transcript of evidence of Delia Parker, 12 June 2002; Witness statement of Steffan Silcox, Attachments B and C, 28 March 2002 and Transcript of evidence of Steffan Silcox, 6 May 2002). According to DOE, in Goldfields remote schools, the average attendance is seven per cent, while in the Pilbara 65 per cent of Year 1 Indigenous Language Speaking Students (ILSS) do not attend school regularly. District statistics indicate that in 2001, 58 per cent of Aboriginal students across the state were absent for 10 or more days, compared to only 16 per cent of non-Aboriginal students who were absent for 10 or more days. (DOE Supplementary Submission 11 July 2002)

DOE (DOE Supplementary Submission 11 July 2002) emphasises the importance of regular school attendance as a means of improving participation in education, which is a major objective of IESIP and DOE's Aboriginal Strategic Plan '*Creating the Vision*'. Regular school attendance has the statutory background of the *School Education Act 1999* and DOE has provided extensive evidence of the considerable resources it dedicates to this end. (Witness statement of Steffan Silcox, Attachments A and B, 28 March 2002)

### **2.2.3 Student retention rates**

The retention rates of Aboriginal students in WA are the lowest in Australia, with approximately 22 per cent of Aboriginal students completing Year 12 in 2000, compared to 60 per cent of all students. While this is a significant improvement on the 15 per cent from 1996, it is still the lowest rate in Australia (DOE 2001). Increased emphasis on Enterprise

Education, Vocational Education and Training (VET) and employment opportunities in remote communities have improved retention post Year 7, even in schools without specific secondary-type facilities. However, the completion of Year 12 remains the educational ideal.

Cultural issues have a serious impact on school retention post Year 7. According to DOE, 'remote' districts report that many students feel that schools are for 'little' people and are reluctant to attend as adolescents. Furthermore, the cultural and social obligations, which contribute to a high level of absenteeism in all age groups, increase in adolescence.

According to the information provided by DOE retention rates in years 8 to 10 are significantly better in remote community schools which have access to facilities purpose built to cater for the needs of secondary students. Consequently, Districts that do not have such facilities are currently in the process of providing them.

**104. The Inquiry recommends that the Department of Education continues to explore and expand mechanisms to increase school attendance by Aboriginal students.**

#### 2.2.4 Students with disabilities

In April 2001 the Minister for Education announced a review of educational services for students with disabilities. The review has yet to be completed. DOE also acknowledged that data concerning Aboriginal students with disabilities is inadequate but states that it will be improved when the results of the Western Australian Aboriginal Child Health Survey are available.

### 2.3 Responding to family violence (overview)

The nature of DOE, in dealing primarily with the education of children, limits its direct dealings with family violence, unless a student is the actual victim of violence in which case the matter is addressed through the Child Protection Policy (CPP), discussed below. Nevertheless, DOE states that it is aware that family violence does affect school attendance and performance, and the social and emotional wellbeing of affected students. (DOE Initial Submission, 25 March 2002, Transcript of evidence by John Hesketh 11 June 2002)

Each district and school cluster has a representative on local domestic violence committees. The purpose of these committees is to alert all local agencies to the problem and difficulties associated with family violence. Operationally, it is difficult to use the information provided by local domestic violence committees to fully support those students who really need assistance because the link between school and families in crisis is tenuous.

Disclosures of domestic or family violence by a child 'victim' are encompassed by the general terms of CPP and intradepartmental disclosure may occur. Nonetheless, the treatment of the subject in CPP itself is rather limited. In cases where a child discloses family violence, not including themselves or other minors, to a teacher or other DOE employee, the violence itself is generally viewed as an issue concerning the adults involved.

DOE offers support and intervention to the child exposed to family violence through the systems in place to address the individual expressions of distress by that child such as failure to succeed

at school, emotional distress or absenteeism, however, other intervention is limited. DOE states that operationally, it is difficult to respond to family violence issues because it is not appropriate for school staff to involve themselves directly with the family, so often their role is restricted to supporting those children during school hours. (DOE Initial Submission, 25 March 2002, Transcript of evidence of John Hesketh 11 June 2002)

## **2.4 Responding to child abuse (overview)**

DOE provides opportunity within the Health and Physical Education curriculum for students to discuss protective strategies and behaviour related to potentially discomfoting situations.

DOE has in place a Child Protection Policy (CPP) which functions include a set of Child Protection Procedures to guide staff in their responses to disclosures or discovery of the abuse of students. Nevertheless, even under the CPP, teachers are obliged to make significant discretionary decisions concerning the nature and degree of what would constitute a significant or reasonable concern of child abuse. This is an area of concern to the Inquiry.

The Inquiry notes however that all evidence indicates that DOE considers child abuse a serious issue and has made significant efforts to address it promptly when it comes to light. The CPP policy is discussed further below.

According to the information provided by DOE, students who are victims of abuse may be supported in a variety of ways. An individualised plan is developed for each child. This may include counselling individually or in a group, altered timetables and social work support. Such a program would be developed in conjunction with the Department of Community Development (DCD).

Both submissions received, from among others the WA Indigenous Child Care Agencies Council and the Australian Association of Social Workers, and community consultations conducted by the Inquiry, have requested education for Aboriginal children in 'Protective Behaviours.' This would consist of a program to develop an age-appropriate understanding that physical and sexual abuse is wrong and methods for children to discourage and report such abuse. DOE has indicated that some instruction in these matters is provided as part of the Health and Physical Education Learning Outcomes, with schools and school communities making the decision as to when and how to incorporate such issues into the curriculum.

*Through the Child Protection policy, principals are obliged to ensure that "school staff provide a curriculum that teaches all students appropriate protective behaviours" 4.2.1 CPP. Schools and school communities make decisions based upon the needs of students as to when and how issues such as self esteem development, drug education, sexual health, mental health and personal safety and prevention education are incorporated into the curriculum.'* (DOE Supplementary Submission, 12 July 2002: 5, <http://www.eddept.wa.edu.au/centoff/outcomes/health/CONCEPTS.DOC>).

As neither school communities nor parents seem to be aware of this, and in light of the specific issues often facing Aboriginal children, this matter deserves further consideration and will be discussed below.



### 3. ORGANISATIONAL ISSUES

#### 3.1 Planning

##### 3.1.1 Making the Difference Strategy

Together with the Curriculum Improvement Program (CIP), Making the Difference Strategy (MDS) encourages all schools to focus more closely on the educational needs of all their students. It is an initiative for students at educational risk and is the tool to assist staff in schools to monitor and promote the mental health of all students through the provision of a supportive learning environment. The key outcomes and focus strategies for this year have been developed to reflect this integrated approach to teaching and learning.

The following outcomes will be worked towards in collaboration with school-based coordinators. Development of:

- Clear connections at a school level between MDS, CIP and other EDWA policies and accountability frameworks
- School processes for identification, monitoring and effective planning for students at risk
- Appropriate curriculum and assessment strategies for students at risk
- Processes and strategies to facilitate collaboration between staff in schools and with other agencies

The four key strategies that will be used are:

- A professional development program for school-based coordinators
- Clusters accessing additional support to address common issues
- Specific assistance for individual schools and for some school-based projects
- An electronic mail network to facilitate the exchange of information between schools.

##### 3.1.2 Creating the Vision 2001 to 2004 – Aboriginal Education Strategy

The *Creating the Vision 2001 to 2004 – Aboriginal Education Strategy* constituted attachment four to the Initial Submission presented by DOE, and is described as the Aboriginal Education Strategy for the new millennium. It is based on the premise that schooling can provide a positive foundation for young Aboriginal people's holistic development through the recognition of differences and strengths that can be enhanced.

The Aboriginal Education Directorate within DOE was responsible for implementing the scheme. It sets out a broad strategy framework and then moves to nine separate 'Key Focus Areas', requiring a concerted effort over the next four years, each of which is dealt with in terms of 'Objectives', 'Performance Pointers', and 'Suggested Actions'.

##### 3.1.2 Western Australian Aboriginal Child Health Survey

During 2000, the Western Australian Aboriginal Child Health Survey (WAACHS) was developed in response to continued community and government concern at the lack of information available about the health and well being of Aboriginal children and

adolescents. The survey was conducted between July and December 2001, with funding and support being provided by several state and Commonwealth agencies, including DOE. The survey is not yet complete.

The data will be used to develop a comprehensive understanding of the health, mental health and well being of Aboriginal children, young people and their families in order to set policy and implement directions for the present and future benefit of all children. (Zubrick, 2001)

### **3.1.3 The National Indigenous English Literacy and Numeracy Strategy (NIELNS)**

This strategy, attachment five to the Initial Submission by DOE, is designed to ensure continuous progress towards achieving outcomes for Aboriginal Students similar to those of non-Aboriginal students in terms of literacy, numeracy, attendance, access and participation and the remediation of conductive hearing loss.

## **3.2 Policy and procedures**

### **3.2.1 The Child Protection Policy**

The Child Protection Policy (CPP) was attachment three to the Initial Submission provided by DOE. This document constitutes express directions to teachers and other staff within DOE. In essence this constitutes a 'lawful direction', binding to employees of DOE.

DOE has established a set of Child Protection Procedures that sit under the policy and guide staff in their responses to disclosures by students. Upon the disclosure of child abuse to DOE staff or the development of a strong suspicion of abuse by DOE staff, the matter must be reported to the school principal, or, if the principal is subject to the allegation, directly to the district director. If a principal is informed, he or she must then report the matter directly to the district director. Teachers and employees must disclose such information to a more senior member of staff and have no discretion in this matter. Any detriment or compromise to a relationship of trust with the child is seen to be outweighed by the nature of the risk to the child concerned. (Transcript of evidence of Steffan Silcox, 6 May 2002)

The principal or district director will select the appropriate actions from the following:

- 1. Contact parents*
- 2. Implement behaviour management strategies*
- 3. Establish case management process*
- 4. Report to DCD*
- 5. Report to Police*
- 6. Report to District Director/Executive Director.*

*(DOE Initial Submission, 25 March 2002: Attachment 3: Child Protection Policy: 8)*

According to the CPP, generally, but not always, this will involve reporting the matter to the Department of Community Development (DCD), the Western Australian Police Service (WAPS), or both. DOE then relies on WAPS or DCD to lead the response, and will respond to requests from the lead department. Where DOE is informed that DCD or WAPS have decided

not to provide immediate action, local decisions may be made by the relevant principal concerning case management of that child.

However, the 'Child Protection Training for Teachers' Training Package (DOE Supplementary Submission, attachment four, 11 July 2002: 21), for the application of the CPP, has very detailed instructions concerning reporting procedures for principals, which are more specific and more prescriptive than the CPP. They state:

*Principals are advised that acting in the best interests of the child can often be complicated by requirements for maintaining confidentiality. Considerable care has to be taken when a child demands confidentiality or requests that parents, Police or other agencies not be informed. This is a request to which Departmental employees cannot accede when the child's welfare or safety is threatened...*

*The principal must report to DCD disclosures or strong concerns of abuse and neglect arising from the actions or inactions of parents/caregivers.*

*Principals are to advise police of strong concerns and disclosures of abuse and neglect involving a person who is not the parent/caregiver for the child.*

*In the event that an alleged perpetrator is a member of staff, the principal must immediately inform the Police and the relevant District Director. Although there is a reciprocal agreement between DCD and the police, it is advisable for the principal to also notify DCD...*

The inference of differing obligations for reporting child abuse in the CPP and the 'Child Protection Training for Teachers' Training Package, as outlined above, is of concern to the Inquiry. Information received by the Inquiry from individual submissions has suggested that the reporting obligations of the employees of DOE confronted with child abuse are not always fully understood or followed by DOE staff.

**105. The Inquiry recommends that the Child Protection Policy and the 'Child Protection Training for Teachers' Training Package be reconciled as a matter of urgency in order to provide consistent guidance to Department of Education staff.**

The Inquiry notes that the DOE Initial Submission states that at least one person per school is trained in CPP, and all district offices student service personnel will be trained by the middle of 2002. (Transcript of evidence of John Hesketh 11 June 2002, Transcript of evidence of Steffan Silcox, 28 March 2002)

In circumstances of a direct disclosure of abuse or neglect from a child, or a serious allegation, discovery or disclosure of sexual contact, the obligations of reporting with regard to the CPP are fairly clear-cut for teachers.

This issue becomes more difficult and complex if suspicions of abuse are not strong or clear. Mr Hesketh, Student Services Manager of the Cannington Education District, pointed out, and justifiably, that there is no expectation of 'investigation' of a disclosure upon a school teacher (Transcript of evidence of John Hesketh 11 June 2002, Witness Statement of John Hesketh). To fully equip and resource teachers to pursue or examine indications of child

abuse or family violence would take considerable resourcing, and such a duty would distract a teacher from regular duties. Generally one would expect a referral to a school counsellor or psychologist if significant concerns were raised.

A situation may become more complex in cases involving 'mature minors' and, as mentioned at point at 4.1 of the CPP, where there are *'signs of abuse or neglect from someone with a responsibility to care for the student'* (DOE Initial Submission, 25 March 2002: attachment 3: Child Protection Policy 7). This necessarily brings into play issues of judgement, degree and discretion. In cases of substantiated, rather than suspected abuse, principals and district directors are obliged to make significant discretionary decisions.

The Inquiry is aware that issues have been raised recently concerning the application of the CPP and associated procedures.

**106. The Inquiry recommends that the Department of Education (DOE) establish a mechanism for reviewing, with a view to expanding and clarifying, the Child Protection Policy and the procedures for its implementation, as carried out by DOE staff. The Inquiry recommends consistency in policy and implementation procedures, and greater specificity in reporting procedures.**

**107. The Inquiry recommends that training to recognise child abuse be mandatory for all teachers.**

### 3.2.2 Attendance Officer (AO)

DOE employs AOs to address issues of attendance, absence and truancy. The AO may approach individual students, particularly those displaying chronic absenteeism and the families of children not attending school, to assist them to recognise their responsibilities to attend school.

During the course of consultations with Aboriginal communities, the Inquiry has been provided with information concerning the activities of AOs in different communities. On the basis of those consultations, the Inquiry sought documentation from DOE concerning the operations of AOs in those areas. Subsequently, DOE provided the Inquiry with documents concerning truancy reports, and follow-ups by AOs of those reports. (DOE Supplementary Submission, 19 July 2002)

It was clear to the Inquiry from reviewing that documentation that AOs faced a difficult task. Often, from the AO reports, it was clear that the family was facing a significant number of issues including poverty, poor living standards, family violence and substance abuse.

In many instances, at remote communities the AO would not be a permanent resident, and would visit the area spasmodically to deal with particularly severe truancy problems. This work practice, from the Inquiry's perspective, does not allow for the establishment of an ongoing relationship, which Delia Parker refers to in her evidence (Delia Parker, D Transcript of Evidence 12 June 2002) as being a key way to encourage children and families to improve school attendance.

DOE figures show that WA has the lowest retention rate of Indigenous students for years 10 to 12. Aboriginal students attend school less consistently than their non-Aboriginal peers and are more likely to drop out of school.

According to DOE data, Aboriginal students are absent up to three times more than non-Aboriginal students. DOE notes that there are many reasons for this situation, and 'cultural alienation' ranks high on the list.

The Initial Submission from DOE deals with the matter at page 9 and in the following way:

*Schools have as their primary role the education of children. In order to carry out this role, teachers have a duty of care to protect children from future harm. It is a departmental requirement that principals accurately record and rigorously monitor the attendance of all students and implement appropriate strategies to restore attendance if there are attendance issues. (DOE Initial Submission, 25 March 2002: 3)*

### **3.2.3 Children whose whereabouts are unknown**

DOE notes that there are currently 578 students recorded as missing from WA schools, of which 22 per cent are of compulsory school age. Of students referred to the list during a calendar year, approximately 86 per cent are located. There are several reasons why a student's whereabouts may be unknown including that the child may have enrolled in another school, but transfer documentation was not completed or the child has moved to a different state, overseas, be in legal detention, suffered a long-term illness or even be deceased.

DOE has put in place a student tracking system, which is a cross-government and non-government approach to improve the attendance and education of transient and truant students. The tracking system relies on a central database to identify and monitor students across government and non-government education sectors. DOE advised the Inquiry that such a tracking system would not be complete until there is a national strategy, or standard, to identify the whereabouts of relocating students. (Carpenter, media release 2002)

### **3.2.4 Cultural Awareness Training**

The Aboriginal Cultural Awareness Training program, '*Our Story*' (DOE Initial Submission, 25 March 2002), was finalised in 1997 and DOE has developed an implementation plan so that trained staff from district offices deliver cultural awareness training to all DOE employees. In some instances, the training program utilises specific local community Aboriginal speakers to provide a regional context at the school level.

DOE predicts that implementation of '*Our Story*' will assist its employees in having a better understanding of Aboriginal people, and will therefore be better equipped to teach Aboriginal students who will then learn more effectively.

### **3.2.5 Early childhood intervention**

DOE runs 29 Aboriginal pre-schools through local schools by agreement with Aboriginal communities to provide early childhood education programs. These programs focus on

children's health and wellbeing, literacy, numeracy and social competency. (DOE Initial Submission, 25 March 2002)

### **3.2.6 Socio-economically disadvantaged students**

There are a number of programs that are intended to assist socio-economically disadvantaged students to access the schooling system and enable low-income families to meet the associated costs.

The Secondary Assistance Scheme has been operating since 1983 to assist low-income families to pay school charges and purchase school clothing. In 2001, assistance totalling \$8.2 million was provided for some 26,000 students. It is available up to and including the year students turn 16 and become eligible for the Commonwealth Government Youth Allowance Scheme.

Funding for Commonwealth disadvantaged schools, which includes the Commonwealth Disadvantaged Schools Program, focuses on those government schools in which the students experience educational disadvantage as a result of low socio-economic backgrounds. The Literacy Net program, targeting preschool to year 2 Aboriginal children in selected schools, was successfully implemented in 1999 and 2000 and helped develop more effective partnerships between schools, parents and Aboriginal communities.

### **3.2.7 Geographically isolated students**

DOE has a large number of remote community schools mainly situated in the Kimberley, Pilbara and Goldfields education districts delivering educational services from kindergarten to year 10 to predominantly Aboriginal children. Many of these remote community schools are located at communities visited by the Inquiry. The particular issues faced in staffing remote schools are discussed below.

### **3.2.8 Students from language backgrounds other than English**

DOE also noted that it provides services specifically for children who speak languages other than English, or who have English as a second language or second dialect. Cultural and linguistic support is provided to some 5000 Aboriginal students for whom English is a second language or second dialect. In four education districts, 420 students are assisted under the Commonwealth ESL Indigenous Language Speaking Students Program.

DOE recognises that Indigenous children from non-English speaking backgrounds are at a particular disadvantage (DOE Supplementary Submission, 11 July 2002). The four 'remote' educational districts are developing initiatives to address language development and maintenance, and taking active steps to better induct new staff and provide second language teaching training.

Specific programs include *ABC Two Way Learning* designed to improve the literacy outcomes of Aboriginal students through the development and application of two-way bi-dialectal approaches to literacy instruction. Another approach, which is proving effective in remote schools, is the *Indigenous Language Speaking Students (ILSS)* program, which is based on a

consultative process so that the strategies for curriculum provision are informed by collaboration between Indigenous community members and teachers with ESL expertise. It facilitates the entry of indigenous language speaking students into mainstream education by providing intensive language tuition.

### **3.3 Aboriginal specific services**

DOE provide a number of Aboriginal specific services within their corporate structure.

#### **3.3.1 Aboriginal support network**

The Aboriginal support network is described by DOE as providing a bridge between the Aboriginal and educational communities. Under its auspices it has Coordinators of Aboriginal Education (CAEs), Aboriginal Liaison Officers (ALOs) and school-based Aboriginal and Islander Education Officers (AIEOs). The role of the support network, according to DOE, is to foster greater outcomes for Aboriginal children by involving Aboriginal parents and communities in educational decision-making. It also works to provide a more supportive school environment for Aboriginal students.

The role of the Aboriginal support network is coordinated by Coordinators of Aboriginal Education. ALOs perform similar roles at a district level and AIEOs work directly on school sites to support Aboriginal students and their families. As noted, there are 517 employees in DOE specifically to provide this Aboriginal support network. (DOE Initial Submission, 25 March 2002)

#### **3.3.2 Aboriginal-specific schools**

The General Submission provided by DOE discusses two Special Aboriginal Schools, Mooditj Noongar Community College and the Djidi Djidi Aboriginal School. These are government schools for Aboriginal children, located in Perth and Bunbury respectively.

The schools implement the curriculum framework with a strong focus on Aboriginal perspectives and ways of doing things. Aboriginal culture, studies and language are entrenched in the learning process. They were established at the request of local Aboriginal people in response to the constant failure of Aboriginal children to achieve in mainstream schooling as well as the demand by Aboriginal people for a more culturally inclusive learning environment. (DOE Initial Submission, 25 March 2002)

#### **3.3.3 Improving outcomes for Aboriginal students**

The Commonwealth Government makes available supplementary funding to DOE to assist with achieving approved outcomes in Aboriginal education. One particular focus is post-compulsory Aboriginal education. Vocational education and training (VET) in school programs provides opportunities for students to receive education that will assist them, directly, in getting employment. This, however, remains a challenge for remote communities where subjects may not be available, or high school students have already left. In general almost 60 per cent of Aboriginal students are now opting for programs with a VET component. DOE intends to continue to promote these programs.

### **3.3.4 Aboriginal Students at Educational Risk (SAER)**

According to DOE (Initial Submission, 25 March 2002) this program provides resources to schools to facilitate the introduction of projects designed to improve the participation and retention rates of students. It provides resources to schools to identify students at educational risk, and to develop, implement and evaluate school-based programs to improve the participation of Aboriginal students.

The initiatives include the Behaviour Management in Schools policy, which requires government schools to take responsibility for

- establishing an ethos which promotes positive learning environments
- developing and implementing preventative programs and processes that result in socially acceptable behaviour
- developing specific programs for individuals or groups exhibiting difficult to manage behaviours.

## **3.4 Human resource issues**

### **3.4.1 Recruitment**

The Minister for Aboriginal Affairs has very recently announced the 'Aboriginal Employment and Career Action Plan 2002-2004', which seeks to address the number of Aboriginal and Torres Strait Islander teachers in WA's schools, thereby helping more Aboriginal children stay in school for longer. (DOE Supplementary Submission, 12 July 2002)

### **3.4.2 Training**

The Inquiry notes that the document entitled 'Department of Education Remote District Responses' indicates that DOE is aware of the difficulties faced by staff in remote regions;

*... in the Kimberley where the majority of teachers new to the region have little or no experience in second language teaching, have limited knowledge of their students' first language and no experience of the community to which they are appointed.* (DOE Supplementary Submission 11 July 2002: 14-15)

The Inquiry has some concerns regarding the provision of teachers to remote schools. The Inquiry noted some occasions when young teachers did not seem to have a clear understanding of relevant cultural and social factors in Aboriginal communities. In particular the Inquiry observed that some teachers did not seem to be aware of the specific risks to young women in a number of communities, and consequently failed to adopt risk-mitigating behaviours.

Information provided by DOE discusses mechanisms put in place in the Kimberly school district to better induct new staff and to provide second language training for teachers. The Inquiry endorses these efforts to prepare teaching staff and recommends that such provisions be extended with particular emphasis on cultural awareness.



**108. The Inquiry recommends that the Department of Education consider providing intensive cultural awareness and induction programs to staff employed in schools, which have a high Aboriginal population.**

The Inquiry is aware of the particular social issues which may be prevalent at Aboriginal communities, and which may expose DOE staff and their families to personal risk. Furthermore in several submissions, individuals in remote communities have expressed concern that, as teachers and parents, they were not warned of specific risks in some communities and thereby failed to adopt risk-mitigating factors.

**109. The Inquiry recommends that the Department of Training institute a risk mitigation program directed towards the protection of their own staff, which would include education of risk, protective behaviours and the creation of a safe work and home environment.**

### 3.4.3 Difficult to Staff (DTS) Schools

DOE has provided the Inquiry with information concerning the range of supports and incentives that are provided to assist and encourage staff to work in remote and rural areas, specifically at country schools classified as DTS.

These include financial incentives, the exact provision of which varies considerably, but seem to range between a total of \$1,645.50 for Northam SHS to \$19,017.50 for Wyndham DHS over a three year period, or an annual sum of \$493.65 (Northam) and \$5,705.25 (Wyndham) for fourth and consecutive years. This appears to be in addition to differential Salary Location Allowances, of which there are three categories, of \$8,500, \$10,000 and \$11,500.

DOE also provides Professional Incentives for service in a DTS school. Employees are granted permanency with DOE upon the completion of two years of good service in a DTS school. For each year of good service they also receive bonus transfer points, subject to the completion of three years good service in a DTS school.

There are also additional days of sick leave, parental leave and bereavement leave, and payment of travel in association with the same. These cannot be considered incentives as such, rather they are costs associated with the particular working environment in a remote community.

The Inquiry notes that significant efforts are being made to attract and retain teaching staff in more remote locations, and that major improvements have been achieved in this regard (the average length of service in remote community schools in the Goldfields District has increased from 14 months in the early 1980s to 32 months for most schools). This is attributed to the *'country incentives package for difficult to staff schools,'* and in particular *'permanency over a two-year period.'* (DOE Supplementary Submission 11 July 2002:15) Permanency is most likely to appeal to graduate and younger teachers.

From anecdotal evidence and from observation, it appears likely that some accommodation of the employment ideal must occur to fill difficult posts. From various submissions and consultations, the Inquiry notes that DOE is aware that many inexperienced teachers are

recruited to remote locations. The Inquiry is conscious that remote and DTS schools are not always the first choice of skilled experienced teachers and suggests that DOE should focus on attracting high calibre teachers to this challenging field.

The Inquiry is aware that research is currently being conducted into the experiences of teachers working in rural and remote schools, with the intention of identifying teachers most suited to these posts and halting the high teacher turnover (Campbell-Fraser 2002). The Inquiry suggests that this research be considered in implementing improvements in DOE remote and rural staffing incentives.

**110. The Inquiry finds that current incentives are insufficient to attract experienced staff to remote areas, and fail to compensate for the additional costs associated with living in a remote community. Non-financial incentives, such as permanency with the Department of Education, are constructed as to be most attractive to junior staff, who may be least qualified to work in a demanding environment.**

### **3.5 Information collection/sharing, including mandatory reporting**

In some school districts, sets of protocols have been developed to allow information sharing between government departments (Witness statement of Steffan Silcox). In serious instances, a Duty of Care will override other considerations. In other circumstances however a conflict remains between the privacy of individuals and the coordination of government services.

The CPP, which guides DOE employees in response to the reporting of child abuse and suspected child abuse, effectively constitutes an obligation of mandatory reporting within DOE, as discussed above.

Concerning mandatory reporting, the 'Child Protection Training for Teachers' training package states that:

*While there is no mandatory requirement to report child maltreatment in WA, organisations have a Duty of Care requirement to report cases of child maltreatment or assault to either the Department for Community Development, Family and Children's Services and/or the Police – depending upon the nature of the harm...*

*The Department of Education will notify the Department for Community Development, when concerns about children or strong suspicions and direct disclosures of child maltreatment or neglect are received.*

*Allegations of sexual misconduct against employees will be referred to the Police.*

(DOE Supplementary Submission, attachment four, 11 July 2002: 23)

DOE employees, including teachers, have a Duty of Care towards students. This is described in the 'Child Protection Training for Teachers' training package (DOE Supplementary Submission, 11 July 2002, attachment four: 18) as '*a duty to take reasonable care to avoid harm being suffered*'. There is no obligation, however, in the CPP for principals or district directors of DOE to report child abuse to other government agencies, specifically DCD or WAPS, although these are listed among appropriate actions following notification of child abuse.

While it is clear that reporting child abuse or suspected child abuse is mandatory within DOE, informing other government departments, specifically DCD and WAPS, is discretionary according to the CPP, but inferred to be obligatory by the 'Child Protection Training for Teachers' training package.

Last year, the State Ombudsman was called to address matters relating to the reporting of child abuse by DOE, among other agencies, and recommended, in July 2001, a revision of the procedural guidelines for the notification of child abuse (DOE Supplementary Submission 19 July 2002). As discussed above, the Inquiry similarly recommends greater clarity in this matter.

### **3.5.1 Data collection**

The Telethon Institute for Child Health, in conjunction with the Australian Bureau of Statistics, is conducting a survey of 3000 Aboriginal children and their families which focuses on mental health, physical health, behavioural problems and adverse health behaviours (drug, alcohol and tobacco use) in children and youth. The survey is not complete, and is significantly behind schedule, but the Inquiry notes that it is one of the first surveys of its kind and will be of significant assistance in shedding light on the educational needs of the Aboriginal community.

The Inquiry also notes the launch of the new monitoring system for tracking and monitoring school enrolments across the state in both government and private school systems, which will improve the collection and co-ordination of student data and allow for better service delivery through the school system. (Media release 2002)

## **3.6 Collaborative models**

Appendix F to Mr Hesketh's witness statement, deals with the 'Principles of Effective Practice,' which are part of the 'Solid Foundation – Health and Education Partnership for Indigenous Children' agreed to by the Ministerial Council for Education, Employment, Training and Youth Affairs (MCEETYA). These 'Principles of Effective Practice' express the ideals of interdepartmental cooperation without specifying the conversion of these principles into practical applications.

Nevertheless, evidence presented to the Inquiry by DOE has stressed the importance of interagency collaboration in response to issues faced by students. Ms Delia Parker stated that from her own observations many SAER were also engaged with a number of other government agencies, particularly DCD, WAPS, and DOJ. Consequently DOE has adopted a range of collaborative approaches.

Information provided to the Inquiry suggests that the majority of interdepartmental projects involving DOE are established at the level of the school district. This allows various projects and programs to target specific local issues. Delia Parker (Transcript of evidence, 12 June 2002) espouses a particular collaborative model, which she was instrumental in developing. It is currently under review which is nearing conclusion.

**111. The Inquiry endorses the collaborative model addressing non-attendance by Aboriginal students, pending its successful review, and recommends that it be expanded to other educational districts.**

Local education district interagency initiatives include:

- Strong Families
- Alternative Education programs
- Families and Schools Together Program
- Triple P (Positive Parenting Program)
- Exploring Together (Preventative intervention for families with at-risk primary school aged children)
- Communities That Care
- ARAFMI Youth Services (Program for young people who have family members with a mental illness).

Education initiatives in partnership with the tertiary sector include:

- Aussie Optimism Program (Depression prevention program for Year 7 students)
- Friendly Schools Project (Bullying prevention in primary schools)
- Resourceful Adolescent Program (Depression prevention program for Year 8 students).

Wider collaborative initiatives include:

- Indigenous Family Program
- The Geraldton and Midland Truancy Programs as an aspect of the Aboriginal Cyclical Offenders Program
- The Lake Jasper Project – funded by DOE, DCD and the Lotteries Commission, provides an alternative education program for young Aboriginal male students who are not attending school due to either exclusion or truancy and who are experiencing other difficulties, such as exhibiting anti-social behaviour, substance abuse, or are victims of neglect, abuse, or violence. The program tries to create a supportive environment in which young people can break negative cycles and start positively interacting with their families, their communities and the natural environment.

According to the further information sought from DOE by the Inquiry (DOE Supplementary Submission 12 July 2002), the Education Program at the Lake Jasper Project is administered through the Nannup District High School. The project commenced in 1989.

### **3.7 Memorandums of Understanding (MOU)**

DOE has signed MOUs with Aboriginal Corporations in order to spell out their respective responsibilities and encourage collaboration between the community and DOE. A MOU in one instance was used to establish a discrete education area managed by Educational Area Directors and overseen by an Education Area Council. This agreement also focused on curriculum and education priorities and capacity building in the community. The MOU is a complex document detailing a number of agreements between the community and DOE which may be used as a model, or vehicle, for improving education service delivery.

## 4. SERVICE PROVISION

### 4.1 Strengths

DOE has identified the particular difficulties faced by Aboriginal students, and taken extensive measures to redress them within the scope of its responsibility.

The specific issues of non-attendance, English as a second language or dialect, and a lack of cultural integration into the educational system, have been noted and addressed extensively.

Very significant efforts have been made to ensure that Aboriginal students have access to Aboriginal support people within the school system, and a considerable number of Aboriginal people are employed in this regard.

### 4.2 Challenges

#### 4.2.1 Non attendance

**112. The Inquiry endorses the inclusion of Aboriginal studies in school curriculum and the development of Aboriginal language programs. The Inquiry supports the ongoing development and provision of Aboriginal language programs across the state.**

**113. The Inquiry finds that truanting or non-attending is a significant issue affecting the education of Aboriginal students as identified by the Department of Education (DOE). The Inquiry endorses the current commitment of DOE to increase school attendance by Aboriginal students. The Inquiry notes the establishment of a review committee to consider fundamental changes to the delivery of education and training to WA's Aboriginal youth.**

**The Inquiry recommends, pending favourable outcomes, the extension of successful programs and systems to increase school attendance by Aboriginal students. The Inquiry finds that school attendance must be one of the primary focuses of the Department of Education in improving the educational outcomes of Aboriginal students.**

#### 4.2.2 Teachers in remote and DTS schools

The Inquiry is aware that the provision of experienced teachers to remote communities, knowledgeable about the local culture and qualified to meet the often specialised educational needs of Aboriginal children, is a challenging task. *'Attracting staff to Remote Community Schools is nonetheless an ongoing issue.'* (DOE Supplementary Submission, 12 July 2002: 15)

As of 1 July 2002, there were 23 vacancies advertised in DOE teaching positions, all in regional or remote communities and the majority, if not all, in communities with a high proportion of Aboriginal students. (<http://www.eddept.wa.edu.au/centoff/HRrecruitment/>). While the conditions of employment are not provided in detail, at least two positions offer shared accommodation; at Nullagine Primary School and at Warburton Range Remote

Community School. These are locations where other housing is unlikely to be available. Shared accommodation is unlikely to make either of these positions, which other evidence has suggested may be demanding, attractive to more experienced teachers with families.

Further issues relating to teachers in remote communities are discussed above in 3.4.2 and 3.4.3.

**114. The Inquiry finds that issues relating to staffing remote and rural schools classified as Difficult to Staff (DTS) impacts upon the education of Aboriginal students. The Inquiry recommends that consideration be given to greater resources being allocated to or directed towards attracting experienced staff to DTS schools. Incentives, in particular, should be attractive to experienced teachers, as well as recent graduates.**

#### 4.2.3 Response to child abuse or suspicions of child abuse

- The Inquiry has observed that policies and procedures provided to DOE staff are neither clear nor consistent for management of:
  1. disclosures of child abuse
  2. circumstances falling short of a disclosure of child abuse, but generating a suspicion that child abuse is occurring,

**115. The Inquiry recommends greater assistance, direction and training be provided to Department of Education staff in the reporting and otherwise responding to disclosure and suspicions that may not amount to disclosure of child abuse.**

#### 4.2.4 Protective behaviours

The Inquiry has observed that the impact of current 'Protective Behaviours' education upon students and school communities is minimal. Although aware of the particular difficulties which can be encountered in providing such education, the Inquiry nevertheless considers that it is necessary for students, and particularly Aboriginal students to be better informed. Such education would have to be both culturally relevant and culturally sensitive.

**116. The Inquiry recommends the provision of basic education in 'Protective Behaviours' to students in all schools through existing curriculum frameworks in the Department of Education.**

**117. The Inquiry supports the Department of Education seeking the services of other agencies, including non-government agencies, to provide assistance in providing education in 'Protective Behaviours.'**

#### 4.2.5 Family violence

Family Violence is not directly within the core business of DOE, unless a child itself is the subject of such violence. DOE is aware that children are in a position of great risk of suffering from exposure to family violence, and that family violence and child abuse often co-exist, but until a child is exhibiting signs of physical or emotional abuse or neglect there is little specific intervention open to DOE. (DOE Initial Submission, 25 March 2002, appendix 2)

Education Districts and school clusters have representatives on local domestic violence committees where they are available. Practical solutions are difficult to achieve even using the information provided by these committees, as it is not appropriate for school staff to involve themselves directly with issues of family violence.

Counselling support is available to affected students, however DOE cannot provide counselling to parents or other family members. In severe cases educational support systems involving the school psychologist, social workers or principals assist students through joint case management procedures with DCD. In most cases it is necessary for students to return to their homes without any alteration to their home environment, in which case intervention by DOE is limited. (DOE Initial Submission, 25 March 2002)

#### **4.3 Future directions**

Aboriginal people have not complained significantly to the Inquiry about the education or lack thereof received by their children. The mechanisms of the current western educational system are not sympathetic to traditional Aboriginal society and for many Aboriginal families, compete with other obligations.

*The Education Department doesn't understand about the need for kids to attend funerals, to stay home and care for sick relatives, and to do other stuff. Aboriginal people are willing to work to keep their children up to date with their learning but kids have other commitments too. (Community Consultation)*

Nevertheless, the Education system provides a significant opportunity to improve the lives of future generations of Aboriginal people. It is also the most universal contact point between Aboriginal children and government services.

Long term changes in attitude, fostered by increased Aboriginal 'ownership' of the education system are likely to bring about the greatest changes in the education of young Aboriginal people. DOE is making significant efforts in this direction, to improve cultural awareness by DOE staff, to increase the Aboriginal content of both standard and Aboriginal specific curricula and to provide targeted assistance to SAER.

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## LEGISLATION

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- School Education Act 1999 (WA)
- Public Education Endowment Act 1909 (WA)





*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse of the Designer'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## Aboriginal affairs

### CHAPTER 12

# SECTION 3

*This chapter primarily examines the activities of the Department of Indigenous Affairs, with an overview of the role of Aboriginal and Torres Strait Islander Commission*



## 1. OVERVIEW OF SERVICE PROVIDERS

### 1.1 Department of Indigenous Affairs

#### 1.1.1 Broad intent and mission statement

The Department of Indigenous Affairs' (DIA) strategic plan describes its role as:

*To build and support partnerships with and between Indigenous people, Government and the broader community in order to assist them to respond appropriately to the cultural, social and economic needs of Indigenous people.*

(DIA Initial Submission 23 May 2002: 1)

DIA provides assistance to the Aboriginal community by providing information and advice to service providers about service gaps and inequities. DIA considers it a high priority to coordinate efforts to improve environmental health conditions in discrete communities. Further, in order to carry out its core business, DIA aims to work at a national, state and regional level to act as a catalyst for change.

The 'Government Structures for Better Results, The Report of the Taskforce Established to Review the Machinery of Western Australia's Government' report ('Machinery of Government') (Hicks et al. 2001) commissioned by the Gallop Government consolidated a key role for DIA in the areas of land, heritage and coordination. The objective of the Indigenous portfolio is stated as:

*Closing the gap between social and economic well being of Indigenous people through strategic whole-of-government management of indigenous affairs.*

(Hicks et al. 2001: 157)

#### 1.1.2 Structure

The Department is headed by the Director General and divided into three directorates:

1. Regional Management
2. Policy
3. Business Services

Each directorate is headed by a director and assisted by assistant directors. Managers are also appointed to each portfolio and report to their respective assistant director.

There are six regional managers who are responsible to the assistant director of Regional Management.

The Director General, directors and assistant director(s) form the Corporate Executive to overview the agency and make decisions on its operations.

### **1.1.3 Staff, budget and office locations**

DIA receives an annual budget of approximately \$17.5 million and, as of 30 June 2001, had 142 staff members.

Its head office is located in Perth, with regional offices in Albany, Kalgoorlie, Midland, Geraldton, Port Hedland and Broome. Sub-offices are located in Kununurra, Halls Creek, Derby, Newman, Meekatharra and Bunbury.

### **1.1.4 Legislative Responsibilities**

#### *1.1.4 (a) The Aboriginal Affairs Planning Authority Act 1972*

The *Aboriginal Affairs Planning Authority Act 1972* (AAPA Act) is the primary legislation underpinning the functions of DIA. Responsibility for the AAPA Act lies with the Minister for Indigenous Affairs. Section 12 of the Act charges the Minister with the duty to:

*Promote the well being of persons of Aboriginal descent in Western Australia and ... take into account the views of such persons as expressed by their representatives. (AAPA Act 1972: s12)*

The AAPA Act creates three primary bodies to facilitate service delivery by DIA:

1. Section 18 provides for the establishment of an Aboriginal Advisory Council (AAC). Such a council is designed to advise DIA on matters relating to the interests and well being of persons of Aboriginal descent.
2. Section 19 establishes an Aboriginal Affairs Coordinating Committee (AACC). The committee coordinates the activities of all persons and bodies—corporate or otherwise—providing or proposing to provide service and assistance in relation to persons of Aboriginal descent.
3. Section 20 establishes an Aboriginal Lands Trust (ALT) for the purposes of acquiring and holding land. Section 23 outlines the following specific functions:
  - To acquire and hold land, and to use and manage that land for the benefit of persons of Aboriginal descent
  - To ensure the use and management of land held by ALT accord with the wishes of Aboriginal inhabitants.
  - To consult, negotiate, enter into financial arrangements, contract and undertake, or administer projects—either directly or in association with other persons or bodies as may be necessary for the development of the land.
  - To generally represent the interests of the Aboriginal inhabitants of the area and to ensure the most beneficial use of the land.

*1.1.5 (c) Aboriginal Communities Act 1979*

*The Aboriginal Communities Act 1979 (AC Act)* enables communities to have specific areas proclaimed in order to better regulate conduct. Section 7 of the AC Act permits by-laws to be made in respect to:

- Entry to community lands
- Use of vehicles and traffic control
- Damage to grounds
- Use and safety of buildings
- Conduct of meetings
- Nuisances, offensive or disorderly conduct
- Use of firearms and other offensive weapons
- Litter
- Regulation or prohibition of alcohol and other substances
- Obstruction of persons acting in the exercise of their duties
- Any other matter that is necessary or convenient to enable good order in the community.

*1.1.5 (d) Aboriginal Heritage Act 1972*

*The Aboriginal Heritage Act 1972 (AH Act)* provides protection for all sites as defined in the AH Act, making it an offence to disturb these sites without permission from the Minister for Indigenous Affairs. Section 28 of the AH Act establishes the Aboriginal Cultural Materials Committee (ACMC) and is responsible for evaluating the importance of places and objects.

## **1.2 Aboriginal and Torres Strait Islander Commission**

*The Aboriginal and Torres Strait Islander Commission Act 1989 (Clth) (ATSIC Act)* established the Aboriginal and Torres Strait Islander Commission (ATSIC). A national body, ATSIC's task is to help strengthen the economic, social, cultural and heritage development of Aboriginal and Torres Strait Islander people.

To comply with the ATSIC Act, ATSIC must:

- Formulate and implement programs
- Monitor the effectiveness of other commonwealth and state programs for Aboriginal and Torres Strait Islander people
- Develop policy proposals
- Advise the Minister for Aboriginal and Torres Strait Islander Affairs
- Do all other things necessary to perform the functions as written in the ATSIC Act.

In carrying out the above tasks, ATSIC must consult and negotiate with Aboriginal and Torres Strait Islander people, communities and organisations.

ATSIC identified the five following priority 'outputs' in providing services to Aboriginal people:

- Promotion of cultural authority
- Advancement of Indigenous rights and equity
- Improvement to social and physical well-being
- Economic development
- Quality assurance and capacity building

Recent changes to ATSIC's structure have seen it refocus toward policy development and coordination of national and state programs. ATSIC has pursued partnership agreements with state governments in an attempt to improve the delivery of services to Aboriginal people, and recently signed the '*Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians*'.

ATSIC provided \$837,254,000 in grants nationally during the 2000/01 financial year toward achieving its outputs. (ATSIC 2001)

## **2. SERVICE PROVISION BY THE DEPARTMENT OF INDIGENOUS AFFAIRS**

### **2.1 General service**

The '*Machinery of Government*' report identified a key role for DIA in the areas of land, heritage and coordination. The objective of the Indigenous portfolio is:

*Closing the gap between social and economic well being of Indigenous people through strategic whole-of-government management of indigenous affairs. (Hicks et al. 2001: 155)*

DIA participates in national, state and local committees, and has developed policies, action plans, benchmarks and reporting processes to improve service delivery to Aboriginal people.

DIA has several areas that are service-specific. The areas, and subsequent responsibilities are:

1. Administration of ALT and its estate:
  - a. to manage land reserved for the 'Use and Benefit of Aboriginal Inhabitants'
  - b. the payment of rates and other charges
  - c. to assist with land care programs
  - d. to undertake the transfer of ALT estate,
  - e. administration of the AH Act 1972
  - f. the operation of the ACMC, which manages and protects Aboriginal sites
2. Contribution and participation into the Joint Town Planning program:
  - a. Provision of planning services for both the Aboriginal community and service providers to enable development of communities in accordance with sound town planning principles and meet legal requirements.

3. Administration of the Aboriginal Communities Act 1979.
  - a. Undertake legislative and policy review to ensure that the needs of the Aboriginal communities are being met.
4. Provision of funds and management of a joint community-planning program with ATSIC to improve infrastructure development and ensure the community and contractors meet legal requirements. (DIA Initial Submission 23 May 2002)

In evidence provided to *'The Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities'* (Inquiry), the Director General, Mr Richard Curry indicated:

*It's very clear under the Machinery of Government reforms that the Heritage Act is a piece of legislation which does require far more resourcing from the agency than has previously been able to be allocated. (Witness statement of Richard Curry 23 May 2002: 1297)*

*We maintain within our organisation a land management section, which is...to ensure that we are actively involved in land management as an ongoing process. (Transcript of evidence by Richard Curry 23 May 2002: 1298)*

*Our coordination responsibility has become more strategic and the way we've done that is to look at Indigenous Affairs in a portfolio sense, to say that it is the responsibility of all government agencies to be involved in the process, not just DIA. So its in one hand tried to maximise our effect in across government coordination and also give us the resources to do the, really the arms and legs work we have to do out there in the field in relation to land and heritage work. And that ... is clearly our responsibility, doesn't belong to anybody else. (Transcript of evidence by Richard Curry 23 May 2002: 1324)*

## 2.2 Responding to underlying factors

### 2.2.1 Aboriginal Communities Act 1979

DIA has statutory responsibility for the Aboriginal Communities Act 1979 (AC Act) and indicates that it continues to support local governance within communities. From community consultations, it was clear that Aboriginal communities regard by-laws as integral to maintaining law and order within communities particularly where there is a lack of police presence. Whilst communities support the by-laws, the lack of legislative powers impedes their enforcement. A review of this Act was undertaken as long ago as 1989. One of the conclusions of that review was that it was more appropriate that provision be made for community wardens rather than Police aides (McCallum 1989: 4). By contrast, Senior Sergeant Galton-Fenzi states:

*This marketing in conjunction with the obvious lack of perceived police support and presence within the communities must have created an influence on the community members as to their ability to obtain appropriate police support and presences and the only alternative being the Wardens Scheme as continually ... expressed to them, by those they considered in authority. (Galton-Fenzi 2002: 14)*

In recognising the need to improve policing of communities, a Memorandum of Understanding (MOU) was signed by the DIA (formally the Aboriginal Affairs Department) and the Western Australian Police Service (WAPS) with the objective to:

- improve the overall delivery of Law and order services to remote Aboriginal communities through consolidating the Aboriginal Wardens Program under the Police Service responsibilities, and
- provide professional policing support and appropriate funding to ensure the effectiveness of the Aboriginal Wardens Scheme.

As a result of the MOU, the coordination and ownership of the Aboriginal Wardens Scheme was transferred to the WAPS on 1 July 2000. The DIA however retained legislative responsibility for the AC Act and assists communities with the preparation of by-laws.

There are 21 Communities proclaimed under the AC Act and it is considered that only 15 schemes are functional. Nine are located in the Kimberley, three in the north-eastern region, two in the Pilbara and one at Warburton.

The DIA indicate that it is currently reviewing the AC Act (DIA Initial Submission 23 May 2002: 5), to better assist the communities. DIA has indicated a framework is in place for the conduct of this review and an additional legal officer has been engaged. However, the likely timeframe for concluding the review remains unclear. (DIA Final Submission 23 July 2002)

The Inquiry is concerned however that DIA considers child protection, family violence and other related issues are not issues of self-governance or community order, and that it would be inappropriate to deal with such issues through the AC Act. (DIA Final Submission 23 July: 23 July 2002: 6)

This view is contrary to Huggins (Huggins 2002: 5) who recommends a better understanding of the critical relationship between the achievement of good governance practices and how to effectively tackle family violence. Further, that consideration should be given to American models where tribes are adopting codes of conduct to deal with family and sexual violence, and negotiating with state and federal governments in order to work cooperatively with courts and law enforcement agencies in dealing with perpetrators and securing victims rights. The Inquiry has not had an opportunity to examine the American models

Dr Jonas supports Huggins position and suggests that community justice mechanisms are an integral part of Indigenous governance. He indicates that the processes of separation through the criminal justice system, juvenile justice and care and protection systems, combined with dysfunctional behaviour such as violence and abuse in communities are the hard edge where the lack of equity and extreme marginalisation of Indigenous people in Australian society is felt the most. (Jonas 2002: 3)

**118. The inquiry recommends that the current review of the Aboriginal Communities Act 1979, be finalised, with appropriate detail, as a matter of urgency.**



### 2.2.2 Aboriginal Lands Trust

The ALT has a specific role to ensure proper management of land that it holds on behalf of Aboriginal people yet the level of community management development undertaken is not apparent (DIA Initial Submission 23 May 2002). DIA's 2001 Annual Report indicated an expenditure of \$289,000 in grants. Given that the ALT estate consists of approximately 12 per cent of the states total land mass and the majority of Aboriginal communities are located on land held by the ALT, it is unlikely to make a significant contribution to sound management practices or capacity building programs being implemented.

The lack of management capacity has been specifically identified as resulting in low self-management, leading to a lack of social cohesion, inability to preserve infrastructure quality and utilise government services. Furthermore the capacity for self-management also encompasses the overall social health of the community as measured by factors such as physical health, education and community law and order. (Gerritsen et al. 2000: 4)

DIA indicates (DIA Final Submission 23 July: 3) that it supports a greater involvement and is concentrating on the better use of the land and resources from an environmental perspective. While it is commendable that better land use practices are being developed, the Inquiry considers that operating governance structures that improve safety and decision making processes should be a higher priority.

**119. The Inquiry recommends that the Aboriginal Lands Trust undertake a greater role in the development of management structures and capacity building in communities located on Aboriginal reserve land and that adequate resources be made available to fulfil this role.**

### 2.2.3 Capacity building

Gerritsen found that the lack of assistance by government to develop governance skills and capabilities in Aboriginal communities was widespread. The report also found that improved capacity rather than more money and more programs have the best potential to improve the current dismal situation facing Aboriginal people. (Gerritsen et al. 2000)

DIA indicated that following the Machinery of Government Report, the Department of Local Government and Regional Development and the Department for Community Development (DCD) identified capacity building as key components of core business. As yet however there is no lead agency and no coordinated strategy to address this need. (DIA Initial Submission May 2002: 15).

*'The Revisiting the Old in Revitalising the New'* report indicated that a single agency should be accountable for overall Aboriginal community development, which would be responsible for applying proper community development principles. As DIA's role is currently being developed following the Machinery of Government report, the Inquiry is of the opinion that it already has the legislation to fulfil this requirement.

**120. The Inquiry recommends that the Department of Indigenous Affairs be responsible for instituting proper community development principles**

## 2.3 Responding to Family Violence

Although in the past DIA's primary role was to coordinate the delivery of services to Aboriginal communities, little emphasis has been placed on the development of social and economic policies to develop communities. As a consequence, issues such as family violence are seen as the responsibility of DCD and the WAPS.

*The Department of Indigenous Affairs in a coordinating role and lead agency for Indigenous Affairs does not bite the bullet in addressing Family Violence and Child Abuse. Like all the other government agencies AAD/DIA hides under its 'mandate' when dealing with the 'too hard basket'. However, as a lead agency of Indigenous Affairs AAD/DIA should have(sic) coordinated government agencies in a more effective manner when dealing with Family Violence and Child Abuse. (Community response to questionnaire)*

The development of the wardens scheme under the AC Act has been seen as a means to provide assistance to communities to deal with specific social disorders which may have included family violence, however the inability of communities to enforce bylaws has negated any real impact, that the by-laws may have had.

*The young men of the community are using violence to get what they want; if it is money or food the young men will assault the elderly in their communities. Inside and outside of the communities the message is if you want it you take it by force. The elderly are no longer protected from such violence, in fact this area of violence is not recorded or very little time and energy is given to this area. (Community response to questionnaire)*

Greater emphasis is required by DIA to address social development issues and ensure that it addresses the service needs of communities' where state agencies have a statutory role to provide such services.

## 2.4 Responding to Child Abuse

DIA advise that it is not legislatively responsible for issues relating to child abuse (DIA Initial Submission 23 May 2002: 9). It has however prepared a video *'My Body Belongs To Me'* to educate community members that abuse is not acceptable in any form. DIA further indicated that it does not have policy in place to provide direction to staff in the event that family violence or child sexual abuse became known through its official dealings.

In its coordinating capacity however, DIA have a responsibility to ensure that services and resources are facilitated to reduce child abuse occurring.

**121. The Inquiry recommends that the Department of Indigenous Affairs develop policy and provide staff training to facilitate services that address causes of family violence and child abuse.**

### **3. ORGANISATIONAL ISSUES**

#### **3.1 Planning**

In October 2001, the State Government signed the *'Statement of Commitment to a New and Just relationship'* with the ATSIC WA State Council Chairperson, Mr Ian Trust. This formal commitment is based on an acknowledgment that to achieve improvement, the government (state and Commonwealth) and Aboriginal people need to work together and share responsibilities.

The agreement proposes to incorporate practical action through:

- Negotiated agreements at regional and local levels; and
- A process of continued dialogue between elected Aboriginal representatives, Government Ministers and Agency Director Generals.

The Indigenous Affairs Advisory Committee (IAAC) replaced the AACC in December 2001 following another recommendation of the Machinery of Government Report, its role being:

*The formal advisor to the State Government on Indigenous Affairs in Western Australia and the vehicle through which agreed policy affecting indigenous Western Australians will be implemented.* (Machinery of Government Report.155)

Its charter requires the IAAC to undertake a central role in progressing issues and developing agreed policy through various cross-portfolio working group processes. DIA provides secretariat and policy coordination support. This variation in focus by the government has suspended the statutory responsibility of the DIA as the lead agency to coordinate the delivery of service by state agencies and relegated it to a secretariat role.

The Director General, Mr Curry indicated that a small organisation like the DIA is easily marginalised in the business of government. (Transcript of evidence by Richard Curry 23 May 2002)

While the Inquiry supports the greater emphasis being placed on the coordination of services to Aboriginal people, it is concerned that the IAAC has no statutory base and able to be disbanded at whim, leaving no structure in place.

**122. The Inquiry recommends that the Aboriginal Affairs Planning Authority Act 1972 be amended to reflect the role and membership of the Indigenous Affairs Advisory Council to ensure consistent coordination of services.**

## **3.2 Policy and procedures**

The DIA does not have specific policies or procedures that relate to family violence or child abuse. DIA supports the Minister for Indigenous Affairs participation in the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA) which is working on a family violence strategy that has direct links to the Commonwealths Partnership Against Domestic Violence. (PADV)

DIA has participated at a state level, in the Action Plan Implementation Committee (APIC) to oversee the implementation of the state's domestic violence strategy. That Committee no longer exists, having been replaced by the Family Violence Coordinating Committee.

DIA attends the Domestic Violence and Safer WA committees established locally and regionally throughout the state and have produced an awareness video on the prevention of sexual abuse in Aboriginal communities.

## **3.3 Human resource issues**

### **3.3.1 Recruitment, training**

Recruitment is based on advertising positions vacant, normally in the newspapers and government gazette.

### **3.3.2 Training and specific employment recruitment/ Aboriginal training and recruitment**

The Inquiry is not aware of any DIA policy regarding the employment of Aboriginal staff. Staff training is dependent on available funds and staff are requested to identify training desired. The Inquiry notes that providing comprehensive training out of the metropolitan area may be financially prohibitive.

A cadetship program to encourage the development and employment of Aboriginal staff was discontinued and has been replaced by the public sector traineeship. This is a 12-month program designed to enable Aboriginal people to learn entry skills that would enable their employment within the public sector.

DIA also participates in the public sector graduate program however has yet to engage a graduate.

DIA provides a \$1,000 scholarship available to its staff for further study and also allows work time to attend study commitments.

### 3.4 Information collection/sharing, including mandatory reporting

Section 18 of the AAPA Act provides for an Aboriginal Advisory Council for the purpose of providing advice on matters relating to the interests and well-being of persons of Aboriginal descent. However, no such body exists *per se*, rather the IAAC is regarded by DIA as operating an amalgam of the two bodies expressly provided for in AAPA Act.

DIA considered that the involvement of Aboriginal people in the consultative process is expressed through the membership and participation of the elected representative members of ATSIC in WA who, together are called the Aboriginal State Council of Western Australia (ASCWA). ASCWA represents all Indigenous constituents of WA. (DIA Final Submission 23 July: 2)

While the Inquiry commends the role ATSIC regional councils undertake in the state, anecdotal evidence indicates that there are organisations and communities that do not consider ATSIC as representing their views and therefore do not have an avenue to make representation to the State Government. Huggins found that:

*While elected regional councils underpin ATSIC in terms of power and authority, the focus tends to fall on the authority and decision making of ATSIC's Board of Commissioners...ongoing tension between the allocation and management of funds on one hand and the development of strategic policy on the other has tended to deflect attention away from the institutional and policy gap that exist down at the local community and regional levels...it is within the legislative and service delivery jurisdictions of State and territory governments where the critical lack of support needs most attention in tackling family violence. (Huggins 2002: 2)*

DIA also considers (DIA Final Submission 23 July: 3) that other Aboriginal bodies and organisations such as the Aboriginal Housing Board, APMC, ALT and Aboriginal Education and Training Council provide advice to government. While it is accepted that invaluable information is obtained from these bodies in respect to the specific role that government has established them, they do not generally address localised community issues, such as gambling or malnutrition.

The Inquiry is supportive of the state government seeking to integrate policies and services with the commonwealth however it must ensure that commonwealth directions do not overwhelm local requirements and direction.

**123. The Inquiry recommends that the Department of Indigenous Affairs maintain a formal structure to receive and disseminate information to Aboriginal communities as required by Section 18 of the Aboriginal Affairs Planning Authority Act 1972.**

## 4. ANALYSIS OF SERVICE PROVISION

### 4.1 Access to services

Because DIA does not maintain a statutory structure to obtain local and regional information directly from communities it is reliant on information provided by other service providers in order to make representation to agencies on services.

*Agencies still frequently rank the need for and benefits of interagency coordination low on their list of priorities. Community leaders, members and organisations express frustrations at not being able to address their community concerns in an integrated manner because agencies are solely focussed upon their own programs. Matters of content, quality of delivery and coordination with community plans and structures of agency activities cannot be addressed because agencies report to their regional and higher authorities first and the community as an entity last. When agencies deliver their services within the authority of a regional Aboriginal organisation, this difference to community priorities is diminished.*  
(Gerritsen et al. 2002)

Regional offices are located in the major towns throughout WA, except for Kununurra, thereby allowing community members to make representations to DIA. It also provides an 1800 number to ensure remote areas are able to make contact at minimal cost.

ALT staff are only based in Perth although due to the '*Machinery of Government Report*', regional staff are now being trained to deal with land issues.

### 4.2 Strengths

DIA is currently free of the '*silo effect*' normally associated with funding agencies and therefore capable of responding quickly to a variety of issues that may or may not be considered to be within its responsibilities. Further as it is specifically commissioned to facilitate the delivery of service it is able to remain objective and provide strategic information to service providers.

DIA, in conjunction, with ALT (being a statutory body to hold management orders for the majority of reserve land where communities are located) are in a strong position to regulate the activity of other agencies to ensure that delivery of services is provided in a coordinated and sustainable process.

Because government policy is refocussing the role of DIA, it has the opportunity to be more active in community advocacy and development of governance structures to assist communities.

### 4.3 Challenges

The nature of the department's role makes it difficult for the community to perceive any tangible service being provided. The coordination and facilitation of services may not actively involve the community, therefore a perception of inaction is created. Considerable effort is required to develop a reciprocal relationship to enable communities to fully appreciate and support DIA in its advisory role.

The contribution of DIA is often misunderstood and understated as its lack of financial contribution may be seen as tokenism by other government agencies and Aboriginal communities.

DIA needs to be able to balance its priority to ensure that its statutory obligations are met equally.

#### **4.4 Future directions**

While currently in a state of uncertainty due to the recent changes introduced by the Machinery of Government report, DIA is in a prime position, given its legislative base, to facilitate the introduction of social development and governance programs.

A greater involvement in the development of management structures and capacity building on Aboriginal reserve lands and application of the AC Act would enable communities to be better equipped to manage their communities and reduce the level of social disorder currently being faced.

There is currently a hiatus in communication of community priorities from the local level to peak committees such as the IAAC. The reconstruction of bodies in the nature of Regional Aboriginal Advisory Committees would be one way of ensuring that community issues are addressed at all levels.

#### **4.5 Conclusions**

Following the Machinery of Government report, DIA considers its future role as having a greater input into land and heritage management.

This refocus of priority enables DIA to move toward a specific role which could encapsulate the sentiment expressed in the *Revisiting the Old in Revitalising the New* report that identifies a need for a specific agency to undertake the lead role in capacity building in Aboriginal communities. The legislation already exists under s.20 of the AAPA Act to provide management and development of the land in accordance with the wishes of the inhabitants.

The reduction of its role in coordination also allows for DIA to be proactive in seeking the views of Aboriginal communities and undertaking advocacy at both a local and state level, which would comply with Sections 18 & 19 of the AAPA Act.

Improvement of the AC Act in conjunction with policing by the WAPS would compliment governance training and management of Aboriginal lands, enabling social development to occur in an environment conducive to positive change.

An outcome in this direction would be the increased protection of women and children, resulting in the reduction of family violence and child abuse in Aboriginal communities.

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## LEGISLATION

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The Aboriginal Affairs Planning Authority Act 1972 (WA)

Aboriginal Communities Act 1979 (WA)

Aboriginal Heritage Act 1972 (WA)

Aboriginal and Torres Strait Islander Commission Act 1989 (Clth)





*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • 'Black sex-abuse whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse clinic' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## Coordination

### CHAPTER 13

# SECTION 3

*This chapter contains an overview and analysis of interagency coordination and examines the benefits and challenges of coordinated service delivery to Aboriginal communities.*





## 1. OVERVIEW AND ANALYSIS OF INTERAGENCY COMMITTEES

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*At a recent conference, 'strong evidence was presented that Government agencies responsible for the reporting and investigation of complaints of child abuse cannot effectively act in isolation. (Save the Children Submission 1 February 2002)*

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### 1.1 Coordinated service delivery

The Western Australian Government, in its 2001 policy statement *Delivering a Better Government*,

*... gave a commitment to rebuilding and maintaining a strong State public sector, and stated its expectation that the public sector would be an effective, efficient, and strategically focused platform for the implementation of Government policy. The Government further indicated that it considered the large number of departments and statutory authorities to be a barrier to effective co-ordination, priority setting and the development and implementation of cross agency or whole-of-Government initiatives. (Hicks et al. 2001: 29)*

Part of the function of *'The Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities'* (Inquiry) has been to investigate the effectiveness of interagency coordinating committees with respect to family violence and child abuse in Aboriginal communities in WA, and to explore how to maximise service delivery to these communities.

In the *'Government Structures for Better Results: The Report of the Taskforce established to review the Machinery of Western Australian Government'* report ('Machinery of Government'), Hicks notes that

*... concerns have existed for some time that the diverse and fragmented nature of the Western Australian public sector compromises its ability to deliver services to the community effectively and efficiently. Criticisms have centred on the comparative isolation, or 'silos', that typify the way Government agencies deal with each other and the community in general. (Hicks et al 2001: 28-9)*

Criticisms levelled at service delivery by agencies dealing with family violence and child abuse acknowledge that most agencies are structured to deliver services of one nature to a client (for example: housing, education, health). However, this approach *'inhibits the ability to respond appropriately or holistically for those needing a multi-agency response.'* (Penter et al. 2001a: 23)

The WA Government established four 'Cabinet Standing Committees' in response to the *Machinery of Government* recommendations—one of which is the Standing Committee on Social Policy, provided with secretarial support from the Social Policy Unit (SPU) at the Department of the Premier and Cabinet (DPC). The Standing Committee sets its own agenda as to what areas of social policy it will investigate, and it acts across government portfolios. This committee comprises the Ministers for Community Development (Chair), Police and Emergency Services, Health, Education, Indigenous Affairs and Housing and Works.

The recent establishment of the Indigenous Affairs Advisory Committee (IAAC) Working Group comprising state and Commonwealth government agencies examining the issue of abuse within Aboriginal families and communities is a concerted effort to establish effective coordination of resources. The aim of this working group is to

*... develop a comprehensive and practical response to the issue which engages State and Commonwealth Government agencies, Aboriginal agencies, ATSIC and the Aboriginal community. (J Brazier [Acting Director, Aboriginal Justice Council, DCD] 2002, letter to G Colbung [Acting Chair, Aboriginal Justice Council] 1 February 2002)*

Central to their aim is the acknowledgement that

*... child abuse is not the sole responsibility of one agency and requires a coordinated effort across Government portfolios and non Government agencies in partnership with the Aboriginal community. (J Brazier [Acting Director, Aboriginal Justice Council, DCD] 2002, letter to G Colbung [Acting Chair, Aboriginal Justice Council] 1 February 2002)*

The *Machinery of Government* report identified the role of the Indigenous Affairs portfolio as

*... to close the gap between the social and economic well being of Indigenous and non-Indigenous people through strategic whole-of-Government management and empowering Indigenous people. Central to achieving this purpose is working in partnership with the Indigenous community of Western Australia. (Hicks et al. 2001: 155)*

Further, the Department of Indigenous Affairs (DIA) has the responsibility to

*... ensure that the relevant parts of the broad public sector are working in concert to meet the needs of Indigenous people by acting as a catalyst to mobilize and integrate the resources of Commonwealth, State and Local government agencies. (Hicks et al. 2001: 155)*

Thus, DIA, pursuant to s19 of the *Aboriginal Affairs Planning Authority Act 1972* (AAPA Act) has the responsibility for the overall coordination of policies affecting Aboriginal people. The role and activities of the DIA will be discussed in Chapter 12.

## **1.2 Indigenous Affairs Advisory Committee**

The Indigenous Affairs Advisory Committee (IAAC) was established as a response to the *Machinery of Government* report and is chaired by the Minister for Indigenous Affairs. It met for the first time in December 2001 and approved the establishment of seven working groups.

*The IAAC is a consultative mechanism between the Government and the Indigenous community for jointly addressing a broad range of issues affecting the economic, social and cultural advancement of Indigenous Western Australians. It also provides for a whole of Government approach to ensure services to Indigenous people are integrated and focused around local communities. (Dept. of the Premier and Cabinet - document relating to request for information by Gordon Inquiry on IAAC).*

IAAC suggested a range of responses to address issues of family and/or community violence. They appointed a high level committee to deal with this issue as a matter of priority. (IAAC 2001a: 2)

They also identified the need for protocols or agreements between the communities and agencies relating to how disclosures of abuse are managed and referred, and the need to support and build on effective strategies already developed within communities. (IAAC 2001a: 2)

The committee has *'worked closely with the Social Policy Unit in developing the agenda papers and the initiatives that would be flowing from the committee's deliberations.'* (Transcript of evidence by Ross Field 26 June 2002: 1716)

DIA considers that IAAC meets the requirements of section 19 the AAPA Act, which provides for a committee that comprises the directors of the key stakeholder agencies to meet regularly (about twice a year) to make high level strategic decisions in relation to Aboriginal affairs. It connects to the Cabinet Standing Committee on Social Policy.

This committee is working alongside the national bodies of Ministerial Council for Aboriginal & Torres Strait Islander Affairs (MCATSIA) and the Council of Australian Governments (COAG). MCATSIA is made up of each state minister and has been operating for some time. It reports through COAG. (Transcript of evidence by Ross Field 26 June 2002: 717)

The Director of the Aboriginal Policy Unit (APU) at the Department of Community Development (DCD), Danny Ford, chairs the previously mentioned IAAC Working Group (D Ford, email, 4 February 2002). Other members include representatives from the Department of Health (DOH), WA Police Service (WAPS), Department of Justice (DOJ), Aboriginal and Torres Strait Islander Commission (ATSIC), DIA, and Commonwealth Department of Family and Community Services (CDFCS) (IAAC 2001a: 3). DCD<sup>1</sup> and ATSIC have taken on the shared lead role in developing an action plan from the findings of the Working Group.

The Working Group prepared a preliminary report in May 2002. One of their findings was that although *'it has been recognised for many years that a lack of coordination between agencies has reduced the efficiency of services'* this issue remains. (IAAC Working Group on Child Abuse in Aboriginal Communities Report 2002: 2)

IAAC endorsed the recommendations of the preliminary report of the Working Group in their 7 June 2002 meeting and it agreed that the preliminary report be further developed *'as the foundation of the development of the whole of government plan of action'* (Minutes of IAAC 7 June 2002: 2). Further, the Working Group will consist of delegates from head or deputy head level, members of *'sufficient seniority to ensure decision-making and direction-setting authority'* (Minutes of IAAC 7 June 2002: 2)

Further, IAAC approved *'the development of a three-way partnership between ATSIC, the Commonwealth Government and the Western Australian Government to improve the social and economic outcomes of Aboriginal Western Australians'* through a whole of government approach to the delivery of services to Aboriginal communities. (Minutes of IAAC 7 June 2002: 4)

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<sup>1</sup> The Machinery of Government Taskforce recommended the development of the DCD to perform an overarching role in Community Development. The new Department will encompass the work of what were previously five separate agencies, namely: Family and Children's Services, Family & Children's Policy Office, Office of Seniors Interests, Women's Policy Office including the Domestic Violence Prevention Unit (DVPU) and the Office of Youth Affairs.

**124. The Inquiry finds that the government, through the Machinery of Government Taskforce and the implementation of the Indigenous Affairs Advisory Council, has indicated its awareness of the positive benefits of a collaborative approach between service deliverers and is supportive of this strategy. The Inquiry supports this collaborative approach.**

### 1.3 The Aboriginal and Torres Strait Islander Commission (ATSIC)

ATSIC is an elected representative body that has a national Board consisting of 17 Commissioners and 35 regional councils. It is governed by the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act). In Western Australia, ATSIC operates under the ATSIC Western Australian State Council (AWASC) which comprises nine regional councils and four Commissioners.

In its *'Statement of Commitment to a New and Just Relationship between the Government of WA and Aboriginal Western Australians'* the state government acknowledged ATSIC's role as the peak Indigenous advisory body and signalled its intention that this body coordinate service provision to Aboriginal people. This commitment was reaffirmed by DPC in their final submission to the Inquiry.

This statement *'recognises ATSIC's role...and provides a framework in which government departments are encouraged to work across functions to better address the needs of Aboriginal people and reduce duplication.'* (IAAC Working Group on Child Abuse in Aboriginal Communities Report 2002: 14)

ATSIC's submission to the Inquiry *'addresses the need for a partnership between Government agencies and the Aboriginal community to effectively deal with family violence and child sexual abuse'* (ATSIC Submission 8 July 2002). Further, they note the partnership *'must be based on the collaboration between Government and Aboriginal communities and families whereby Aboriginal people have the capacity and power to fully assume responsibility and control of the issue.'* (ATSIC Submission 8 July 2002)

As previously noted, ATSIC has nine regional councils throughout the state and it is envisaged that these councils oversee the provision of coordinated services within their locality. A key aspect of the 'Statement of Commitment' is the intention of *'decentralising decision-making to the regions'* through these nine regional councils. This will enable *'Aboriginal communities to make decisions about programs for their specific region.'* (IAAC Working Group on Child Abuse in Aboriginal Communities Report 2002: 14)

According to ATSIC:

*This historic signing was developed so that ATSIC, and the relevant Aboriginal peak bodies such as the Aboriginal Legal Service and the Western Australian Aboriginal Community Controlled Health Organisation, could sit down together with the State and Federal departments of Health, Education and Training and develop across-the-board, long-term measures to solve the social, economic and health problems facing Aboriginal people. (ATSIC media release – 2 April 2002)*

In their submission to the Inquiry, ATSIC WA made a number of recommendations regarding what they termed *'Joined Up Government and Aboriginal Community Partnerships.'* Recommendation 1 reads:

*That the Inquiry recommends to the Government that a Unit of Indigenous Affairs be created and located within the Department of Premier and Cabinet; that this Unit be responsible for all strategic planning of Government services to Indigenous families including the areas of concern for the Inquiry and that the Unit be headed by a suitably qualified Aboriginal person supported by a multidisciplinary team.'* (ATSIC Submission 08 July 2002: 4)

ATSIC WA's involvement in the State Aboriginal Family Violence Strategy (SAFVS) is illustrative of their commitment to collaborative measures to address family violence. This strategy is based on the

*'empowerment of Aboriginal communities to not only address the issue of violence but also to promote access to other services through joined up government processes.'* (ATSIC Submission 08 July 2002: 26)

## **1.4 Aboriginal Justice Council**

The establishment of the Aboriginal Justice Council (AJC) was a key recommendation of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). It began as an interim committee named the Aboriginal Justice Advisory Committee (AJAC) in 1992 and its permanent status was ratified by Cabinet in November 1994 and it was renamed the AJC.

Control of the Council transferred from the then Aboriginal Affairs Department (AAD)--now DIA--to DOJ in April 2001 to be more consistent with the structure of similar councils in other jurisdictions.

The Council's Terms of Reference are to:

- Monitor, evaluate and report to government on the implementation of the criminal justice and related recommendations of the RCIADIC, including the provision of services to Aboriginal people
- Monitor the underlying issues identified by the RCIADIC as contributing to the social and economic disadvantage experienced by Aboriginal people
- Negotiate priorities and policies for the provision of government services to Aboriginal people, including to the design and delivery of programs that reduce Aboriginal offending, arrest and imprisonment rates
- Provide advice on the development of the proposals which affect the operation of government services for Aboriginal people
- Disseminate information to Aboriginal people on issues that affect them
- Sponsor Regional Aboriginal Justice Councils and the development of local initiatives to address Aboriginal issues
- Report to the Attorney General on issues and concerns identified through monitoring activities
- Annually report to Parliament and the Aboriginal community on the performance of government agencies in the provision of services to Aboriginal people. (AJC website 2001 viewed 11 July 2002)

The state AJC's aim was to reduce the number of Aboriginal contacts at all levels of the justice system by:

- Developing local service agreements between government agencies and local Aboriginal communities for services for Aboriginal people
- Ensuring that all government agencies plan and implement their programs and services together to remove unnecessary duplication and allow better application of available money
- Focusing on services in the areas of family, education and policing. (WA AJP 2000: 2)

The council identified three critical areas of family, education and policing and noted

*... family is central to the fabric of Aboriginal society and critical to its wellbeing. The rich and complex Aboriginal kinship system cannot be explained or understood within the concept of the nuclear family.* (WA AJP 2000: 4)

The AJC planned to implement frameworks to address critical focus areas during 1999/2000 by:

- Identifying a lead agency which would be responsible for each focus area
- The role of the lead agency would be to develop the framework and advise government and the AJC on how current resources and programs could be redirected to achieve the desired outcomes
- The lead agency would establish multidisciplinary focus groups to facilitate this work
- Focus groups would contain representatives from government, non-government agencies, Aboriginal organizations, program and service deliverers and academics. (WA AJP 2000: 8)

Under the recommendations of the RCIADIC, the AJC established Regional AJCs to monitor and negotiate with government at a local level. Regional AJCs were established in the Metropolitan/Wheatbelt, South West, Goldfields, Murchison/Gascoyne, West Kimberley, East Kimberley and Pilbara regions. (AJC website 2001 viewed 11 July 2002)

A criticism levelled at the AJC was that it

*... failed to effectively monitor and oversee the implementation of the Royal Commission into Aboriginal Deaths in Custody and that has further disempowered the Aboriginal Community. AJC failed to have Aboriginal injustices heard and coordinated in a strategic way.* (Worker in rural community)

The council was notified in May that it would be dissolved and it ceased operations on 30 June 2002.

## **1.5 Inter-Departmental Committee on Sexual Assault**

The Inter-Departmental Committee (IDC) on Sexual Assault was established under the auspices of the then Minister for Women's Interests, now with the Hon. Sheila McHale (Minister for Community Development), with input from the Ministers for Health, Police, Justice and Indigenous Affairs. The then-Director General of Family & Children's Services was also involved. Each agency



nominated a representative on the Committee, which is chaired jointly by the DPC and the Women's Policy Office (WPO)<sup>2</sup>.

The role of the IDC is to *'review the provision and coordination of services for victims of sexual assault within WA, identifying strengths, gaps and options for improvement.'* (WA IDC on Sexual Assault Terms of Reference)

The IDC contributes a Western Australian perspective to the national body, National Initiative to Combat Sexual Assault (NICSA). (WA IDC on Sexual Assault Terms of Reference)

It reports to the government via the Cabinet Standing Committee on Social Policy.

The IDC *'believes that "mainstream" responses are inadequate to address the issue for certain high-risk groups, which have quite specific and unique needs'* and one of these identified groups are Aboriginal people. (Noela Taylor [Acting Executive Director, DCD], letter to Inquiry, 31 May 2002)

Paula Chatfield, Manager of the Sexual Assault Resource Centre (SARC), told the Inquiry that the establishment of this committee by the government was a positive move as this issue had not been previously addressed statewide. (Transcript of evidence by Paula Chatfield 16 May 2002)

She told the Inquiry that

*I think there needs to be a framework that allows inter-agency...[or] across government collaboration to occur, because I think at the moment we all do act like chimneys and silos and, you know, we need to really cut across through those chimneys and silos.* (Transcript of evidence by Paula Chatfield 16 May 2002: 1166)

## **1.6 Domestic Violence Prevention Unit**

In March 1995, the Western Australian government established the Family and Domestic Violence Taskforce to develop a comprehensive Family and Domestic Violence Action Plan which culminated in the establishment of the Domestic Violence Prevention Unit (DVPU) within the Women's Policy Office in December 1995. (DVPU 2001 website)

The objective of the DVPU is to *'facilitate a framework which enables Government to provide a coordinated and integrated response to domestic violence across the State.'* (DVPU 2001 website)

In order to achieve this, the DVPU has established 16 regional domestic violence committees which were funded to develop regional domestic violence plans to identify priority areas within the region. (See 1.5.1)

Aboriginal family violence has been a key initiative for this unit and an Aboriginal Program Development Officer was appointed to the unit in 1997/98 to encourage the participation of Aboriginal people on regional committees. It is unclear whether this position remains filled.

This unit has commissioned two reports which are currently in draft form, but which the Inquiry has found of interest. These reports are the *'Action Plan II on Family and Domestic Violence'* (March 2001) ('the Draft Action Plan') and the *Aboriginal Family Violence Strategy* (June 2001) ('the Draft Strategy').

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<sup>2</sup> In September 2001, the Government announced that the Women's Policy Office was to be separated into two separate entities, the Office for Women's Policy and the Family Violence Unit, both reporting directly to the Minister. (DPC Final Submission 19 July 2002)

The Draft Strategy addresses the need for family violence, in particular Aboriginal family violence, to be addressed in a holistic manner. Central to the Draft Strategy is a goal to involve Aboriginal communities in the response.

Carol Kagi, Director of the DVPU, told the Inquiry that the unit is expected to disband some time in the future and be restructured to broaden its scope. The new unit will be known as the Family Violence Unit<sup>3</sup>(FVU). (Transcript of evidence by Carol Kagi 25 May 2002) The Executive Director responsible for the FVU will be part of the Department for Community Development (DCD) Executive and will report directly to the Minister. (DCD Closing Submission 22 July 2002)

### **1.6.1 Regional Domestic Violence Committees**

In July 2001, the status of interagency coordination in the role of family violence was *'primarily achieved through the activities of 16 Regional Domestic Violence Committees (RDVCs) located throughout the state.'* These bodies draw on government and non-government agencies in an effort to improve service delivery to victims and perpetrators of domestic violence. While the basis of the RDVC's service delivery is interagency, services are provided in a combination of *'cooperative, collaborative, integrated and coordinated service responses and activities'*<sup>4</sup> suited to the individual regional requirements. (Penter 2001b: 7)

These committees are controlled by DCD and responsible to the Women's Policy Office, DVPU which implements the coordinated response to domestic violence. Further discussion of this can be found in at 2.2 in Chapter 8.

The following agencies participate in the RDVCs at senior level – Women's Policy Development Office, WAPS, DCD, DOJ, DHW, DOE and DIA. (WPDO website (1999) viewed 11 July 2001)

The state government has provided these committees with \$1 million over four years with \$250,000 allocated in 2001/02. (DPC Final Submission 19 July 2002)

## **1.7 Memorandums of Understanding between Department of Community Development and Kimberley Aboriginal Communities.**

Department for Community Development (DCD) undertook Memorandums of Understanding (MOU) with Kimberley Aboriginal Communities in 1998 at the commencement of the Servicing Aboriginal Communities Project (SACP). There are now 10 Kimberley communities involved in this process. (Witness Statement of Julie Newsham, 10 May 2002)

The MOUs are reflective of *'a desire to ensure that departmental services would be available to Aboriginal Communities across the Kimberley.'* (Draft MOU: 107) It was acknowledged that DCD

*... has had a long and historic association with some of these Communities, however this association was [sic] not always been clearly defined and mutually understood. As a result service delivery practices have often been ad hoc and delivered in response to crisis. The Communities*

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<sup>3</sup> See section 1.25 for further discussion.

<sup>4</sup> To find definitions of the terminology used see Penter 2001a: 21

*perceived the Department's services as 'welfare policing' and 'interfering in family relationships' thus having a healthy distrust and suspicion of the Department. (Draft MOU: 107)*

The basis of the MOUs is a respect for Aboriginal culture, kinship and family relationships and for Aboriginal community life, along with a determination that isolation should not prevent access to services. (Draft MOU)

The MOU recognised the need for Aboriginal staff to be trained to work in the communities and become the leaders in all matters. There is an acknowledgement that some communities wished to be able to deal with a non-Aboriginal person on some issues of confidentiality. (Draft MOU) Access to interagency personnel could possibly solve this dilemma.

The MOUs were developed in response to complaints from community groups that there was a high turnover of staff within all relevant agencies, particularly in remote areas, and that each new appointee *'reinvented the wheel'* and drained the community. They also commented that interagency consultation was uncommon and, as a result, a community could experience visits from more than one agency representative on a given day. Many agency representatives did not conduct their business in a sensitive manner, nor consider the ramifications of their intervention on the community. (Draft MOU: 106)

The MOUs are renegotiated annually and this allows for changes in personnel and for alterations to the MOU to suit the individual community. (Witness Statement of Julie Newsham 10 May 2002)

An advantage of this approach is that it is region and community-specific and is designed to address the idiosyncratic problems associated with each region or community. This approach would probably be more suited to discrete Aboriginal and remote communities. Further, the MOU process itself creates a relationship with the community.

While DCD has recognised the benefits of the MOUs, they note that *'much more needs to be done to cement this cooperation including communicating with and fostering the understanding of all members of communities about the role and purpose of these MOU's.'* (DCD Final Submission 22 July 2002: 216)

DCD has an objective to develop a MOU with the Swan Valley Nyungar<sup>5</sup> Community (SVNC) to address services that can be provided to the community by the department (DCD Case Audit for Susan Taylor 6 November 2001). This may be an effective vehicle for interagency service provision for this community who have asked that *'governments at all levels immediately start a program with each Aboriginal community of addressing community problems as required by each community.'* (SVNC Final Submission 21 June 2002: Recommendation 4, p2 [emphasis added])

## **1.8 SAFER WA**

This program is run under the auspices of the Cabinet Standing Committee on Social Policy.

This program is a whole-of-government project established within the Department of the Premier and Cabinet. A key feature of this program is *'its focus on bringing about cooperation and coordination between government agencies.'* (Witness Statement of Rae Markham 14 May 2002: 6)

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<sup>5</sup> 'Nyongar' has also been referred to as 'Nyungah' in this report. The Inquiry has used this spelling as per the Terms of Reference. Where 'Nyungah' has been used, this is part of a proper title.

It consists of a network of local committees that identify local crime problems and develop local solutions. It is made up of business and community representatives as well as Commonwealth, state and local government representatives. The basis of its structure rests on an expectation that *'agencies will only be able to work together at a local level if the structures at a central level are supportive and enabling of local responses.'* (Penter 2001a: 63)

SAFER WA has the benefit of district inter-agency working groups which have the support of the Directors-General involved. (Transcript of evidence by Ross Field 26 July 2002)

Steffan Silcox of the Department of Education (DOE) told the Inquiry that in his experience the program has been beneficial and that it *'has the potential to be a very powerful initiative.'* (Transcript of evidence of Steffan Silcox 28 March 2002: 698)

Participating departments include the DPC, DCD, DHW, DOJ, DOE, DIA, Local Government and WAPS.

**125. The Panel endorses the work of SAFER WA as an effective model of interagency coordination.**

**1.8.1 Midland Aboriginal Advisory Group**

In January 1998 the Midland Aboriginal Co-ordinating Steering Committee was formed under Safer WA to address social issues that lead to Aboriginal people committing crime in the Midland area. In February the same year, the group changed its name to the Midland Aboriginal Advisory Group (MAAG) and confirmed its commitment to a focus on membership of Aboriginal workers as opposed to both Aboriginal and non-Aboriginal workers. (DCD Case Audit for Susan Taylor 6 November 2001)

Membership was drawn from the following agencies:

- DCD
- WAPS (Community Policing Officers)
- DOE
- DHW
- DOJ
- DIA
- Centrelink
- Midland Aboriginal Medical Services
- Community Drug Service Team
- North East Regional Youth Council
- Yahnging Aboriginal Corporation
- Swan Aboriginal and Community Patrol
- DOH (OAH)
- Cyril Jackson Senior High School
- Karnanay Aboriginal Housing
- Swan Valley Child and Adolescent Health Clinic

The effectiveness of MAAG has been questioned by some groups. A/Snr Sgt Clarysse told the Inquiry that one of the WAPS Liaison Officers approached the group about establishing a 'half-way house' for victims of substance abuse, but the group was not interested and nothing occurred. He noted that:

*It would certainly make our job easier when we have issues where these people haven't offended and we've got no cause to hold them in our custody. We'd take them somewhere where they can be looked after and get them off the streets so they're not at risk to themselves or anybody else'* (Transcript of evidence by A/Snr Sgt Clarysse 8 March 2002: 332)

Gordon Cole told the Inquiry that in its genesis, MAAG '*particularly targeted young people and substance abuse which was seen as a major issue in the Midland area.*' (Transcript of evidence by Gordon Cole 25 March 2002: 376)

Donna Birch, of DCD, told the Inquiry that the issue has '*been on the agenda for quite some time in discussion around the need, but there hasn't actually being any proposal written up or any work done.*' (Transcript of evidence of Donna Birch 25 March 2002: 443)

She further hypothesized that

*... since the Aboriginal Cyclical Offenders Program and since MAAG has become a reference group to the ACOP program there hasn't been any further discussions about the safe house ... And my view is that there's this expectation that ACOP will actually pick up on the needs of the young people in the area.* (Transcript of evidence of Donna Birch 25 March 2002: 444)

Part of the strategy of this organization is to develop a community feeling among the Aboriginal people in Midland which would allow them to offer support and services as required, rather than dictate to people how they should solve their problems. (Transcript of evidence by Gordon Cole 25 March 2002: 378)

In their involvement with the Mairu/Spratt family, MAAG offered productive support by cleaning the house and grounds with products donated by local businesses that they approached. Gordon Cole told the Inquiry that their attitude was '*maybe we can assist by cleaning up the house for a start and try and get some sense of pride back into the house and family.*' (Transcript of evidence by Gordon Cole 25 March 2002: 383)

In early 1998 MAAG was appointed as the Aboriginal reference group to the Aboriginal Cyclical Offending Project.

## **1.9 Aboriginal Cyclical Offending Program**

The Aboriginal Cyclical Offending Program (ACOP) was '*developed by senior officers within the relevant departments and focuses on primary crime prevention as the means to reduce the over representation of Aboriginal juveniles in the criminal justice system*' by developing a partnership model and developing a coordinated strategy of primary prevention initiatives. (ACOP Business Plan n.d.: 4)

This operative began under the auspices of the Aboriginal Justice Plan and is about *'engaging government response and policies around the Aboriginal reference groups ... as opposed to where Strong Families is about taking services to families.'* (Transcript of evidence by Robert Carter 23 May 2002: 1442)

Senior government department officers within relevant departments developed the program, and a pilot program is currently operating in Midland and Geraldton (Transcript of evidence by Phillip Narkle 7 May 2002). Midland was chosen for the pilot study due to its high Aboriginal population. (ACOP Business Plan: 6)

*'The general approach through the Project is more coordinated and allows the departments to look at the underlying issues rather than simply the presenting issue' as well as allowing 'Aboriginal people to have power in the process and allows them to take a position in the negotiations.'* (Transcript of evidence by Phillip Narkle 7 May 2002: 31, 49)

It is now overseen by the Western Australian Justice Coordinating Council (JCC) and involves CEOs and Ministers of Police, Justice, Education, Health, Housing, Training, Family & Children's Services, Women's Policy and Aboriginal Affairs. (ACOP Business Plan n.d.: 3)

## **1.10 Local Drug Action Groups**

Local Drug Action Groups (LDAGs) were established in 1995 following the state government's Task Force on Drug Abuse. There are currently 80 in operation throughout Western Australia and these groups are predominantly community based, and the membership of each chapter varies considerably.

The LDAGs are *'an excellent example of interested members of the community networking together to solve drug related problems in their immediate community.'* (Lions Club of Bull Creek website <http://lions.iinet.net.au/bullcreek/drugaction.html> accessed 11 July 2002)

Although the primary focus of these groups is drug abuse, as substance abuse is a known contributor to family violence and child abuse, the groups' involvement in collaborative responses will be relevant in some cases.

## **1.11 Joondalup Family Violence Court**

The Joondalup Family Violence Court (JFVC) program was piloted in December 1999 in an effort to provide a collaborative approach to issues of family violence. The aims of the pilot were not only to improve the criminal justice response to family violence, but also to support the victims and reduce the incidence of family violence in the pilot area (Transcript of evidence by Robert Carter 23 May 2002: 1432).

The program was based on interagency cooperation and collaboration and trialled for two years. (Witness Statement of Rebecca West 22 July 2002) and *'utilised an inter-agency and alternative sentencing approach for dealing with the civil matters of Violence and Misconduct Restraining Orders, and all criminal matters related to family violence.'* (Joondalup Family Violence Court Final Report February 2002: ix)

Agencies who had formal involvement in the program were DOJ, WAPS, DCD and the Pat Giles Refuge. In January 2001 the agencies signed a MOU '*covering the principles of information sharing and inter-agency co-operation.*' (Joondalup Family Violence Court Final Report February 2002: ix)

For young offenders who came to the attention of the program, juvenile justice teams were employed which consist of representatives of DOJ and WAPS, supported by an Aboriginal support officer. Their job

*... is to actually be closely involved in diverting young offenders from the ... I suppose from the courts, and have had a considerable success around that.* (Transcript of evidence by Robert Carter 23 May 2002: 1435)

One of the recommendations from the Joondalup trial was the support for '*the joint interagency case management of families in a practical and structured format which includes sharing of information.*' (Witness Statement of Rebecca West 22 July 2002).

However, of particular interest to the Inquiry is the fact that

*... people from Aboriginal backgrounds do not appear to be utilising the resources of the court, indicating that the issue of Aboriginal family violence does not appear to be addressed through the use of court-based interventions, and alternatives need to be considered.* (Joondalup Family Violence Court Final Report February 2002: xi)

The 2002 review of the program noted that the most beneficial aspect was '*the case management approach to the management of domestic violence.*' (Joondalup Family Violence Court Final Report February 2002: xiii)

One of the recommendations of the review was that '*an interagency committee be established to investigate and identify strategies aimed at:*

- *Reducing the impact of domestic and family violence on children;*
- *The more appropriate or alternative use of fines as a sanction in family violence criminal matters;*
- *The use of alternative dispute resolution processes for people involved in domestic or family violence situations where the existing Criminal Justice System response is not appropriate;*
- *The development of indigenous specific interventions;*
- *The development of specific legislation covering the exchange of information; and*
- *Reviewing the Restraining Order Act 1997.'* (Joondalup Family Violence Court Final Report February 2002: xvii)

The trial period ended in December 2001 and following an evaluation, the project has been given a permanent status.

**126. The Inquiry finds that the Joondalup Family Violence Court project was evaluated as successful in its pilot stage and its permanent status is supported by the Inquiry.**

## 1.12 Joint Justice Health Interdepartmental Council

A 'Report on the Implementation by Government of Recommendations Contained in the Chief Justice's Taskforce Report on Gender Bias', compiled by the Women's Policy Development Office in conjunction with the then Ministry of Justice in April 1997 included recommendations to the government. Recommendation 192 was that *'the quality of health care services provided to prisoners at Bandyup be reviewed with particular reference to the extent to which existing services cater to the special health care needs of women, and those who have been victims of child sexual abuse or domestic violence.'* The response noted that

*... the specific health needs of women who have experienced sexual or domestic abuse are recognised by the Ministry of Justice. The extent of the problem and appropriate responses to it will be evaluated in a systematic review of health needs and health care priorities to which the Joint Justice/Health Interdepartmental Council is committed. Work has already commenced on this initiative as part of a comprehensive evaluation of health services to people in the custody of the Ministry. (DHW website (1998) viewed 15 July 2002)*

This is discussed in further detail in Chapter 6.

## 1.13 Coalition of Aboriginal Agencies

Coalition of Aboriginal Agencies (CAA) membership is available to all Aboriginal community controlled organisations.

While this is not a government agency, it is partially funded by government and is involved in the coordination of services to government agencies. It involves Aboriginal agencies that have joined forces and the organisation heads the Indigenous Family Program (see 1.11.1). One of their aims is to

*... [s]upport coordination and facilitation across Government agencies and non-Government organisations to case-manage better the needs of Aboriginal families and individuals.'*  
(Mooney & Dzator n.d.: 4-5)

The mission statement of this coalition notes that it is not *'an umbrella body or an additional service provider'*. The coalition's role is to deliver *'better coordinated and sustainable service regimes'* and to advise government service providers at policy level. All members retain their independent roles and their membership in the coalition grants them a stronger voice in the community and with government. (CAA Submission: 1)

Dean Collard noted that

*... [c]ritical to the effectiveness of the coalition and its programs is its capacity to work with and alongside other community based and government agencies. In order to give the effort undertaken in this area, clearer definition with respect to roles and relationships and necessary status, the Coalition has taken steps to establish certain enabling instruments. The Coalition has drafted a Partnering Agreement with intention to sign off on with government and relevant service agencies. (CAA Submission: 5)*



### 1.13.1 Indigenous Family Program (IFP)

This program is operated under the auspice of the CAA and has as an objective of

*... 'coordination and brokerage' of services to 'high risk' Aboriginal families experiencing multiple problems ... At any one time however, this program only has a capacity to work with a limited number of Aboriginal families experiencing a range of complex difficulties.* (DCD Final Submission 26 June 2002: 19)

The program was set up for Nyoongar families with a recurring history of contact with the criminal and juvenile justice systems and it has been acknowledged that the potential benefits may not be obvious in the short term; rather the program is dependent upon long term benefits. (Mooney & Dzator n.d.: 4)

One of the reported strengths of the program is the fact that it is perceived as an Aboriginal controlled organisation and officers have a greater understanding of Nyoongar family systems. (Bessarab n.d: 7)

The IFP works through coordinated application of CAA resources and can be involved with up to eight families at a time. Their process involves:

- Intake and engagement
- Assessment and identification of issues
- Family mapping, family care and development plans
- Coordinated and transparent community and government sector responses. (Mooney & Dzator n.d.: 6)

Between July and December 2001, the IFP dealt with 156 people from 21 families. (Bessarab n.d: 5)

The evaluation of the program noted that, following the implementation of the IFP, participants showed *'less involvement with the justice system, better housing, higher school attendance, better health and reduced domestic violence.'* (Mooney & Dzator n.d.: 12)

An evaluation of the IFP concluded that during the period 1 July 2001 to 30 May 2002, the estimated savings provided by IFP interventions in 25 family units was approximately \$340,000. (Mooney & Dzator n.d.: 13)

The IFP has demonstrated significant results in:

- Maintaining long term stable housing for homeless families
- The reduction of drug and alcohol abuse
- Establishing greater levels of school attendance
- Reducing the contact with the criminal justice system
- The return of children to the care of their mothers
- Establishing sustained interaction between support services and family members. (Bessarab n.d: 5)

A review of the program found that recipients were enthusiastic about the service and found the delivery of service relevant to their needs and staff showed *'a greater empathy for, and understanding of their problems than demonstrated by mainstream agencies.'* (Bessarab n.d.: 6)

DCD, Derbarl Yerrigan Health Service (DYHS), DHW and DOE, who evaluated the service delivery as effective, holistic and culturally appropriate, had made referrals to the program. (Bessarab n.d: 6-7)

The program is currently limited by funding arrangements which make planning and staff recruitment and retention unnecessarily difficult (Mooney & Dzator YEAR: 14) and there is said to be a lack of commitment and support from other agencies. (Bessarab n.d: 8)

## 1.14 Strong Families

The Strong Families program grew out of the realisation that there were *'significant and entrenched barriers to achieving coordination and collaboration in the delivery of human services'* within the government, at all levels: *'worker, service provider and government, including between tiers of government.'* (Strong Families 2001: 2)

According to Rae Markham, Senior Policy/Program Officer for DCD, who has been involved in this initiative since its inception in early 2000

*Strong Families is a collaborative case management approach to working with families who are experiencing social problems, and where a number of different agencies are involved in providing assistance. [It] assists Government and non-Government agencies to provide better services to families through facilitating a coordinated case management approach to service delivery. The initiative also seeks to bring about family empowerment as a result of the process through its emphasis on informed consent and participation.* (Witness Statement of Rae Markham 14 May 2002: 4)

The critical aspect of the program is the reliance on locally based coordinators. In fact,

*... the evidence from the Strong Families pilot and from the literature demonstrates that ongoing resources and in particular the presence of a skilled convenor or coordinator to drive change are key factors to achieving collaboration.* (Strong Families 2001: 3)

Central to the role of the coordinator is independence and lack of alignment with any one agency. (Transcript of evidence by Ross Field 26 June 2002: 1722)

The role of the coordinator is to facilitate interagency relationships and work with local agencies in case management to *'identify and overcome barriers to achieving coordinated and collaborative services.'* (Strong Families 2001: 3)

Strong Families is a simple and flexible model that

*... identifies each agency's roles and responsibilities and a lead agency worker to oversee implementation of the plan. The appointment of a lead agency occurs by consensus.* (DCD Final Submission 26 June 2002: 20)

In this program, relevant agency workers and family members

*... come together in a neutrally facilitated meeting to discuss how the family can be assisted. The family must agree to the process and for information to be shared, and family representatives themselves participate in the meetings with agency workers.*

(Strong Families 2001: 5)

The family involved is asked to provide written consent for the sharing of information, thereby overcoming one of the major identified barriers to interagency collaboration.

While the family must agree to the process of information sharing between agencies, it has been noted that '*[s]uch information sharing must be underpinned by clear protocols and guidelines which have been signed off and supported by CEOs.*' (Strong Families 2001: 10)

The criteria under which the project is employed is as follows:

- A family with children under the age of 18 can be involved
- More than one agency must have involvement with the family
- Family consent for the process and the sharing of information must be gained

The basis of the project is that '*more formal coordination will make a positive difference to the outcome for the family*' involved. (Witness Statement of Rae Markham 14 May 2002: 17)

#### **1.14.1 Evaluation of Strong Families**

The pilot project commenced in November 2001 in the Midland and Great Southern regions. The Great Southern and Midland SAFER WA District Interagency Working Groups (DIAWG) managed the project at the local level. (Witness Statement of Rae Markham 14 May 2002)

By the end of April 2002, 56 families had participated in the pilot projects--33 from the Great Southern and 23 from Midland. Nineteen of these families were Aboriginal. To date, 15 families have completed their contact. (Witness Statement of Rae Markham 14 May 2002: 25)

Feedback indicates that the following issues are of importance to the success of this program:

- The liaison people involved in the process know the local Aboriginal community
- If family members do not wish to be involved (particularly in incidents involving child protection), agency officers still coordinate their information and responses
- A lead agency is appointed
- Family and community conferences are held, but mediated by an independent facilitator.

*In the 'Strong Families' initiative the independent facilitator coordinates the participation of different agency officers in attendance at a 'Strong Families' meeting. This role could be extended to enable this facilitator to advise on agencies that need to be present and to coordinate or arrange the setting up of follow-up meetings.*

(DCD Final Submission 26 June 2002: 20)

The extension of Strong Families is expected to benefit the families by:

- Developing a partnership approach between families and service agencies and providing families with a voice in the planning of their service provision
- The simplification and streamlining of interaction between families and service agencies with an increased ability to access services
- More timely and comprehensive provision of services
- Agency accountability for the services they provide. (Strong Families 2001: 4)

Benefits for the service providers and government are:

- Reduction of duplication and more effective use of resources
- Clear allocation of responsibility
- Improved communication between professionals, with greater sharing of information
- Access to more information thereby allowing service providers to better understand the problems of their clients
- Earlier identification of high risk families and appropriate intervention
- Increased identification of gaps and overlaps in service provision.
- Improved relations between government agencies at all levels. (Strong Families 2001: 4)

Community benefits include:

- Holistic view of community issues
- Greater impact on community issues due to coordination and collaboration
- Local solutions to local problems
- Building on community assets and strengths. (Strong Families 2001: 5)

A review of the pilots in Midland and Albany indicated that the collaborative case management approach had positive outcomes for both families and agencies, (Strong Families 2001: 6) although the program was more successful in Albany rather than Midland. Midland families tended to be more reluctant to become involved due to their previous interactions with government. (Transcript of evidence by Robert Carter 23 May 2002: 1442)

Rae Markham hypothesised that part of the reason why Aboriginal families in Midland did not become as involved in the pilot as hoped is possibly because there are already programs in the area designed specifically for Aboriginal people--certainly there was a lack of referrals to the project in the Midland region. The lack of success in the Midland project has also been explained by the high turnover of staff in agencies and the difficulties of continually providing information about the project. (Transcript of evidence by Rae Markham 14 May 2002: 1082, 1086)

Steffan Silcox of DOE informed the Inquiry that the project's success in Midland was not as successful as its potential indicated. He attributed this to the fact that *'the families have to agree to participate and, unfortunately, a lot of the resource rich families don't agree to participate.'* By this he meant that some families in the Midland region are already

receiving assistance from many agencies that they see as more beneficial to them than being involved in coordinated service delivery. (Transcript of evidence by Steffan Silcox 28 March 2002: 701)

Part of the relative success of the Albany pilot has been attributed to the Active Women's Centre, which has taken a strong interest in the project. Albany is also a discrete region with stable management and leadership and a real community feeling and a high degree of communication. (Transcript of evidence by Rae Markham 14 May 2002: 1083, 1087)

Issues of accommodation, mental health, finance, substance abuse and familial conflict were significant in the families involved in the pilots. (Witness Statement of Rae Markham 14 May 2002: 29)

According to Rae Markham, the *'majority of families, workers and managers who took part in the evaluation reported many real and potential benefits gained by involvement'* in the project. (Witness Statement of Rae Markham, 14 May 2002: 31)

It has been cautioned that collaborative approaches are not a 'one stop shop' approach and do not replace existing service delivery and under the Strong Families program, *'agencies maintain their customary role with families, with the collaborative case management approach providing the mechanism for coordination and collaboration.'* (Strong Families 2001: 5)

**127. The Inquiry finds that the model of the Strong Families program appears to be a positive program with great potential and recommends that its wider implementation should be encouraged.**

**128. The Inquiry recommends that the Strong Families program should be independently evaluated with input from the wider Aboriginal community.**

In response to the Inquiry's recommendation that the Strong Families model be expanded, DCD agreed that the Strong Families approach is a flexible model for achieving collaboration and coordination between agencies and families for:

- complex cases requiring across-agency management
- cases requiring appointment of a lead agency
- cases requiring a multi-disciplinary approach. (DCD Closing Submission 22 July 2002: 159)

The department further noted that in order to achieve this, they will require extra funding *'to enable full time coordinators to be engaged in both metropolitan and country areas.'* (DCD Closing Submission 22 July 2002: 160)

### **1.15 An Agreement for the provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia July 2002 – June 2007**

In October 2001, the Government of Western Australia and ATSIC signed an agreement to work together to *'enhance the outcomes that protect and respect the inherent rights of Aboriginal people*

*and to significantly improve the health, education, living standards and wealth of Aboriginal people.'* (Gov of WA 2001: 3)

At the present time,

- ATSIC, through Regional Councils, manages and disburses funds provided by the Commonwealth to Aboriginal people for housing and infrastructure.
- The Aboriginal Housing and Infrastructure Unit (AHIU), through the Department of Housing and Works (DHW) manages and disperses funds provided by the Commonwealth and State for housing and infrastructure for Aboriginal people. (Gov of WA: 4)

**129. The Inquiry endorses the 'Agreement for the provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander people in Western Australia July 2002–2007' and its recognition of the need for improved coordination for the provision of Aboriginal housing and infrastructure and the need for the reduction of the duplication of services and the promotion of resource efficiency.**

Under the agreement, the Aboriginal Housing and Infrastructure Committee (AHIC) will act as the principal body responsible for planning the distribution and application of pooled funds. (Gov of WA 2001: 7)

The AHIC will consist of eight Aboriginal members as follows:

- four ATSIC representatives
- a part time salaried Chairperson appointed by the Western Australian Minister
- the Executive Director of the AHIU
- two state representatives appointed by the Western Australian Minister. (Gov of WA 2001: 10)

Meetings are to be held at least four times per year, and annual performance reports will be submitted. (Gov of WA 2001: 10, 17)

The Agreement was binding for five years, with extensions and variations to be implemented by mutual written agreement. There were also provisions for renegotiation and dispute resolution. (Gov of WA 2001: 18)

## **1.16 State Homelessness Taskforce and Government Response**

The taskforce was instigated by government in July 2001 to develop a State Homelessness Strategy, and the *Government's Response to the Report of the Homelessness Taskforce 'Putting People First'* was delivered in May 2002.

The government response noted that '*the combined resources of the social sector, together with the continuing input of the community is essential in tackling this issue.*' (Gov of WA 2002: 3)

The response indicated that the Standing Committee on Social Policy, which consists of Ministers representing the social policy spectrum, would oversee the government's proposed combined and coordinated set of policies. (Gov of WA 2002: 3)

The government recognised that homelessness can result from other social problems including family conflict, mental illness, instability due to institutionalisation, family violence, drug or alcohol abuse, inadequate monetary resources. (Gov of WA 2002: 4)

The government announced that the new approach to homelessness *'represents a significant turning point in the Government's response to homelessness. For the first time, the combined resources of the community sector are to be drawn into a concerted and holistic response.'* (Gov of WA 2002: 4)

The response references the government's commitment to *'cohesive and integrated Government policy.'* This would be achieved by:

- facilitating a whole of government approach to addressing community problems through greater coordination and integration of service delivery
- reducing the duplication of policy advice. (Gov of WA 2002: 5)

The government response reiterated the determination to reduce the 'silo' approach of previous governments and acknowledged *'[t]he commitment by Government is to work collaboratively with the community and across portfolio areas to respond to the needs of people.'* (Gov of WA 2002: 5)

The taskforce included representatives from government, non-government, regional, metropolitan and Aboriginal forums. (Gov of WA 2002: 5)

*The Government response reflects the thrust of the Taskforce recommendations to include:*

- *preventative and early intervention services designed to minimise homelessness risk and maximise people's opportunities through early assistance to prevent crises*
- *merging Government programs to present a seamless set of services for people*
- *involving the community in the planning, design and implementation of responses*
- *being supportive and compassionate in assisting people who are homeless; and*
- *monitoring the implementation of these initiatives through the development of performance measures.* (Gov of WA 2002: 6)

The focus of the government's response rests on the maxim *'prevention is better than cure.'* (Gov of WA 2002: 7)

The response to the recommendations of the Taskforce will be implemented by a committee, which will monitor the process and report at six monthly intervals to the Cabinet Standing Committee on Social Policy (Gov of WA 2002: 7). At their 10 June 2002 meeting, the Standing Committee approved the establishment of a Monitoring Committee to oversee the *'implementation of the Government response to the Report of the State Homelessness taskforce.'* (DPC Final Submission 19 July 2002)

In response to the recommendation of the taskforce that there be an *'increase in services working with the children of people who are homeless as a result of domestic violence and other crises'*, the government committed to provide further funds to put towards *'new services and bolster existing services.'* In one process the

*Government is working in collaboration with the Commonwealth through the Partnerships Against Domestic Violence and cooperatively across Government and community agencies through the Family Violence Coordinating Committee and local Domestic Violence Regional Coordinating Committees. (Gov of WA 2002: 27)*

**130. The Inquiry finds that the State Homelessness Taskforce is an important initiative by the Government and endorses the recommendations of the Taskforce.**

### **1.17 Department of Justice Advisory Council**

This council is made up of senior departmental executives. Information flows both ways *'back up from the operational areas to try to get issues of policy addressed, and also picks up at the wider...government level issues...work with other departments across some of the issues that are identified.'* (Transcript of evidence by Robert Carter 23 May 2002: 1460)

### **1.18 Aboriginal Justice Issues Chief Executive Officers Forum**

*The Department of Justice has established an Aboriginal Justice Issues Chief Executive Officers Forum as a mechanism to lead and coordinate action on priority issues, to reduce the involvement of Aboriginal people in the criminal justice system. This group comprises of CEOs from the Dept of Justice, Community Development, Indigenous Affairs, Education, Police, and the manager of the ATSIC State Policy Centre. And that committee in turn is supported by the Aboriginal Justice Issues Senior Officers Group, and that comprises of the senior officers of those departments, and they are to provide leadership and direction to cross-government initiatives, and coordinate action on key access issues. (Transcript of evidence by Robert Carter 23 May 2002: 1455)*

The CEOs group meets every two months and the Senior Officers Group sits monthly. (Transcript of evidence by Robert Carter 23 May 2002: 1455)

### **1.19 Aboriginal Justice Issues Senior Officers Group (AJISOG)**

This group was created to coordinate justice issues involving Aboriginal people.

It includes senior representatives of the WAPS, DOJ, DIA, DCD, DOE and ATSIC.

The group is *'similar to what was in place to support the Aboriginal Justice Council. It's a group of senior officers who will table issues across departments that need to be addressed, so as to seek cooperation at the local level ...'* (Transcript of evidence by Robert Carter 23 May 2002: 1461)

See further discussion in Chapter 11.

### **1.20 Aboriginal Justice Plan**

The Aboriginal Justice Plan (AJP) is a partnership between the Aboriginal Justice Council and the Justice Co-ordinating Committee, formed in 2000 to *'develop a strategy to address the continuing over representation of Aboriginal people in custody.'* (WA Aboriginal Justice Plan 2000: Forward)



The AJP seeks to achieve their aim by:

- developing local service agreements between government agencies and local Aboriginal communities for services for Aboriginal people
- ensuring that all government agencies plan and implement their programs and services together to remove unnecessary duplication and allow better application of available money
- focusing on services in the areas of family, education and policing
- renewing the government's commitment to continued implementation of the RCIADIC recommendations. (WA Aboriginal Justice Plan 2000: Foreward)

Its focus is on prevention and early intervention. *'It provides a framework for collaboration between government and non-government agencies around the issues of justice.'* (Transcript of evidence by Robert Carter 23 May 2002: 1461)

Since the dissolution of the AJC, the DOJ has taken on responsibility for the plan.

The AJP focuses on three critical areas of family, education and policing and has initiated investigation into these areas through the appointment of a lead agency for each. These agencies are WAPS, responsible for policing; DCD is responsible for family; and DOE is responsible for education. The role of the lead agencies is to *'establish and facilitate the work of multi-disciplinary focus groups.'* (WAPS Initial Submission 8 March 2002: 26)

These lead agencies are currently in the process of investigating *'relevant government and non-government agencies, Aboriginal organisations, program and service deliverers and academics.'* The role of the lead agencies is to:

- further develop the framework to incorporate all relevant literature and research
- scrutinise the 'evidence'
- analyse the current 'mix' of programs and resources. (WA Aboriginal Justice Plan 2000: 8)

It has been recognised by the AJP that in order to achieve their goals *'it is essential that initiatives, programs and services are the result of coordinated planning and negotiation between all relevant agencies and Aboriginal people at State, regional and local levels.'* (WA Aboriginal Justice Plan 2000: 12)

### 1.21 Kimberley Regional Justice Project

This project was designed to divert offenders from imprisonment to alternatives in the community and relies on a coordinated approach from client groups. It is currently a pilot program in the implementation stage. (Transcript of evidence by Robert Carter 23 May 2002: 1462-3) See Chapter 11 for further reference.

### 1.22 Attendance and Interagency Collaboration (AIC)

Recognising that school truancy was intertwined with other issues, Ms Parker, of DOE, and representatives of DCD, WAPS and DOJ collaborated and decided that the best method of dealing

with school attendance issues was to *'develop an interagency approach whereby key agencies could communicate with each other about cases common to each other.'* (Witness Statement of Delia Parker 12 June 2002: 31-33)

Ms Parker acknowledged that her *'current broader role includes interagency work and the initiation and implementation of new ways to deal with school attendance issues.'* (Witness Statement of Delia Parker 12 June 2002: 30)

In 1996, the WA Justice Coordinating Council (JCC) requested the *'establishment of an interagency working party to deliver a report on current activities and proposals for improving interagency cooperation in addressing'* non-attendance at schools within the state. The working party reported back to the JCC the same year.

(<http://saferwamidwest.modnet.com.au/interagencollab/AIC2000PLAN/AIC2000PLAN.html>: 5 Accessed 15 July 2002)

The collaboration developed a document entitled *'Attendance and Interagency Collaboration'*, which formalised the processes that the DOE will implement to ensure student attendance at school. It also represents a genuine attempt to maximise interagency cooperation by:

- detailing the responsibilities of each agency with respect to attendance issues
- identifying agreed areas within which agencies may work collaboratively together
- coordinating processes to provide a more effective service to students and their families.

The document sets out three-tiered process--District Interagency Management Group (responsible for establishing protocols and shared understandings, funding and resource issues), Interagency Case Management Group (case managers from each of participating agencies. It meets monthly and determines each agency's level of involvement) and School Attendance Panel. (Witness Statement of Delia Parker 12 June 2002: 42-44)

The following principles underpin this interagency approach:

- Integrated programs and services delivered through interagency cooperative and coordinated mechanisms will ensure that there are no wasteful duplications and students do not fall through the safety net strategies currently provided by all agencies.
- This cooperative interagency approach will use the established regional and district structures as its organisational basis.

Non-attendance concerns will be addressed through intervention, involving the least intrusive methods required to achieve the desired outcomes. Students and their families will be required to actively participate in the intervention process.

(<http://saferwamidwest.modnet.com.au/interagencollab/AIC2000PLAN/AIC2000PLAN.html>: 5-6 Accessed 15 July 2002)

The program has addressed the issue of confidentiality and provides for the organisation of a *'protocol or code of conduct covering confidentiality of information and the ability to share information across departments, and participate in a consultative and collaborative role as the need arises.'*

(<http://saferwamidwest.modnet.com.au/interagencollab/AIC2000PLAN/AIC2000PLAN.html>: 12  
Accessed 15 July 2002)

### **1.23 Reciprocal Child Protection Procedures 1997**

These procedures control interagency protocols between the WAPS and DCD, Princess Margaret Hospital (PMH) and the DOE in relation to allegations of child abuse. Other agency involvements include Department of Health (DOH), DOJ, Disability Services Commission (DSC), King Edward Memorial Hospital (KEMH) and the Coroner's Office.

DCD notes that these procedures are currently being updated and strengthened. (DCD Final Submission 22 July 2002: 111).

These procedures are discussed in greater detail in Chapter 6.

### **1.24 Child Protection Unit at Princess Margaret Hospital**

This unit, an initiative of DOH, is discussed in greater detail in Chapter 6. The unit is a collaborative effort between DCD, WAPS, Princess Margaret Hospital (PMH), other hospitals, families and members of the legal profession. The primary aim of the unit is to collaborate investigations into suspected child abuse.

### **1.25 Action Plan Implementation Committee**

In June 1998, following a review of the Implementation Advisory Committee (IAC), this committee was replaced by the newly formed Action Plan Implementation Committee (APIC). APIC has representatives from key government departments with responsibilities under the Action Plan, including the then Family and Children's Services, Health, Police, Justice, Education, Homeswest, Aboriginal Affairs Department and Legal Aid Commission. The committee's primary role is the implementation of the Action Plan and the development of the next phase. (DVPU Annual Report 1997 – 1998 Women's Policy Development Office website viewed 15 July 2002)

Despite the high-level multiagency involvement in APIC, *'Regional Committees consulted view the APIC as lacking any real power and influence on important issues'* and its own members view the committee *'as having no real influence over government policy and funding decisions and a limited capacity to mandate or force agency representatives to participate in Regional Committees.'* (Penter 2001a: 59)

Carol Kagi, Director of the DVPU told the Inquiry that

*... the ability of APIC members and government departments to make commitments...of this magnitude was not possible. They did not have the authority, because there are resources attached to this. They were very well intentioned, but they could not...sign off and say, "Our department will now look at, for example, providing more emergency housing for women fleeing a domestic violence situation". They just didn't...have the capacity, and also the organisations didn't.* (Transcript of evidence by Carol Kagi 25 May 2002: 1358-9)

APIC did, however, progress the State Action Plan on Family and Domestic Violence. The committee has been restructured and central to this restructure is its *'aim for a higher level of representation.'* (WAPS Initial Submission 08 March 2002: 10)

Ultimately, the committee was impotent because representatives had no real power to change policy and could only *'reaffirm what their departments were already doing.'* (Transcript of evidence by Carol Kagi 25 May 2002: 1361) Further, the DPC told the Inquiry that the *'lack of community representation on APIC was regarded as antithetical to the goal of community engagement.'* (DPC Final Submission 19 July 2002: 7)

A review of the committee was undertaken in early 2001, commonly referred to as the *'Matrix Report'*, as it was undertaken by the Matrix Consulting Group. This resulted in APIC being disbanded in November 2001. (Transcript of evidence by Carol Kagi 25 May 2002: 1375)

The current situation is that a Family Violence Coordinating Committee is to replace this body. This committee is to comprise high level government representation, but delays in appointing a suitable chair postponed the commencement of the new body (*See Section 1.28*). These delays have since been overcome and the first meeting of the FVCC was held on 24 June 2002 (DPC Final Submission 19 July 2002). A key initial task of this new committee is the advancement of the draft *'Aboriginal Family Violence Strategy'* developed in 2001. (DCD Closing Submission 22 July 2002: 167)

## **1.26 Justice Coordinating Council**

The Justice Coordinating Council (JCC) was established in 1993 *'out of recognition that to make a significant and long-term impact on crime and justice related matters in Western Australia'*, relevant agencies needed to work cooperatively. (Safer WA website n.d. [www.saferwa.wa.gov.au](http://www.saferwa.wa.gov.au) accessed 11/07/2002)

The Council is chaired by the Attorney General and members are the Ministers and CEOs of the DOJ, Legal Aid, WAPS, Aboriginal Affairs (now DIA), DOE, DOH, DCD, Training, Youth and the DPP.

The Council is progressing and developing important justice initiatives in response to community concerns about law and order, such as the Action Plan on family and domestic violence which identified the problems of coordinated agency work.

The Action Plan recommended that a Family and Domestic Violence Coordinating Committee be established with representatives from relevant government and non-government agencies to oversee the implementation of the State Family and Domestic Violence Action Plan and accompanying Resource Plan. The JCC would oversee the Plan.

## **1.27 Family and Domestic Violence Task Force**

This program was initiated in 1995 and is controlled under the auspices of the Women's Policy Office Domestic Violence Prevention Unit at DCD. The WAPS is involved in this program, along with representatives of departments that are directly involved with the contributing issues of family violence. (WAPS Initial Submission 8 March 2002: 10, & FDV Taskforce 1995)

Its Terms of Reference were to develop a comprehensive Family and Domestic Violence Action Plan for statewide implementation, which reinforces that family and domestic violence is a crime that cannot be tolerated by the community.

The Task Force should develop a response to the incidents of family and domestic violence that works to:

- ensure effective coordination of government and non-government sectors
- identify service delivery gaps and areas of overlap
- consult widely with government and non-government organisations and assess effectiveness of existing strategies
- examine and take into account previous reports and recommendations on family and domestic violence
- consider and recommend funding options
- recommend on monitoring and evaluation of the plan. (FDV Taskforce 1995)

The findings of the taskforce included recommendations from a meeting with Aboriginal women. These were:

- *The approach to family violence, as recommended by the Aboriginal women at the meeting, is a "bottom-up" approach. It is not a "wish list" that was compiled by Aboriginal people, it is a call for action from all the departments that affect the lives of Aboriginal people on a daily basis. Government departments and agencies are servicing the wider community and at the same time attempting to provide mainstream services to Aboriginal communities in diverse cultural environments. As the figures clearly indicate, and reports, media releases and Aboriginal people are repeatedly saying, the services provided are not stopping Aboriginal family violence.*
- *Aboriginal communities are asking for more control of their communities and with the support and co-ordination of government departments they will be able to develop a culturally appropriate, holistic approach that has not existed in the mainstream model before.*
- *Aboriginal people need to be supported, as a priority, to address family violence within their communities. In order to stop the violence and abuse we have to stop talking and writing about the problems and do something! (FDV Taskforce 1995)*

## **1.28 Family Violence Co-ordinating Committee**

The Family Violence Co-ordinating Committee (FVCC) was established in June 2002 to 'develop a strategic approach to planning and co-ordinating family violence services across Western Australia.' (Hon Sheila McHale, Minister for Community Development, Press Release 24 June 2002)

McHale noted that 'integrated service provision is more effective than many organisations working in isolation of each other' and 'more effective partnerships must be developed between Government and non-Government agencies so that there are real improvements in family violence services.' (Press Release 24 June 2002).

The committee will link into the 17 regional domestic violence committees throughout the state. Membership will consist of senior representatives of eight government departments along with four non-government agency representatives under the chair of Pauline Phillips. (Press Release 24 June 2002)

## **1.29 Partnerships Against Domestic Violence Program**

The national Partnerships Against Domestic Violence Program (PADV) commenced in June 1998 and *'has shown that the most effective approaches to family violence in Aboriginal communities are those which are grounded in an acceptance that family violence is a problem owned by the whole community, and which offer a community solution.'* (IAAC Working Group on Child Abuse in Aboriginal Communities Report 2002: 33)

The program is an initiative of the Commonwealth, in partnership with state and territory governments. It is coordinated by the Commonwealth Office of the Status of Women and reports annually through the Commonwealth/State Ministers' Conference on the Status of Women to Heads of Government. (PADV website viewed 15 July 2002)

Their role is to fund Commonwealth, state and territory projects which come under their six priority themes, which are helping children and young people who are the victims or witnesses of domestic violence, helping adults break the pattern of violence, protecting people at risk, educating the community against violence, developing information and good practice and helping people in regional Australia overcome the difficulties of service provision in remote areas. (PADV website viewed 15 July 2002)

One regional incentive that has been supported by the PADV is the funding of the Derby Aboriginal football team, the Mowanjum Hawks. Coached by a local Senior Constable, the team has seen a major turnaround in its attitude and consequent results. Previously a team that had to be breathalysed prior to taking the field due to an endemic alcohol problem, the team achieved the top position of the ladder at the beginning of July this year.

The change was brought about by a combination of team rules whereby players were not permitted to play if they missed training or broke other rules and community support and PADV support.

Corresponding to the success of the team has been fewer problems at the Mowanjum Community in relation to alcohol consumption and domestic violence. (A. Zampogna [Senior Constable], letter to Mrs Sue Gordon AM, Chairperson of the Inquiry, 7 June 2002)

### **1.29.1 Crisis Intervention in Aboriginal Family Violence Project**

ATSIC refer to an initiative of the PADV—the Crisis Intervention in Aboriginal Family Violence Project undertaken by the Western Australian Crime Research Centre. The project *'found that there were significant differences in the thinking and responding to family violence by Aboriginal and non-Aboriginal communities.'* (ATSIC Submission 8 July 2002: 25) Specific findings of the project have implications for coordinated service delivery for family violence and child abuse to Aboriginal communities.

### 1.30 Interdepartmental Child Protection Co-ordination Committee

This committee has been established by DCD to:

- Develop a strategic approach to ensure coordination and collaboration in child protection across relevant government agencies
- Oversee the ongoing maintenance and future development of interagency child protection intervention guidelines and protocols with a focus on agencies and communities working together to promote children's welfare and safety
- Monitor, consider, promote and implement interagency coordination and collaboration strategies in child protection matters, including inter-sectorial training. (DCD Final Submission 22 July 2002: 111)

## 2. SERVICE PROVISION

### 2.1 Key requirements of coordinated responses by government departments

Interagency coordination of service provision is acknowledged by all stakeholders to be necessary in order to reduce the drain on resources and to maximise the benefits to the client. The current state government has also announced its commitment to coordination of government services and the inclusion of non-government agencies where appropriate.

To date, the Western Australian processes of coordination;

*... are, and have been, frequently promoted and imposed by government as a panacea to the problems of strategic policy making and governing without careful definition of its purpose, or considered analysis of its application, implementation and meanings. (Beresford & Robertson 1995, cited in Pentter 2001b: 13)*

However, the mere establishment of a coordination committee does not ensure that service coordination will benefit. There are numerous factors that influence the effectiveness of such committees. These factors will be discussed in Section 4.1.

The main objective of a coordinating committee is to share the resources and knowledge of the involved agencies to provide a service that is relevant to the client and can address all their needs.

Combined with the benefits of resource sharing, the reality of family violence and child abuse is that clients often come to the attention of numerous agencies and an interagency approach is necessary if the issue is to be dealt with efficiently and expediently. It has been noted that an adequate response to domestic violence

*... requires a whole of community and whole of government response and an integrated system of service provision. This can only be achieved through formal and informal mechanisms and structures in which all relevant agencies and stakeholders work together and coordinate their efforts. (Pentter 2001b: 12)*

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*The Swan Valley Nyungah Community made reference to the need for legislative change in relation to the sniffing of solvents, which has been identified as a contributor to family violence and child abuse. They recommend that "all proposals and actions from all over the world to legislate on solvent abuse be considered by Premier and Cabinet with Aboriginal Lawmen, Law-women and Elders together.* (SVNC Final Submission to the Gordon Inquiry, 21 June 2002 Recommendation 8: 4)

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The effectiveness of coordinated responses by government departments is reliant on many factors. Central to the success are issues of policy and legislation. If the government wishes to promote coordinated responses, it must ensure that actual legislative and policy are in place to provide support.

Reviews of the effectiveness of coordinated responses have noted that coordinated approaches generally *'involve legislative, policy, funding or program/service initiatives by governments who seek to include other key stakeholders to mobilize a more concerted and widespread response.'* (Penter 2001b: 11) Further, it needs to be acknowledged that multi-agency approaches can only be as effective as the legal and policy framework within which they operate. (Harwin 1999)

Rebecca West of WAPS touched on this issue in her statement to the Inquiry. She noted that *'there is an urgent need for legislation and directives from CEOs to enable information sharing between agencies for the purpose of case managing family violence and child abuse cases.'* (Witness Statement of Rebecca West 22 July 2002)

With specific reference to family violence and child abuse, it needs to be acknowledged that there is no single government department that can be assigned responsibility for these issues. They are issues that require the involvement of many agencies – government and non-government. As such, *'an effective response to domestic violence requires a pluralisation of responsibilities and a significant change in the way government agencies think and act.'* (Penter 2001b: 38)

The research indicates that there are a number of key characteristics essential to effective coordinating committees. These characteristics include:

- mutual respect between committee members
- understanding and trust
- an appropriate cross-section of members
- open and frequent communication
- sufficient funds
- a skilled convener
- a process whereby members share in the process and outcomes
- a formalized structure rather than informal liaisons
- and a committee which consists of multiple levels of decision making.
- clarification of issues of confidentiality and referral processes
- consistent policies across agencies, and
- a measurable improvement in resources. (Gardiner 2000: 8 & 41)

Effective delivery of interagency service for indigenous communities relies principally on cultural sensitivity and culturally effective practice (Diamond & Villaflor 2001: 11) and successful programs addressing child abuse rely on the programs being:



- Child centered, family focused and empowering
- Locally available and community based in management and development
- Comprehensive, flexible, responsive and permeable, addressing the needs of clients holistically and with a continuum of intensity
- Long-term, preventive and evolving
- Supporting of the formation of respectful and trusting relationships between staff and clients
- Outcome focused
- Involving families in policy and program planning, development and implementation
- Supported by committed, hard working and highly skilled management. (Diamond & Villaflor 2001: 10)

In conjunction with these factors, it has been noted that *'services to Aboriginal children must reflect uniquely Aboriginal ways of caring for children, and that these should include culturally relevant behaviour, toys, tools and materials.'* (Diamond & Villaflor 2001: 15)

Of specific interest to the Inquiry is the conclusion by DVPU that

*... interagency collaboration in family violence has proved to be of benefit to families experiencing that violence. Achievements of interagency work through regional domestic violence committees has included 'improved regional planning and identification of service gaps; improved networking, liaison and information sharing between agencies; improved case management practices; improvements in policy and practice of agencies; and development of innovative responses. (DVPU submission).*

Kimberley Zone Manager for DCD, Julie Newsham noted that, in her experience, the following factors are important indicators to successful interagency delivery of service:

- Staff need to be skilled, confident, experienced and supported. They need to understand their role and be able to engage communities and individuals.
- The officers need time to speak to all key people involved, family and agencies and time to explain things and for families to ask questions until they feel comfortable making the decisions affecting their family or community.
- Good interpersonal relationships between all involved departments, agencies and communities. Trust has to be built to enable progress to be made in resolving some of the issues facing people in [their specific region].
- Cultural awareness: there has to be an understanding of history and how this effects people; an understanding of some of the issues impacting on Aboriginal people now; and, an understanding of the community you are trying to work alongside. (Witness Statement of Julie Newsham, 10 May 2002: 9)

As previously discussed, one of the most necessary requirements of an effective coordinated committee is the appointment of a lead agency that coordinates the response. The Working Group on Child Abuse in Aboriginal Communities through IAAC noted that *'lead agency identification and responsibilities are important to holistic multi-disciplinary/agency approaches to case managing complex cases.'* (IAAC Working Group on Child Abuse in Aboriginal Communities Report 2002: 2)

Peter Ward, Zone Manager, DCD, gave evidence to the Inquiry that, in his opinion, *'the success of inter-agency collaboration and cooperation can often stem from the effective leadership of a particular person or a particular agency.'* (Transcript of evidence by Peter Ward 7 March 2002: 304)

The appointment of a lead agency can often depend upon the involvement of representatives with the particular family. Ward told the Inquiry that:

*... there can be a difference between lead responsibility, if you like, and taking a lead role in actual coordinating activities. And in terms of the particular agency that would have the most contact with a family, or an individual, then those sorts of factors would be taken into account as to whether there is an existing relationship with that particular family or child; whether there's a formal relationship within the mandate of that agency that can facilitate the provision of supports or services by other agencies.* (Transcript of evidence by Peter Ward 7 March 2002: 307)

Additional to the necessity of a lead agency to coordinate the specific response to each case, there is the necessity for a lead overarching agency to coordinate departmental services to Aboriginal communities. The government has appointed the IAAC to undertake this role.

## **2.2 Investigation of coordinated service delivery by the Inquiry**

### **2.2.1 Interagency coordination with respect to Susan Taylor**

Although up to thirteen different agencies were involved in providing services to Susan Taylor and her family, DCD states they were unaware of *'all the services being provided by each agency and there was a lack of clarity as to a "lead coordinating agency."* (DCD Final Submission 22 July 2002: 19) A similar lack of effective coordination of service delivery has been seen in other cases examined by the Inquiry.

The case audit of Susan Taylor's death notes that:

*... The interagency approach reflects the historical problems in dealing with families who enter and leave the camp from time to time and the problems that causes in delivery services to the family. In taking a whole of family approach to Mairu/Spratt family, the department has endeavoured to work collaboratively with the other agencies who were providing services to the family whilst the children were residing in the camp and in the broader community. The interagency approach was necessary because no one agency had access to the camp and therefore access to all the knowledge and an understanding of the issues confronting the family.* (DCD Evaluation of Departmental Interagency Involvement for Susan Taylor 30/10/01: 5)

The agencies involved in the coordinated provision of service to the Spratt/Mairu family included:

- DOJ – who provided a mentor for Susan
- WAPS – who provided an Aboriginal Liaison Officer who assisted with transport and support

- DHW through Homeswest – who provided housing and support via an Aboriginal Housing Officer
- DCD – who provided family support, financial assistance and exploration of alternative carers to relieve the grandparents
- Swan Child and Adolescent Mental Health Service – who provided a counsellor for the young people
- North East Regional Youth Council (NERYC) – who provided access to a substance abuse program and support
- Noongar Alcohol and Substance Abuse Service (NASAS) – who provided support on substance abuse issues
- Community Drug Service Team – who provided substance abuse support
- Swan Education District – who engaged the children in appropriate educational programs
- Aboriginal Medical Service/Derbarl Yerigan Health Services (DYHS) – who provided workers including 'in home' help on hygiene and health issues
- Silver Chain – who provided health support to Mr and Mrs Mairu. (DCD Case Summary for Susan Taylor 6/11/01: 3)

The family had contact with DCD from 1995, but it was not until 1998 that interagency collaboration was formalised in an attempt to deal with the family's many social and health issues. (DCD Case Summary for Susan Taylor 6/11/01: 2)

In September 1998 the Midland Regional Action Group (MRAG) met to discuss a coordinated approach to the family situation after the family were referred. The above named agencies became involved in the coordinated approach which continued after Susan's death. (DCD Case Summary for Susan Taylor 6/11/01: 4)

The aim of the interagency collaboration, which determined to meet weekly, was to *'move the solution along.'* (DCD Case Audit for Susan Taylor 6/11/01) MRAG/MAAG seemed to take the lead agency role initially and convened regular interagency meetings in September 1998. In March 1999, DYHS convened a number interagency meeting in an attempt to find a solution to the family's problems. In July 1999 Manguri (Aboriginal Family Support Agency) became involved and took a prominent role until 2000 (DCD Evaluation of Departmental Interagency Involvement for Susan Taylor 30/10/01: 3). At this point, the focus of the coordination was the health of the family members and the needs of the specific children who were in crisis. DCD notes that *'there was a definite shift in focus in case planning at this time which was not clearly documented.'* They note that staff have indicated that the reason for the shift in focus was that *'case planning was removed from the local Departmental office level, and involved senior staff of the Department and other leaders from the Aboriginal community.'* (DCD Case Audit for Susan Taylor 18/01/02: 12)

This is confirmed by the DCD case audit, which notes that *'no agency took a clear and continuous leadership role.'* They also noted that *'coordination between agencies was an*

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<sup>5</sup> This organisation later became MAAG – Midland Aboriginal Advisory Group

*issue, as was the sharing of information about the family and family members.'* (DCD Case Audit for Susan Taylor 18/01/02: 2)

It also needs to be noted that although the intention of the interagency coordination meetings was that Susan's grandmother attend, she did not actually attend any of the weekly meetings in September 1998 (DCD Case Audit for Susan Taylor 18/01/02: 11). Further, she *'refused various offers of financial counselling and withdrew her participation with bill-paying service.'* (DCD Closing Submissions to Gordon Inquiry 22 July 2002: 13)

DCD notes that

*... despite the number and range of agencies involved, most agency staff appear to have had considerable difficulty in engaging the children and grandparents in any sustainable manner. The older children, including Susan, were very mobile with chronic solvent and substance abuse and frequently moved between the grandmother's house and Lockridge camp. Departmental officers and many other agency staff did not have access to Lockridge camp, which exacerbated attempts at providing continuity of service.* (DCD Case Materials on Susan Taylor Letter from Jim Laffer, Custodian of the Child Protection Register to Mr Dave Dent A/Registry Manager Coroners Court n.d: 3)

It would also appear that no single lead agency was appointed to the task of coordinating the agency intervention, rather different agencies became more closely involved as warranted.

Analysis of the management of the case by DCD has identified that coordination of services is a significant and ongoing issue. They note that:

*Departmental staff needed to provide leadership in the coordination of services to this family, and clarification of the direction that services needed to take. The case was reopened in July 1998, with the same issues presenting as had occurred over the previous two years. Meetings were arranged by a local interagency group in which the Department participated and then these meetings ceased. This left the Department in a reactive situation, and not always well informed of new developments. The family support focus continued longer than was desirable in a family situation which was complex due to multi-agency participation and difficulty in determining the direction in which the Department should move.* (DCD Case Audit for Susan Taylor 18/01/02: 12)

Of particular interest to proposed models of coordinated interagency activity, it was noted by DCD that from the end of 1998, the Case Worker involved in the Mairu/Spratt family, Mr Gordon Cole, was an Aboriginal person and the benefit of this cultural understanding was reflected in *'the increased quality of background family information'* which was included on the file under this Case Worker. (DCD Case Audit for Susan Taylor 18/01/02: 15)

In fact, DCD has acknowledged that

*despite being a trainee, Mr Cole was able to establish a more effective link with the family than other more experienced staff such as Ms Gail Laing. It was that link and rapport that was needed to assist the family to help themselves.* (DCD Closing Submissions to Gordon Inquiry 22 July 2002: 9f)

### 2.2.2 Comments on coordinated service delivery from Submissions to the Inquiry

#### 2.2.2 (a) Lack of effective coordination

Submissions to the Inquiry in general noted that government agencies needed to coordinate their delivery of service more effectively and work in partnership in a transparent fashion.

According to one submission from an Aboriginal community, the current system suffered from a

*... persistent lack of a cohesive and interactive service between all agencies when dealing with clients. Agencies are not working together, nor collaboratively with families, in a holistic manner to keep the family unit intact within the family home, where it is in the family's interest to do so. A range of issues such as drug and alcohol counselling, anger management, domestic violence counselling, sexual health, family planning, positive parenting, nutrition and basic budgeting are not offered in a coordinated way to ensure all of the families needs are met in a manner that is appropriate to the culture.*

Further, services in a regional town

*are a whole series of government and non government groups on the ground however, they are highly uncoordinated, fragmented, under resourced, and do not have specific outcomes that are meaningful to indigenous people. (A worker in Aboriginal service delivery)*

A suggestion put forward for the better coordination of service delivery to Aboriginal people in regards to family violence and child abuse is the development of

*... a special indigenous squad with full powers in either or all of the following bodies; Police Services, DCD, DIA, with mandatory obligations by all other government agencies to attend all meetings and commit to Local Service Agreements that are binding and are monitored by the government via the Attorney General or similar body. (A worker in Aboriginal service delivery)*

The National Association for Prevention of Child Abuse and Neglect (NAPCAN)<sup>6</sup> whose aim is to 'open up the lines of communications between the different government departments, agencies, professionals and community group working in the child protection field' (NAPCAN Website), noted that 'the intervention in and prevention of child abuse would also benefit significantly from improved interagency collaboration.' (NAPCAN Submission: 6)

#### 2.2.2 (b) Lack of information on services available

There were many submissions that drew the Inquiry's attention to the current situation where services are available, but the client is uninformed about which agency to approach. The current system of coordinated service delivery is not catering for the needs of Aboriginal people. One of the criticisms levelled at the current system

<sup>6</sup> This is a national non-government volunteer based organisation which was established in 1987. Their vision is 'to prevent child abuse in all its forms and to nurture and protect children and keep them safe.' (NAPCAN website [www.napcan.org.au](http://www.napcan.org.au) accessed 16 July 2002)

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Currently, there is a 'lack of consultation with grass roots community people about their concerns and needs and how they would like them addressed. Instead, many perceived problems in the community are being dealt with in a white persons way, that has no relevance at all for the Aboriginal client.'

(Anonymous submission from Aboriginal community)

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was that it *'...is not specifically customer friendly.'* (A worker in Aboriginal service delivery)

Along with this, many clients have a number of issues which need to be dealt with and often find that they have to repeat their story to every relevant agency. There were numerous calls for a *"one stop shop" dealing with indigenous youth needs in a confidential and culturally relevant manner.'* (A worker in Aboriginal service delivery) It was also noted that *'existing services might be better coordinated so there is a "one-stop-shop" where families can be provided with the help across all the areas of need.'* (The WA Indigenous Child Care Agencies Council.)

An individual who provided the Inquiry with a submission regarding her personal experience with family violence said that *'I believe I was uninformed as to what was available'* and that she would have benefited from information regarding accessible resources.

Along with this, a worker in Aboriginal service delivery recommended *'a review or audit of all services that could possibly assist in any way issues relating to indigenous child abuse.'*

#### 2.2.2 (c) Lack of Community Consultation and Involvement

It was noted that Aboriginal communities would benefit from consultation and that the issue of sexual and domestic abuse is *'not simply a matter of calling an agency or sending a survey.'* (A worker in Aboriginal service delivery)

As discussed in Section 4.2.5 effective coordinated service delivery needs to take into account the specific, and often unique, needs of a community.

Suggested approaches incorporate service delivery with the provision for

*... self-determination and involvement of clients at a grass-roots level, with qualified service providers giving a service that is appropriate to the cultural diverseness of the area. It should be a service model that is determined by the client not the funding body.* (Anonymous submission from Aboriginal community)

Recommendations include that

*... the Aboriginal community should lead the family violence strategy in partnership with government and non-government service providers. This requires Aboriginal participation at all levels, top level commitment to a real partnership and understanding of regional issues within government.* (DVPU Submission)

In an effort to include more community consultation in service delivery, DPC is currently finalising contracts for the delivery of an Aboriginal Family Violence Training Program which is entitled *'Wrong Way: Understanding and Responding to Aboriginal Family Violence.'* *'The aim of the program is to promote an understanding of Aboriginal family violence and to build networks between Aboriginal and non-Aboriginal service providers.'* One of the defining features of the program is the

involvement of Aboriginal elders *'in explaining historical regional events' which have had an impact on the community'* (DPC Final Submission 19 July 2002: 7)

*2.2.2 (d) Concluding Comments*

Specifically, *'Aboriginal people would like to see an improvement in relations between community-based services and police and hospitals in some areas, increased training, including appropriate cross cultural awareness training, and better coordination.'* They also *'perceive a lack of ongoing, coordinated support services for the family and the community as a whole.'* (DVPU Submission)

The IAAC Working Group reported that

*... members of communities require development and support and community capacity processes to engage in a meaningful way with government. The capacity of individuals, families and communities to address the issue of child abuse may need to be increased and this should be facilitated by government and non government organizations...a particular challenge for some communities will be to ensure strategies to prevent child abuse are inclusive of those who are most disadvantaged, isolated and excluded, especially women and children.*

(IAAC Working Group Report 2002: 34)

To change family violence, the following factors need to be considered:

- Increase employment opportunities especially for Aboriginal males
- Address the problem of substance abuse in the household
- Provide access to financial counselling
- Address accommodation problems to avoid overcrowding
- Address physical and mental health issues in the household
- Address issues of isolation from community or social isolation in general
- Educate families to use family support and/or to seek other support systems
- Provide culturally appropriate and accessible government resources
- Increase access to education in relationship and parenting skills
- Provide access to education in social skills, for example effective communication, anger management, conflict resolution
- Identify and provide rehabilitation services to those who have a history as victim of family violence
- Educate and encourage the perpetrator's partner to raise their sense of control in the situation and their self-esteem to effect a change in the situation. (The WA Indigenous Child Care Agencies Council)

### **3. ORGANISATIONAL ISSUES**

Material which has come to the attention of the Inquiry; either published material, submissions or evidence, have indicated that the current system of coordinated service delivery is flawed in many aspects, particularly in relation to Aboriginal people. ATSIIC note that *'there is a poor history of*

*interdepartmental/agency collaboration to tackle the issue of maltreatment in Western Australia.'* (ATSIC submission 08 July 2002: 36)

The major challenges facing effective coordinated service delivery to Aboriginal people in the area of family violence and child abuse are:

- The need for legislative or policy framework to support effective collaboration between departments and the coordination of service delivery
- The need for the provision of middle-management level committees serving as intermediaries between the upper level management committees and on-the-ground service providers
- Barriers to the sharing of information between departments which currently has a negative impact on the effectiveness of collaborative service delivery
- The need for the allocation of an independent lead coordinator to oversee coordinated service delivery
- The fact that difficulties facing coordinated delivery are exacerbated, in some instances, by factors such as remote settings.

A literature review commissioned by the PADV indicates that

*... in order for interagency approaches to be effective, the systems they are coordinating have to be adequately resourced, agencies have to have a commitment to the project through delegated representatives who are able to implement change in their agency policy, and practice and power differences between agencies need to be acknowledged and dealt with.* (Strategic Partners Pty Ltd 1999: 27)

One of the more necessary requirements for effective collaborated service delivery is policy *'to provide for and support a higher level of coordination that will facilitate coordination throughout the service system, while allowing for local flexibility.'* (PADV 2001: 73)

Policy support needs to be, in turn, backed by legislation which allows for effective interagency collaboration, particularly with regards the sharing of confidential information.

Departmental structures need to allow for effective interagency collaboration at all levels. The research indicates that there are three main levels of collaboration which are often not working in conjunction. The community level whereby officers are engaged in direct service delivery to the client is probably the most obvious level of collaborative case management. The next level is the middle-management level of government. These levels are headed by officers at CEO or Director level who formulate the departmental policy.

### **3.1 Community level service delivery**

This is the level where service delivery should be more client focused and the collaborate effort should be directed to the specific needs of the individual or family involved.

Community based service delivery is directly impacted by staffing issues such as high turnover of staff, lack of funding and resources, interpersonal relationships and tensions, time restraint and personal stress.



Added to this, many service delivery officers have indicated that the time currently spent on working collaboratively is above and beyond their normal work. Thus, it requires the personal commitment of all individuals involved to be effective.

Coordinated committees at this level face the challenge of maintaining a collaborative working relationship with changing staff, changing community members and working within departmental policy restraints, often without the access to departmental members who have the authority to alter these policies.

Of utmost importance to the coordinating committee at this level is the appointment of an effective lead coordinator in each case. The lead officer may alter on a case by case basis, as indeed may the committee, as the team responds to the specific needs of the case.

Also of great importance at this level is the development of a management plan with the specific duties and timelines of each active agency identified.

Interpersonal skills are an important attribute for team members at the community level as well as effective cultural awareness training specific to the communities they deal with.

### **3.2 Middle management coordination**

This level of coordination is the point upon which both the upper and lower levels rely in their efforts to provide coordinated service delivery.

To date, the evidence suggests that middle managers engage in partnerships with other agencies in an informal manner, which is a positive thing. Steffan Silcox noted that DOE gave their district directors *'considerable discretion ... to engage in partnerships wherever possible'* (Transcript of evidence by Steffan Silcox 28 March 2002: 703). However, these informal partnerships need to be formalized to provide consistent interagency collaboration.

Middle managers are required to liaise with the community based service deliverers and the executives of departments. They act as an intermediary between these levels as well as building relationships among departments at their level.

Their major role would be to inform their superiors of the difficulties facing the community level officers and propose solutions to these problems. They would also be responsible for educating the community level officers of the departmental policy and relevant legislation in an effort to assist their interagency collaboration.

### **3.3 Executive level coordination**

This level of coordination is primarily involved in the development of interagency protocols and policies which form the foundation of the coordinated service delivery models.

Delegates at this level also have a responsibility to confirm their department's commitment to interagency service delivery and to provide support for their 'on the ground' officers.

It is at this level that the priorities of the department are articulated and their level of commitment to coordinated activities to Aboriginal communities in relation to family violence and

child abuse is formulated. Commitment by involved agencies is integral to the effectiveness of interagency collaboration. Peter Ward noted that *'the best inter-agency collaboration, the most effective that occurs is where there is a strong commitment from both agencies because they feel that a joint approach is going to be a successful one.'* (Transcript of evidence by Peter Ward 7 March 2002: 304)

**131. The Inquiry finds that for collaboration service delivery to be effective, information and policy advice should circulate between frontline officers, middle management and strategic, whole-of-government planning bodies. The Inquiry recommends that a formalized and simplified structure be developed and implemented to allow for this.**

## 4. ANALYSIS OF SERVICE DELIVERY

### 4.1 Strengths of coordinated responses

Coordinated agency responses are of enormous benefit to both clients and agencies when they work effectively and smoothly.

Of major advantage is the reduction in the duplication of services provided by respective agencies and the facility for early intervention. This allows agency resources to be used more effectively and pools the resources of the agencies involved. (Gardiner 2000)

A review of the literature on coordinated agency work suggests that there is

*'substantial evidence that, overall, the regional coordination process, particularly at the Regional Committee level, is using the relatively small investment of financial resources to significant effect ... [through] collective work.'* (Penter 2001a: 110)

Combined with this fiscal benefit, coordinated agency committees have a greater variety of expertise to draw upon, thereby providing heightened awareness of cultural differences, the inclusion of the expertise of marginal agencies who may not normally be involved and the

*'provision of a more effective, integrated and supportive service.'* (Gardiner 2000: 8)

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*Members of Aboriginal communities are aware of the benefits of the holistic approach and one commented that what is currently required is 'a concerted effort to work with families in a holistic manner that encompasses the entire family network if needed. (Anonymous submission from Aboriginal community)*

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With the cooperative involvement of a number of agencies, the service provision is likely to become more consistent and effective and to identify any gaps in service which may exist and proffer responses to address these gaps, thereby offering a more holistic approach to service delivery which is tailored to the specific needs of the client and/or community.

A coordinated provision of service also lessens the possibility of the intervention of more than one agency in the same sphere of community life. Some Aboriginal communities report their concern at being visited by members of different agencies on the same day, effectively covering the same issues and report that they see this as unnecessarily intrusive and traumatic. (Draft MOU: 106)

ATSIC has noted that *'a collaborative approach based on shared resources and commitment offers the best hope to children in Aboriginal communities.'* (ATSIC submission 08 July 2002: 39)

The previously mentioned Mowanjum community of Derby has benefited from an interagency approach targeting the men in the community. The provision of a social and physical outlet has brought about a reduction of violence in the community.

Julie Newsham, Zone Manager in the Kimberley for DCD, gave evidence of her involvement in coordinated responses to child care in England. She stated that

*I started to work with...other agencies to provide a more holistic approach towards families and to involve families in the process. By working with people in this way better results were shown.* (Witness Statement of Julie Newsham 10 May 2002: 3)

Reference to this individual and informal coordination recurred throughout the evidence provided to the Inquiry. While these individual efforts are to be commended, organized interagency protocols need to be established to enable all workers to deliver consistent services. The personal approach relies too greatly on the commitment and personality of individual agency officers and, as previously mentioned, input from staff beyond normal working hours.

While there are distinct benefits of coordinated agency service provision relating to financial savings, effective utilization of resources, maximum skills input and more consistent responses, one of the biggest advantages can be seen at the community or local level. Coordinated responses in a regional capacity are the best place to administer services which are locally focused and culturally appropriate. It would follow that regional coordination would be of distinct benefit to Aboriginal communities, particularly rural and remote communities.

## **4.2 Challenges facing coordinated committees**

As previously noted, there are numerous factors that influence the effectiveness of a coordinated interagency committee. Of these factors, the most powerful challenges facing such committees hinge on the different ideological perspectives of departments, departmental policies, leadership tensions within the group, the history of previous inter-departmental interactions, lack of resources, differing structures within agencies and confidentiality issues. (Gardiner 2000: 9)

The sheer number and range of agencies that require representation on a coordinated committee compound these aforementioned challenges. Logistical difficulties, combined with the fact that *'domestic violence is not the core business of many agencies'* and the corresponding reluctance of some agencies to allocate resources can undermine the effectiveness of such a committee. (Penter 2001b: 39)

DCD Kimberley Zone Manager, Julie Newsham, informed the Inquiry of the barriers to interagency collaboration she has encountered. Her experience indicates that the following factors can inhibit the effectiveness of interagency collaboration:

- Confidentiality can prevent the sharing of information between departments
- Mistrust and lack of knowledge about the roles and responsibilities of others

- Attitudes that have built up over time based on poor responses from each other and a misunderstanding of intentions
- Lack of resources causing difficulties in responses
- Time to meet to discuss planned ways of working. (Witness Statement of Julie Newsham, 10 May 2002: 29)

In a Queensland review of domestic violence, the authors made reference to the fact that *'domestic violence continues to be addressed in isolation from other related issues such as child protection, juvenile justice and responses to sexual assault'*. This compartmentalized approach is compounded by a lack of coordination between government departments. Although there was recognition of the growing number of coordinated responses to domestic violence involving government and non-government agencies, the authors were critical of the fact that *'there was no overall strategic policy or philosophical framework to guide these multi-agency approaches'* which reduced their effectiveness. (Penter 2001b: 17)

The following limitations to providing effective coordinated services have been identified:

- The lack of seniority in committee membership
- The lack of a linkage between funding programs and local needs
- The need for a skilled coordinator
- The recruitment of stakeholders
- The size and diversity of the State
- The gaps in services
- The need for ongoing commitment from all agencies
- Vulnerability to changing government policy imperatives
- Different departmental attitudes to information sharing
- The insecurity of funding.

Specifically to WA, the IAAC Working Group has found that

*... there is still a need in Western Australia for more coordinated working relationships. Some of the traditional barriers to whole of Government coordination which have been identified elsewhere include fragmented funding arrangements; program specialization and separation; planning by agencies in isolation from other agencies and the community; lack of agreed baseline indicators; different reporting responsibilities and systems; and high turnover of staff in some agencies.* (IAAC Working Group report 2001: 32)

Ms Newsham also noted that while the implementation of bodies such as SAFER WA and the RDVC have *'greatly increased relationships between department managers ... at the local level it can depend upon the personalities of the staff and how they relate to each other whilst working together.'* (Witness Statement of Julie Newsham 10 May 2002: 30)

Evidence of Ross Field, presented to the Inquiry, suggested that the current structure of Government with its financial accountability within departments is a distinct obstacle facing any attempts at interagency coordination, particularly with respect to the pooling of finances between agencies. (Transcript of evidence by Ross Field 26 June 2002: 1713)

#### 4.2.1 Confidentiality

The issue of the confidentiality of an agency's material is a major inhibitor to interagency coordination. Agency representatives have expressed concern that there is currently no legislative or policy framework enabling the sharing of specific case information and they are concerned about the ramifications of divulging sensitive and confidential material to another agency.

Associated with the aspect of confidentiality is the issue of who 'owns' the information and which agency has ultimate responsibility for the client. There is a potential risk that passing on information can be combined with abrogating responsibility.

Associated with this is the fact that agencies can be obliged to comply with a client's request for confidentiality and non-disclosure of information. An investigation by the Ombudsman in July 2001 upheld a minor's right to have an allegation of sexual assault withheld from her parent (who was not involved with the assault). The basis of the school's decision rested on the assessment that she was not at further risk and was mature and competent enough to make her own decisions. (Enquiry by Ombudsman)

The action of DOE is supported by evidence given to the Inquiry by Paula Chatfield of the SARC who agreed that *'if in fact the professional assessment is made that the victim is at risk then the information will be shared, even if the complainant is saying, "I don't want you to tell anyone else"'* but only if they are considered at risk. (Transcript of evidence by Paula Chatfield 16 May 2002: 1152)

As can be seen, then, issues of confidentiality and sharing of information can be extremely subjective and open to complaints.

Superintendent Robbins of the WAPS noted that interagency collaboration was hampered by agency restrictions on the sharing of confidential information. (WAPS Submission 8 March 2002: 10)

His statement was echoed by that of Rebecca West of the WAPS who noted that *'the ability of agencies to share information and work jointly with the same families is crucial to the success of interventions.'* (Witness Statement of Rebecca West 22 July 2002)

Steffan Silcox of the DOE gave evidence to the Inquiry that while programs such as SAFER WA were beneficial, good protocols needed to be established, particularly in relation to the sharing of information. He commented that at present there are restrictions on the sharing of information which prevents agencies from understanding the full context of the situation they are dealing with. (Transcript of evidence by Steffan Silcox 28 March 2002: 698)

Mr Silcox told the Inquiry that it was his belief that some organizations were addressing this issue through their CEOs and he was confident that interagency collaboration would proceed more smoothly once these protocols were established. (Transcript of evidence by Steffan Silcox 28 March 2002: 698)

**132. The Inquiry finds that legislative and policy changes are necessary for the effective coordination of service provision to Aboriginal communities, particularly in relation to the sharing of confidential information. The Inquiry notes that the Government is currently considering issues relating to privacy information, which may impact upon the sharing of information. The Inquiry recommends that the Implementation Body (see Chapter 16) progress the required legislative changes as a matter of urgency.**

#### 4.2.2 Standing and Influence of delegates

One of the major criticisms levelled at interagency committees is that their effectiveness is diluted by their lack of power and influence in policy and legislation. The DVPU

*... has the responsibility to drive the whole-of-government policy agenda on family and domestic violence, but it has little power and authority to bring that about. The extent of DVPU's authority to influence philosophies, priorities and funding decisions of individual government agencies is limited by its location, the ineffectiveness of APIC and by a lack of power relative to the agencies it is attempting to coordinate. (Penter 2001a: 57)*

A British study highlighted 'the need for people with seniority and decision-making authority to attend' and noted that 'the more influential people are, the greater potential inter-sectorial collaboration has to bring about change.' (Costongs & Springett 1997, cited in Gardiner 2000: 12)

As previously discussed, although APIC's membership was meant to consist of directors, the reality is that delegates were not of this level, thereby negating the impact of this committee.

It would appear from the information garnered by the Inquiry that if delegates of an interagency committee do not have the authority to make policy changes, they need to, at least, be supported by agency members who do have such authority.

The findings of the Cape York Justice Study included a finding of the effectiveness of coordinated service provision, particularly with respect to the status of delegates. They found:

*Overall, the policy of coordination between agencies and program flexibility has not yet produced a significant change in approach by the various departments and agencies which are involved...Hierarchical structures and strict processes narrowly confine the authority of the public officials directly involved, each of whom is required to give effect to his or her agency's policies and practices, including policies and practices relating to service delivery. Government officials directly involved in the communities have little discretion to make decisions or take action according to local needs. Any 'flexibility' is largely controlled by senior officials, who are seldom well informed of those needs. (Fitzgerald 2001: 52)*

#### 4.2.3 Rural areas

*'Aboriginal people living in country areas are more than twice as likely as those living in the city, and more than 63 times more likely than non-Aboriginal country dwellers to be victims of reported domestic violence.'* (WAPO website (1999) viewed 11 July 2002)

The urgency for effective coordinated service delivery relevant to family violence and child abuse for rural Aboriginal people is obvious.

Rural communities pose their own particular problems for coordination of agency work. Most service provision costs more in a rural setting and literature reviews and submissions suggest that the lack of funding is a consistently identified problem.

*Indigenous people face a number of potential barriers to accessing services, such as distance, availability of transport, access to GPs and pharmaceuticals [and] the proximity of culturally appropriate services.* (McLennan & Madden 1999: 4)

A worker with Aboriginal people in a rural setting told the Inquiry that they wanted *'State and Commonwealth funding to be better and more effectively coordinated, in that three separate agencies in the same town do not get the same funding to do similar things.'*

The working arrangements of regional staff can also pose challenges for coordinated committees. *'In some departments, eg HDWA and EDWA, regional office staff are autonomous from central agency imperatives and communication between the central agency and the regional staff is problematic'* (Penter 2001a: 123). Without a consistent agency protocol and response, the coordination of interagency work can be severely undermined.

An attempt to address the challenges of rural coordination has been undertaken by Wesnet<sup>7</sup> whose

*... approach attempts to assist rural communities to develop an active community based, rather than, or in addition to, a professionalised response to domestic violence. The idea is that a service delivery strategy based only on a professional response may not be feasible due to lack of resources, and the diversity and geographic size of most rural areas.* (Penter 2001a: 128)

As previously mentioned, the needs of rural and urban communities differ and, consequently, so should the coordinated approach. The PADV has identified one of the issues which needs addressing in effective coordinated service delivery as *'developing service models and responses to meet the needs of victims of domestic violence in rural and remote communities.'* (PADV 2001: 73)

The major theme appearing in the literature is the need to address community issues in rural and remote areas and to involve the community in greater depth. Community

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<sup>7</sup> WESNET is Australia's peak women's organisation working to eliminate domestic and family violence. It is a strong and respected organisation with almost 400 member organisations across Australia. Most of these are women's refuges and women's shelters, others are domestic violence outreach services, women's homelessness and housing services, and domestic and family violence information, resource and referral services. (see <http://www.wesnet.org.au/> accessed 22 July 2002)

awareness and education appear to be the most common factors required in addressing issues in rural communities.

Rural communities are in need of assistance to develop *'an active community-based, rather than professionalised response, to domestic violence,'* emphasizing *'the development of volunteer responses and the provision of adequate training.'* (Penter 2001b: 30)

DOJ has noted that current service provision is often inadequate for the needs of rural and remote Aboriginal communities. They suggest that *'it is apparent that government needs to reconsider how it provides services to these communities and not attempt to duplicate the metropolitan based service delivery models.'* (DOJ Final Submission 16 July 2002: 24)

DCD has told the Inquiry that its *'child protection response in country areas requires strengthening and in this regard a mobile child protection capacity to respond and attend to, rural and remote community needs has been considered.'* (DCD Closing Submission 22 July 2002: 121)

Consistent with previously discussed urban/rural distinctions, it has also been noted that

*Aboriginal women living in remote areas cannot simply leave their homes and start a fresh in a new town. Family relations is just one reason that unites them to the communities they live in, both economically and socially. The Aboriginal approach, that the women recommended, is to make the violence go away, not the victim.*

(Family and Domestic Violence Task Force at

<http://www.wa.gov.au/wpdo/dvpu/append.html> viewed 11 July 2002)

The importance of family relationships to Aboriginal people cannot be overlooked. Not only are these relationships ties that bind women and children to their community, they are also integral in explaining why many Aboriginal people are reluctant to report issues of family violence and child abuse. They believe there is a chance that their family unit may be broken and they fear the repercussions on the wider community. This cultural relationship needs to be taken into account by coordinating committees when forming their service delivery.

#### **4.2.4 Lack of Resources**

Of particular concern to rural communities is the perceived lack of resources many agencies face in providing quality services to clients in a rural setting. Staff maintenance is a challenge as is funding of services. It has been suggested that

*... without the priority of committed funding for community initiatives and infrastructure from government departments and agencies, the predicament of Aboriginal family violence will continue to exist and most probably escalate.*

(Family and Domestic Violence Task Force at

<http://www.wa.gov.au/wpdo/dvpu/append.html> viewed 11 July 2002)

It is generally agreed that government agencies tend to have more access to resources than non-government agencies, particularly in remote settings. Any interagency cooperation in this respect tends to be somewhat unbalanced and involves a greater commitment by government agencies than non-government agencies.



#### 4.2.5 Remoteness

Combined with rural challenges, a further logistical factor, which particularly affects many Indigenous communities, is that of remoteness. In a remote location, isolation, distance, time, resources and personnel numbers all combine to add to the already inherent difficulties of interagency work.

Studies have shown that

*... coordinated and collaborative approaches are easier to achieve when they are contained in particular geographical or regional boundaries. Distance and remoteness place considerable strain on efforts to achieve interagency work and regional coordination in rural and remote areas.* (Penter 2001a: 40)

Geographically, WA faces unique challenges in the delivery of coordinated services. The large expanse of rural and remote areas, the size of the state and the varied living conditions present government with the responsibility for areas of diverse culture, regional size, needs and resources. No singular policy can provide for the needs of such a diverse range of communities, reinforcing the notion that coordinated service delivery should be locality based and locally responsive

DOJ has recognised the problems encountered by government providing effective service delivery in remote and rural communities *'relate predominantly to the low population density and the large distances involved, as well as the need to provide services that are appropriate to the culture.'* (DOJ Final Submission 16 July 2002: 24)

Remote communities have particular needs combined with a high turnover of staff at all levels. These factors tend to result in a lack of continuity of committee members and hinder the development of trust and cohesion necessary for an interagency committee to operate effectively.

Ross Field noted that *'in more remote parts of the state it's more difficult to sustain quality people involved'* in coordinated projects. (Transcript of evidence by Ross Field 26 June 2002: 1721)

DOJ suggests that while *'people in these communities are over-represented in the health, justice and welfare services'* they *'receive disproportionately less assistance than their metropolitan based counterparts.'* (DOJ Final Submission 16 July 2002: 24)

#### 4.2.6 Aboriginal communities

Aboriginal communities have been identified as high risk in the area of domestic violence and have *'quite specific and unique needs'* (Taylor 2002). Research indicates that *'Aboriginal people (overwhelmingly women) are 53 times more likely to be a victim of domestic violence than non-Aboriginal people'* (Family and Domestic Violence Task Force at <http://www.wa.gov.au/wpdo/dvpu/append.html> viewed 11 July 2002). This vulnerability, combined with the specific needs of Aboriginal communities has caused the Inter-Departmental Committee (IDC) on Sexual Assault to signal its intention to *'recommend that specific initiatives be developed for each group.'* (Taylor 2002)

Not only are Aboriginal communities an identified high risk group for domestic violence, but Aboriginal communities, have unique requirements of agency services that do not necessarily extend to the wider population. Their particular needs are not always met by mainstream services and interagency committees need to be aware of their clients' requirements when developing protocols. It has been noted that

*... although Aboriginal people suffer many of the same consequences as the general population, this is not always for the same reasons; the underlying causes may be fundamentally different and thus require quite targeted interventions. (Diamond & Villaflor 2001: 8)*

A further criticism levelled at the provision of government services is that *'Aboriginal services tend to be marginalized within agencies' and 'government organisations are not sufficiently informed with respect to Aboriginal issues.'* (DVPU 2001b Vol 2: 20)

Many committees have been established to address domestic violence in general, but have readily identified that Aboriginal communities within their regions are high-risk groups. Difficulties arise when these committees need resources to address the distinctions between 'domestic violence' and 'Indigenous family violence'. In order to address these differences, the committees require the participation of Aboriginal workers who are currently well represented in non-government rather than government organizations (Penter 2001a: 92). In order to address this problem, Aboriginal people have reported that they would like more of their community members provided with information, training and support and utilized by interagency coordination committees. (DVPU 2001a Vol 1: 9)

ATSIC noted that

*... the majority of Aboriginal people have a preference for services provided by an Aboriginal agency. There does need to be some consideration to developing culturally appropriate services in mainstream agencies for those Aboriginal people who seek services away from Aboriginal agencies. (ATSIC submission 8 July 2002: 36)*

Aboriginal women have emphasised *'the need for the Government "to let go" and recognise...the Aboriginal community's abilities to develop and implement effective solutions to the problem.'* (Family and Domestic Violence Task Force at <http://www.wa.gov.au/wpdo/dvpu/append.html> viewed 11 July 2002)

Further, Aboriginal communities have indicated the urgent need for *'the provision of training to community members so the necessary skills to provide services reside within the community.'* (Family and Domestic Violence Task Force at <http://www.wa.gov.au/wpdo/dvpu/append.html> viewed 11 July 2002)

**133. The Inquiry recommends that identified community members in remote Aboriginal communities have access to training and resources in the dissemination of information regarding coordinated service delivery within each community.**

The literature highlights that complaints about responses to Aboriginal family violence consistently refer to the lack of trained Aboriginal workers to deal with Aboriginal issues. Communities and agencies attempting to provide services to Aboriginal communities request *'more funding, more time, trained Aboriginal people, appropriate men to talk to the men.'* (Penter 2001a: 93)

The requirements of Aboriginal communities are community based and focused on prevention and the effective reduction of direct law enforcement. (DVPU 2001a Vol 1: 5) This, combined with the Aboriginal preference for keeping the family intact means that strategies need to be developed with focus on meeting the needs of communities and families as a whole. (DVPU 2001a Vol 1: 8)

Indeed, one commentator noted that

*... issues underpinning family violence include many aspects of community life ... The Aboriginal perspective includes a holistic view of the needs of extended families and community and everyone is seen to be affected by family violence in one way or another. There is a growing belief in the Aboriginal community that social services need to be underpinned by a commitment to economic development which lead to increased self reliance in the long term.* (DVPU 2001a Vol 1: 9)

One of the major challenges facing Aboriginal family violence programmes is the fact that communities tend to prefer that the offenders remain in the community, combined with protection of the victim (DVPU 2001a Vol 1: 19). This preference is contrary to standard European based solutions that rely on the removal of either the offender or the victim to deal with the problem. Aboriginal people have said that the current services delivered by agencies *'do not deliver what the community sees as appropriate services'* (DVPU 2001a Vol 1: 9). Any proffered solutions to this dilemma would have to come as a result of extensive consultation with Aboriginal communities.

The way forward preferred by Aboriginal communities lies in

*... preventive approaches including community education, early intervention and support for families, as well as long term programs for the community which address issues in appropriate ways. These are lacking or need resources including necessary skills and are often poorly coordinated.* (DVPU 2001a Vol 1: 9)

Not only do Aboriginal communities in general require culturally appropriate service delivery, but individual Aboriginal communities have requirements specific to their customs and traditions. Thus, coordinating committees need to be sensitive to localised requirements and their service delivery needs to be

*... appropriate to each area and service providers need to understand the implications of local politics in community decision-making as well as language, traditions and customs and family and community obligations if their efforts are to be effective.* (DVPU 2001a Vol 1: 8)

Planning needs to take into account the fact that *'each region has its own needs and characteristics including language and culture, history, lifestyles, appropriate education and economic opportunities.'* (DVPU 2001 Vol 1: 20)

Anthropological evidence supports the argument that Aboriginal people and communities are not homogeneous and are differentiated not only by culture, language and geographic location, but are particularly influenced by the status of their traditional ties. It needs also to be taken into account how 'Europeanized' the community is. *'The generalizations which can be made are those which promote respectful ways of working, which value diversity and difference and which assist in the development of shared understandings.'* (Diamond & Villaflor 2001: 1)

**134. The Inquiry recommends that coordinated service delivery to reduce family violence and child abuse needs to be targeted at the recipients and customized to the needs identified by the specific Aboriginal community.**

However, these programs would only be successful if the infrastructure was available at the time of execution. This would require the availability of suitably qualified Aboriginal personnel. Studies have indicated that

*... attempts to establish specialized Aboriginal services in several regional settings that have been unsuccessful due to the absence of Aboriginal organizations willing to undertake the role, a lack of suitably experienced personnel and problems with factions within the community.* (DVPU 2001b Vol 2: 12)

Experts have suggested that the issues surrounding family violence cannot be addressed by either the community or government in isolation, rather, *'an equal partnership between the two needs to be developed'* with the community providing the bulk of intervention services, with the government providing support. (DVPU 2001b Vol 2: 19)

**135. The Inquiry finds that interagency management of family violence and child abuse must be community based. The identified lack of resources available to communities in remote areas limits effective delivery of the service. The Inquiry finds that the programs must be relevant to the distinct cultural, financial and physical needs of the community. The Inquiry further finds, that despite the best efforts of coordinated committees, the current approach is not successful and must be improved.**

### 4.3 Future directions

The research has highlighted recommendations made by stakeholders in relation to the development of more effective service delivery to victims and perpetrators of domestic violence in Aboriginal communities.

Primarily, recommendations centre on the understanding that Aboriginal communities have different requirements to mainstream communities and, more specifically, each Aboriginal community has its individual and specific requirements. The IAAC Working Group recommends

that *'models of service delivery should be determined at the community level, rather than funders prescribing a centrally determined model or approach.'* (IAAC Working Group Report 2002: 33)

Coordinating activities are required at all levels. Support for coordinating direct service delivery must occur at middle management. This level of management must provide supports and encouragement and assist those delivering services to overcome any barriers, either within the organization or externally. At all levels, the committees need to be aware of all the services available and required by communities and ensure that they are brought together.

The SFP points the way forward in its ability to overcome the challenges to interdepartmental committees of information sharing which has been shown to be a major challenge to coordinated service delivery.

DCD is keen to continue coordinated activities and recommends the following:

- The model of the Indigenous Family Program continue to be supported as relevant to the provision of services to 'high risk' Aboriginal families in the metropolitan area.
- The Strong Families approach be considered by the Inquiry as a flexible model for achieving collaboration and coordination between agencies and families for
  - Complex cases requiring across-agency management
  - Cases requiring appointment of a lead agency
  - Cases requiring a multi-disciplinary approach.
- Consideration be given to supporting and resourcing expansion of the Strong Families approach statewide to enable fulltime coordinators to be engaged in both metropolitan and non-metropolitan areas.

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*The SVNC recommend that 'the Government should support communities and their decisions. The communities themselves should have the power and the funding to select and engage who they need to help them – teachers, doctors, social workers, anthropologists, managers, accountants etc working for them. This way would preserve their autonomy and is a possible way forward.*

(SVNC Final Submission to Gordon Inquiry, 21 June 2002 Recommendation 29: 14)

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- Consideration be given to expansion of the role of coordinators to include facilitation of family group conferences and community conferences when possible and appropriate. (DCD Final Submission 26 June 2002: 21)

With specific reference to coordinated committees responsible for service delivery in the field of family violence and child abuse in Aboriginal communities, developments need to centre on education, prevention and community involvement and management. Carol Kagi informed the Inquiry that *'there is certainly an emphasis more recently in looking at ways to engage Aboriginal people and Aboriginal organisations and communities in participation in the committees.'* (Transcript of evidence by Carol Kagi 25 May 2002: 1404)

Of particular concern to Aboriginal communities is the need for the family and the community to remain intact before, during and after any service provision and for committees to provide support to enable this to occur.

Interagency committees need to be focused, have a common aim, have representatives from key government and non-government departments who are at a level where they can influence policy and service delivery and have appropriate supportive legislation and government policy. Without these features, combined with the appropriate level of resources, the effectiveness of the committees is reduced. Of specific value to Aboriginal communities is the provision of trained Aboriginal people to address the specific cultural needs of the community.

**136. The Inquiry finds that the coordination of government service delivery to Aboriginal people with regards to family violence and child abuse, has not been, in many instances, very effective. The Inquiry makes the following findings of principle:**

- Legislative or policy framework is imperative for effective collaboration between departments and the coordination of service delivery
- The provision of middle-management level committees serving as a intermediaries between the upper level management committees and on-the-ground service providers is imperative for effective coordinated service delivery
- The barriers to the sharing of information between departments has a negative impact on the effectiveness of collaborative service delivery
- The allocation of an independent lead coordinator to oversee coordinated service delivery is imperative to its effectiveness
- The difficulties facing coordinated delivery are exacerbated, in some instances, by factors such as remote settings.

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## **LEGISLATION**

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Aboriginal Affairs Planning Authority Act 1972 (WA)

Aboriginal and Torres Strait Islander Commission Act (1989) (Cth)

Restraining Order Act 1997 (WA)

*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • *HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999* • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Looking Back Eyes Violence Directions for Australia* • *VIOLENCE IN INDIGENOUS COMMUNITIES* • *'Black sex-abuse whistleblower axed'* *The Weekend Australian 22-23 December 2001* • *'Abuse charges for bad father'* *The West Australian 1 November 2001* • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • *CHILDREN ACT NOW - MESSAGES FROM RESEARCH* • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguarding Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

# Responses to family violence and child abuse at the Swan Valley Nyungah Community

## CHAPTER 14

### SECTION 3

*This chapter describes aspects of Government agency service delivery at the Swan Valley Nyungah Community as required by Term of Reference 1.*

**SECTION 3**

*Chapter 14: Responses to family violence and child abuse at the Swan Valley Nyungah Community.*

## **1. INTRODUCTION TO TERM OF REFERENCE ONE**

### **1.1 The death of Susan Taylor**

On 12 February 1999 Susan Taylor ('Susan') died as a result of hanging at a toilet/ablution block at the Swan Valley Nyoongah' Community (SVNC). Susan was a 15 year old Aboriginal girl, who had most recently resided with her grandparents and certain other family members at a residence in Herne Hill. She had not, at any material time prior to her death, lived at SVNC.

### **1.2 Inquest into the circumstances of Susan's death**

In March 2000, Susan's grandmother, Mrs Miriam Mairu, wrote to the State Coroner expressing a number of concerns as to the circumstances of Susan's death. In light of those concerns, the Coroner decided to hold an Inquest into the circumstances of Susan's death.

In his decision of 21 November 2001 the Coroner delivered an Open Finding as to how Susan's death occurred. The reasons for decision of the Coroner canvassed a number of issues involving Susan's circumstances prior to her death, including allegations of sexual assault on Susan and other persons frequenting the SVNC. The Coroner also canvassed broader matters concerning the sexual abuse of young Aboriginal persons, substance abuse in the Midland area, and access issues relating to the SVNC.

### **1.3 This Inquiry's first Term of Reference**

The first Term of Reference expressly requires the Inquiry to:

*Examine the issues raised by the Coroner's inquiry into the death of Susan Taylor in relation to the way that government agencies dealt with the issues of violence and child sexual abuse at the Swan Valley Nyungah Community.*

## **2. POLICE INVESTIGATIONS**

### **2.1 Coroner's findings with regard to the police investigation of Susan's death**

The Coroner observed that the investigation conducted by police officers subsequent to Susan's death was not sufficiently thorough to determine, with certainty, the circumstances in which Susan was found, including whether there was any significant delay in attempting to resuscitate her. He also expressed concerns as to shortcomings in the investigation of the state of Susan's clothes when she was first located, together with whether Mr Richard Bropho (in respect of whom Susan had made allegations of an indecent assault and a common assault upon her in January 1999 at the community) was present at the time when Susan was located. (Hope 2001)

<sup>1</sup> 'Nyoongar' has also been referred to as 'Nyungah' in this report. The Inquiry has used this spelling as per the Terms of Reference. Where 'Nyungah' has been used, this is part of a proper title.

## 2.2 Western Australia Police Service Internal Review

The Western Australia Police Service (WAPS) conducted an Internal Review of its investigation of Susan's death. That Internal Review had, in fact, commenced before the delivery of the Coroner's findings. Superintendent Steve Robbins, who gave evidence on a variety of matters concerning the structure, policies and procedures of WAPS, had not himself actively participated in the Internal Review (nor indeed had he had any involvement in the investigation of issues relating to, or preceding, Susan's death). However Superintendent Robbins expressly endorsed the conclusions that were drawn by the WAPS in its Internal Review and the related observations of the Coroner.

The Internal Review concluded that police officers investigating the circumstances of Susan's death should have:

- Obtained statements from key witnesses regarding the discovery of Susan's body, and conflicting information at the scene
- Investigated the state of Susan's attire
- Examined any significant delay in resuscitation of Susan

Inspector John Hart gave evidence elaborating on the methodology of the Internal Review and its conclusions. He explained the steps that were being taken by WAPS in an attempt to address those shortcomings, which included:

- A package setting out, in more prescriptive detail, the actions required when responding to a Coronial Investigation, which procedures have now been in place since 1 February 2002
- An overall tightening of procedures and standards in the investigation of sudden deaths in the Eastern Metropolitan Police District, which investigation has now been taken over by the Coronial Inquiries section
- More general improvements in investigative training and supervision of police officers, in part due to the broad ranging Investigative Practices Review undertaken in (May 2002). (Transcript of Evidence of John Hart, 26 March 2002)

Unsatisfactory as the shortcomings of the investigation were, it is important to highlight the absence of any evidence, either on the basis of the WAPS's own Internal Review or on the material obtained by the Inquiry, to suggest any absence of good faith on the part of the investigating police officers, or the presence of any external forces influencing the investigation.

**137. The Inquiry finds, consistent with the Internal Review of the Western Australia Police Service, that the investigation as to the circumstances of Susan's death was most unsatisfactory.**

**Those inadequacies were attributable to a combination of:**

- **Lack of application of proper investigative principles relevant to sudden deaths**
- **Lack of proper communication between police officers**
- **A lack of overall supervision of the investigation**

- **A presumption by investigators that the circumstances surrounding Susan's death were not suspicious due to her past history**

### **2.3 WAPS investigation of allegations of criminal conduct made by Susan**

A discrete issue concerns the adequacy of WAPS investigations of the allegations of criminal conduct made by Susan in January 1999. The Coroner found that it was not possible to determine whether any particular offences had been committed against Susan. Importantly, however, he stated that he was 'convinced', on various aspects of the evidence before him, that Susan had been sexually abused, and that that prior sexual abuse played a large part in the circumstances of her death. (Hope 2001)

In early January 1999, Susan made a statement to police in the Midland detectives office that she had been indecently assaulted and physically assaulted by Richard Bropho at the community. There is certain material before the Inquiry, in addition to that which was before the Coroner, supporting the notion that, at least around that period (January 1999), Susan had been subjected to even more serious conduct than an indecent assault and a physical assault, quite possibly involving a sexual assault. That material includes certain evidence given in private and other information obtained through informal consultations.

At the coronial inquest, Richard Bropho gave evidence denying the allegations made by Susan with respect to the alleged incidents of 4 January 1999. However, he had not been spoken to by police about the allegations prior to that coronial inquest. As noted by the Coroner, a hand-written statement had been obtained from Susan on 13 January 1999, subsequent to the making of her initial complaint (Hope 2001). An offence report was then forwarded from the Midland detectives' office to the Moora detectives' office on 18 January 1999. Senior Constable Brett, who received that offence report, then contacted Mrs Mairu to inform her that she wished to speak to Susan to clarify certain points in her statement.

However, by that time Susan had gone to Northam and Mrs Mairu agreed to advise Detective Brett on her return. In the interim, Detective Brett interviewed two other potential witnesses to the alleged offences. Whilst Detective Brett did make diligent attempts to arrange for an occasion to interview Susan after her return from Northam to Perth (on about 2 February 1999) such an interview never occurred before Susan's tragic death. It is of importance to note that, as numerous witnesses testified to, Susan was a highly mobile and transient young person who was very difficult to pin down to any kind of fixed appointment or other arrangement.

Following Susan's death, it was determined by investigating police that there was insufficient evidence to form a basis for any charges of indecent assault. In relation to the allegations of physical assault, the accounts of two eyewitnesses contained apparent inconsistencies. Plainly any evidence led of Susan's complaints or disclosures would have been hearsay and inadmissible in a court of law. It was thus concluded that there was insufficient admissible evidence upon which to base any charges after Susan's death. The Inquiry has not received any evidence or other material that would cast doubt on this conclusion.

Whilst the investigation into Susan's allegations with respect to Richard Bropho must be viewed in a very different light to the distinct investigation into the circumstances of her death, the most unfortunate outcome does highlight the value of WAPS reviewing the manner in which priority is assigned to allegations to child abuse. This issue has been canvassed more fully in Chapter 9<sup>2</sup>. In particular, the appropriateness of examining the assignment of priority to cases where a child is itinerant or highly mobile, and therefore at a heightened state of vulnerability, is apparent in light of this aspect of Susan's death. The considerable disadvantage experienced by young people in Susan's position, in fully accessing the criminal justice system, is one so extreme as to require urgent redress.

**138. The Inquiry recommends a review of the assignment of priority to cases of child abuse where a child is itinerant or highly mobile, and therefore at a heightened state of vulnerability.**

### **3. INVOLVEMENT OF DEPARTMENT OF COMMUNITY DEVELOPMENT**

#### **3.1 Case Audit of the role of Department of Community Development**

Although the role played by the Department of Community Development (DCD) in service delivery to Susan and her family was not directly called into question by the Coroner, a Case Audit was nonetheless convened by the acting Director General of DCD, at the request of the Minister for Community Development in November 2001. The Case Audit was subject to fairly detailed terms of reference but was designed, broadly, to assess DCD's involvement and management of Susan's 'case', and the issues associated with access to the SVNC. It was conducted by a departmental Zone Manager and Area Manager who themselves had had no involvement with relevant issues. The authors of the Case Audit reported through the Executive Director, Metropolitan Service Delivery to the acting Director General, who in turn reported to the responsible Minister.

The Inquiry has taken into account the full detail of the Case Audit in addition to the direct evidence it has received from DCD staff involved in providing services to the Spratt/Mairu family, and otherwise having some connection with relevant events. The following summary of the facts draws on the entirety of factual sources available to the Inquiry, not simply the Case Audit.

The direct contact between DCD officers and Susan herself was minimal. The nature of the support given by the department was to the Spratt/Mairu family rather than the one or more individuals. The initial contact of the department occurred in April 1995. From that point, contact continued intermittently, with particular emphasis on providing financial assistance and debt negotiation to Mrs Mairu, together with liaison and representation towards Homeswest on the issue of suitable accommodation.

Susan, together with one of her two brothers, commenced living with Mrs Mairu in October 1995, at which time another six grandchildren were also staying with her and her husband. Both Mr and Mrs Mairu had, from that time, chronic and serious health problems which seemed to have worsened in the period of time under which Susan remained in their care. DCD made certain

<sup>2</sup> The recommendation at 2.3.6 of that chapter deals with the merit of a more broad-ranging review of an assignation of priority to reports of child abuse.

ongoing attempts to assist Mr and Mrs Mairu in the care of their grandchildren and, accordingly, assist those grandchildren themselves, by attempting to engage one of Mrs Mairu's daughters. Susan's mother had, in the years preceding Susan's death, considerable health problems and for a considerable period was serving a term of imprisonment. Certain plans to relocate some of the grandchildren (Susan's cousins) to Darwin, which would undoubtedly have eased the pressures on Mr and Mrs Mairu, did not eventuate.

It cannot legitimately be said that DCD adopted anything in the nature of a 'lead agency' role with respect to the Spratt/Mairu family. Much of its work involved liaison with other agencies, including participation in a series of interagency meetings in September 1998 and, following Susan's death, in March 1999. At the earlier of those two meetings, at least 11 government and non-government agencies were providing, or attempting to provide, service of some kind to the family aside from the role of DCD itself. Those agencies included:

- Ministry of Justice (now Department of Justice), providing a mentor for Susan and otherwise.
- Department of Education (DOE) providing an Aboriginal liaison officer assisting with transport and related support education and attempting to assist the grandchildren in schooling and other Educational programs
- Homeswest through provision of housing, and other support through an Aboriginal housing officer
- Derbarl Yerrigan, the Aboriginal Medical Service
- Department of Health (DOH), Swan Child and Adolescent Mental Health Services
- North East Regional Youth Council—provision of a substance abuse program and support
- NASAS—provision of other support to grandchildren regarding substance abuse
- Community Drug Service Team—additional provision of substance abuse supports
- Silver Chain Nursing—ongoing support to Mr and Mrs Mairu on various health issues

## **3.2 Specific communications preceding Susan's death**

### **3.2.1 Communications from Department Of Justice**

Rhona Haining, in the course of her work as a Juvenile Justice Officer for the Department of Justice (DOJ), was assigned Susan to work with. This allocation existed in addition to the allocation of a mentor, namely Michel Poland, to Susan. In her statement to the Inquiry, Ms Haining estimated that she had three or four contacts with Susan over a period of about four to five months before her death, either at the Herne Hill residence or at Ms Haining's office. In addition to those direct contacts, Ms Haining regularly received information about issues regarding Susan from Ms Poland. Accordingly, Ms Poland told Ms Haining on 15 January 1999 that Susan had allegedly been 'sexually assaulted' at the SVNC. She also found out, through Ms Poland, that Susan had gone to Northam for a period of time by reason of, on Ms Poland's view, being too scared to remain at the Herne Hill premises. Ms Poland had also suggested to Ms Haining, probably in late January 1999, that Susan may have been pregnant.

On 4 February 1999 Ms Haining sent a two page facsimile message to the 'Duty Officer, Family and Childrens Services'(as DCD then was). The first page comprised a hand written facsimile cover sheet on Ministry of Justice (now DOJ) letterhead. It said *'To the Duty Officer, please find referral for Susan TAYLOR. Please call if you have any queries. Gordon Cole knows the family history. Regards Rhona'* (Documents tendered, 25 March 2002:1)

A second page of the facsimile message was type written and addressed to 'The Duty Officer, Family and Childrens Services' (as DCD then was). Its text warrants quoting in full:

*'It has come to my attention that the welfare of Susan Ann Taylor, aged 14 years is of some concern. Susan is a current client of the Ministry of Justice. She currently resides at (the Herne Hill premises) under the care of her maternal grandmother, Miriam Mairu.*

*This officer has been made aware of a number of circumstances in Susan's life which place her in a situation of some risk.*

*On 15.01.99 this Officer was informed by Susan's mentor, Ms Michel Poland, that Susan had allegedly been sexually assaulted whilst at the Lockridge Nyungah camp. Susan has allegedly made complaints to the CIB in relation to these matters. Shortly after this incident, Susan ran away to Northam and did not return for some time. Ms Poland also alleges that Susan was scared to remain at her home after the incident at the Camp.*

*It has also recently been brought to this officer's attention by Ms Poland that Susan may be pregnant. This is yet to be confirmed by a doctor.*

*Susan's father died some years ago in a car accident and her mother is currently an inpatient at Graylands hospital. Mrs Mairu cares for a number of children, many of whom abuse volatile substances'* (Documents tendered, 25 March 2002:2)

Ms Haining did not receive any response to her facsimile message of 4 February 1999. On 9 February 1999 Susan attended the Midland office of the Ministry of Justice with Ms Poland. This was the first time that Ms Haining had seen Susan since prior to Christmas 1998. She informed Susan that she must complete her outstanding community work as soon as possible and arranged a time in March 1999 for that to occur. Ms Haining's notes of that meeting record that, at that time, Susan appeared *'quite content and relaxed'*. The notes also reflect that Ms Haining attempted to talk at length with Susan, but found it difficult to do so as Susan was distracted by the behaviour of one of her cousins at the time. Ms Haining told Susan that she could come in at any time to talk. (Witness statement of Rhona Haining, 22 July 2002)

On 11 February 1999 Ms Haining sent a single hand written facsimile, on Ministry of Justice letterhead, to the 'Duty Officer, Family and Childrens Services'. It contained the following message:

*'Can the DUTY OFFICER or OFFICER responsible for SUSAN ANN TAYLOR date of birth 30.07.84, contact me as soon as possible in response to the Fax I sent of 4.02.99 to which I have had no reply.'* (Documents tendered, 25 March 2002:3)



### **3.2.2 The responsible officer at DCD**

Gordon Cole commenced his employment with DCD in March 1998 on a 12 month Aboriginal Service Delivery Officer Traineeship program in the NorthEast Metropolitan Zone, based at the Midland office. Six months into that traineeship, Mr Cole was directed to the Lifeskills Team to become a Case Manager. Around October/November 1998 he was allocated the Spratt/Mairu family.

On 19 January 1999 Mr Cole had received a facsimile from the Crisis Care Unit (CCU) at DCD advising that Susan was in Northam and that she had been picked up by police because she was sniffing solvent. Mr Cole discussed Susan's circumstances with Ms Poland on 22 January 1999, and with both Ms Poland and Mrs Mairu on 28 January 1999. Through those conversations he became aware of Susan's allegations with respect to Richard Bropho of 4 January 1999. He did not become aware, however, of the detail of those allegations. In his evidence, he said that he did not consider it necessary to attempt to find out for himself that level of detail. In that latter conversation (which encompassed most of the grandchildren and not just Susan) Ms Poland told Mr Cole that Susan needed counselling and was suicidal, placing her at risk. Mr Cole said that he asked Ms Poland for a report about both the family and Susan specifically, but did not ever receive such a support.

Mr Cole received the facsimile of 4 February 1999 on that day, and placed it on file. He said he did not do anything specific in response to that facsimile because it confirmed information he already knew. On 11 February 1999 Mr Cole had a telephone conversation with Ms Cecily Johnson, a clinical nurse at the Derbarl Yerrigan health service, who told him that Susan was, then, impossible to locate.

On the morning of 12 February 1999 Mr Cole found the facsimile of the previous day in his pigeonhole. Very shortly thereafter he had telephoned for Ms Haining and was told by the receptionist that Ms Haining was out of the office and would be returning at 4:45 pm on that day. He asked the receptionist to let Ms Haining know that he had called, and that he would call again on 15 February 1999.

It was on 15 February 1999 that Mr Cole was advised by a colleague of Susan's death.

### **3.2.3 Conclusions with regard to those communications**

Ms Haining, in her statement, said that she had reviewed relevant documents on the DOJ case file and had no specific recollection of the faxes of 4 February 1999 and 11 February 1999, nor any phone calls between that period. She said that she believed she would have taken accurate notes of the situation. She said further, however, that she did think the alleged pregnancy and alleged sexual abuse of Susan would have been key issues for her and that she would have been trying to link Susan with services from DCD to assist her. (Witness Statement of Rhona Haining: 22 July 2002)

Mr Cole testified that, with respect to the 4 February 1999 fax, he took it as confirmation or information that was already known, and filed it accordingly. He said that if the fax had contained a specific request he would have acted upon that. (Transcript of evidence of Gordon Cole: 25 March 2002)

The text of the two page facsimile message does bear out that position. There is nothing in the content of the documentation which contains a specific request. It is described on the hand written coversheet as a 'referral'. The body of the document reads as a somewhat formal communication of information. Consistently with that characterisation, the recipient is invited to call Ms Haining if he or she has any queries. Nothing specific is respected of Mr Cole—he is simply specified on the coversheet as someone who *'knows the family history'*.

The language of the 11 February fax did suggest greater urgency and the need for more immediate contact. Mr Cole correctly recognised that at the time, and that it was appropriate for him to respond and respond quickly. Most unfortunately, Ms Haining was not present when Mr Cole telephoned to speak to her.

Other particular aspects of the surrounding circumstances are important.

It is difficult to say with any certainty that if Mr Cole had responded to anyone at the DOJ earlier than 12 February 1999, any particular contact with Susan would have occurred. Her highly mobile and transient state at that time renders any such suggestion highly problematic. Moreover, subsequent to the appointment which occurred at Ms Haining's office on 9 February 1999, no other particular appointment had been scheduled with Susan and even if it had been, there would have been a reasonable likelihood that she would not have attended.

Moreover, when Ms Mairu raised certain issues with the Ombudsman concerning service delivery prior to Susan's death, she commented that Mr Cole was *'the only one who was interested in helping'* her family (DCD Supplementary Submission, 7 February 2002). Indeed, other direct evidence from Mr Cole reinforces the level of his commitment to assisting the family. The manner of Mr Cole's giving of evidence was also important.

The Inquiry considers that, in examining the circumstances, it is important to have regard to the entire context of what took place between representatives of DCD and DOJ prior to Susan's death. The full sequence of events, viewed against the background of the particular roles played by the individuals involved, is necessary for a full and proper understanding.

Taking into account all of the relevant circumstances, the Inquiry concludes that no finding adverse to any individual ought to be made.

### **3.3 Other aspects of DCD's Case Audit**

The Case Auditors found that, with respect to Susan's case:

- There was no negligence on the part of any staff involved in the case
- The family support approach was appropriate
- There may well have been earlier statutory intervention in relation to the younger children
- There is minimal reference to Susan in the files, the most significant being the facsimile received from the Department of Justice a week before, which did identify risks in relation to Susan

- There were many agencies involved with the family, however, no agency had a clear leadership role in relation to this family
- The lack of sharing information between agencies was an issue
- The department had a positive working relationship with the SVNC until mid-1996
- Denial of access to the community was widespread
- That a Memorandum of Understanding and related protocols be developed with the SVNC for addressing case management issues
- Following the death of Edna Bropho in June 2000 there appears to have been silence from the community in relation to concerns for the well being of anyone from the community (DCD Initial Submission Attachment 17, 5 March 2002)

Some of those findings warrant particular comment by the Inquiry. The conclusion that there was no evidence of negligence on the part of any staff involved in the case, consistently with the conclusion reached at 3.2.3 above, is endorsed. It is manifestly the case that difficulties arose, or were reinforced, in government service delivery to the Spratt/Mairu family by reason of the proliferation of agencies involved with no agency taking on a clear leadership role, together with the lack of information sharing.

In her memorandum of 7 February 2002 to the Minister for Community Development, Woman's Interests, Seniors and Youth, the acting Director General of DCD said that she believed *'there must be serious concerns about the Department's failure to respond to two faxes from a MOJ officer in the last days of Susan's life'*. She later observed that *'while Susan was apparently almost impossible to locate, and her pattern of solvent misuse was by then well established, the question remains, given the failure of the Department to respond, whether action(s) could have been taken which would have prevented her death on 12 February 1999'*. (DCD Initial Submission, 5 March 2002:1)

The acting Director General was right to raise those issues as she did. Having undertaken the detailed analysis required of the circumstances by the first term of reference, the Inquiry is satisfied that it would be inappropriate to assert that any particular actions could (or indeed ought) to have been taken *'which would have prevented'* Susan's tragic death. Such a conclusion would, in the Inquiry's view, fail to have sufficient regard to:

- The sheer complexity of service delivery to the Spratt/Mairu family
- The full text and context of the facsimile messages of 4 February and 11 February 1999
- The nature of the role played by Mr Cole in assisting the Spratt/Mairu family, particularly when seen in light of Mrs Mairu's appreciation for his work.

The Inquiry concludes, however, that the tragic circumstances giving rise to Susan's death do warrant an examination of certain issues intrinsic to the work of DCD.

**139. The Inquiry recommends:**

- **There be ongoing monitoring of case loads by Department of Community Development of trainees and other Case Officers, as to both the quantity and intensity of those case loads<sup>3</sup>.**
- **The role of the Duty Officers within the department be reviewed.**
- **Urgent consideration be given to the most appropriate means by which difficult/complex cases, such as those disclosed by the first Term of Reference, be addressed through effective, whole of government collaboration, with one particular agency being identified, from case to case, to adopt a lead agency role<sup>4</sup>.**

#### **4. SUBSTANCE ABUSE**

The State Coroner observed that young persons who are involved in paint and solvent abuse are vulnerable and likely to become victims of sexual abuse and that they are also likely to live a high risk lifestyle which places them at risk of a number of diseases and infections. He also suggested that the health issues involved cannot adequately be addressed by one agency and that there is an ongoing need for inter-agency cooperation in dealing with the problem. (Hope: 2001)

The Inquiry has been cognizant of the importance of substance abuse as one of the most significant in the complexity of factors underlying family violence and child abuse. It has been alive to the views of witnesses and others with whom it has consulted, not only with respect to the first term of reference.

A considerable body of evidence and other material reinforces the concerns highlighted by the Coroner. Some of the witnesses who made reference to the prevalence of substance abuse, in particularly in the Midland area but with reference to other parts of the metropolitan area, were Gail Laing, Lee Peters, Ann Leishman, Teresa Tagliaferri, Danny Ford and Donna Birch.

**140. The Inquiry finds that substance abuse is a widespread occurrence amongst Aboriginal children in many parts of the metropolitan area and particularly in the Midland area. Such substance abuse:**

- **has a devastating affect on the physical, intellectual and emotional wellbeing of young lives.**
- **creates considerably vulnerability to, particularly, sexual offences.**

Even on the basis on material received with a particular view to addressing the first term of reference, the Inquiry would be satisfied that there is a need for urgent strategic action to be taken to address substance abuse, with a lead role being taken by the department of Health DOH. This issue is developed further at Chapter 7 with respect to particular services provided by DOH.

<sup>3</sup> This may be compared with a recommendation at 3.3.1 of Chapter 8, which deals with the slightly different concept of developing a method of the assessment of workload to determine acceptable caseload limits.

<sup>4</sup> Chapter 17, at 1.1.3(b) places a similar emphasis as to the importance generally of effective case planning and management.

## 5. ISSUES INVOLVING ACCESS TO SWAN VALLEY NYUNGAH COMMUNITY

### 5.1 Examination of legal issues

The Inquiry has received a variety of material, including certain pieces of legal advice, dealing with aspects of the status and use of the land vested in the SVNC Aboriginal Corporation and circumstances attending entry onto those premises. Based on that material, and reinforced by the Inquiry's independent research, the following observations are made.

The relevant land, having an area of approximately 8.8 hectares, is set apart as a public reserve pursuant to section 29 of the *Land Act 1935* for a designated purpose of '*use and benefit of Aboriginal inhabitants*'. The land is vested in the Swan Valley Nyungah Community Aboriginal Corporation for that same designated purpose pursuant to section 33 (2) of that Act. The land, according to the Crown Reserves Index, is designated as a Class "C" Reserve.

The Swan Valley Nyungah Community Aboriginal Corporation is incorporated pursuant to the *Aboriginal Councils and Associations Act 1976 (Clth)*. The Rules of the corporation provide certain objects for which the corporation is established including:

- Protecting the health and welfare and working for the benefit of all Nyungah Aboriginal people
- Upgrading the living conditions of Aboriginal people
- Supporting and protecting Aboriginal culture
- Living in harmony with the whole white society
- Seeking peace, understanding and respect.

It is clear to the Inquiry that the land is used by members of the community as a residential area for its members. That use plainly falls within the purpose for which the land was originally designated and vested, namely the '*use and benefit of Aboriginal inhabitants*'. That residence creates sufficient possession of the land to confer on the SVNC (or perhaps, more accurately the body corporate as registered under the applicable Commonwealth legislation) certain rights to control entry of persons onto the land.

As a general legal proposition, a civil action for trespass to land lies for interference with an occupier's actual possession of that land. The relevant title required in that regard is possession, not ownership, and a possessory title will prevail against everyone except a person who has a superior title.

### 5.2 Entry onto the premises by government officers

It is when one moves from the generality of that position to the specifics of circumstances where government service providers may wish to enter onto the land that complications can arise. Entry on land without a licence, express or implied, will constitute a trespass unless a right of entry is

given by statute, or at common law. Generally, police officers have an implied licence to go onto land in the conduct of their lawful enquiries<sup>5</sup>.

The precise circumstances in which it can be said that police officers are authorised to enter upon any land, so as to interfere with an occupier's actual possession, are not comprehensively dealt with in any Western Australian legislation. It is necessary to have regard to the common law. A number of authorities at the highest appellate level in this country have dealt with this difficult question<sup>6</sup>.

One example of where the position seems clear is the right to enter upon premises, using force if necessary, after requesting and being refused admission, for the execution of a warrant, such as a search warrant issued pursuant to section 711 of the *Criminal Code 1913*. Another is an entry to directly prevent the commission of a criminal offence, or making an arrest if a criminal offence has apparently been committed and the accused person has been followed to the premises.

It is also to be noted that section 146A of the *Child Welfare Act 1947* empowers a Justice of the Peace or Magistrate to grant an order authorising certain persons to enter and inspect premises and, if need be, investigate and apprehend a child suspected to be in need of care and protection. Such an order gives rise to an implied licence of the kind described.

The Inquiry considers it unnecessary to attempt any kind of exhaustive analysis of the circumstances in which a public servant, police officer, or other government officer will be permitted to enter upon land so as to interfere with an occupier's actual possession.

### **5.3 Access to the SVNC and other Aboriginal communities**

The solution to this dilemma lies, in the Inquiry's view, through a means other than legal analysis. It appears that there will always be potential, particularly in subtle cases, for arguments to exist as to whether a government officer is truly entitled to enter upon premises on an Aboriginal community (whether the SVNC or another of the approximately 290 Aboriginal communities in Western Australia). The guiding principle, in the interests of sensible relations between government service providers and Aboriginal communities, lies in negotiation, understanding and mutual respect and trust.

Indeed, the submission of the SVNC to the State Coroner appeared to recognise the importance of these principles in the following way:

*Government Departments and Community Service Organisations ought to recognise that Aboriginal communities are entitled to have their rights to personal privacy recognized ... In circumstances where the unique nature of a community suggests that service providers and guardians of law, order and welfare, require special arrangements to gain access to a community in order to perform their functions and members of the community require their services, then such agencies should negotiate a protocol for entry which satisfactorily allows them to perform their necessary or desired functions, while respecting the rights of members of the community (Hope: 34-35)*

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<sup>5</sup> *Halliday v Neville* (1984) 155 CLR 1

<sup>6</sup> See, particularly, *Plenty v Dillon* (1991) 171 CLR 635 and *Coco v The Queen* (1994) 179 CLR 427

That submission referred to certain precedents set between the SVNC and WAPS in that regard.

On the material directly before the Inquiry, government agencies have consistently acted in good faith and pursuant to proper statutory or other legitimate government functions in seeking entry to the SVNC. There are no circumstances, of which the Inquiry has heard evidence, where it could be said that a government officer was acting inappropriately in attempting to enter the premises, or such as to fail to show sufficient respect to the community and its members.

In her evidence to the Inquiry, Donna Birch, a Senior Aboriginal Service Officer in the North Eastern Metropolitan Zone of DCD, spoke of her diligent attempt to progress a Memorandum of Understanding with the SVNC to deal with issues of access. As at Feb 2002, that Memorandum of Understanding had not been finalized, and the Inquiry has heard of no suggestion to the effect that such finalisation has taken place. (Transcript of Evidence by Donna Birch, 25 March 2002)

**141. The Inquiry recommends that urgent steps be taken to develop Memorandum of Understanding between the Swan Valley Nyungah Community and those government agencies which may reasonably seek access to that community. In developing those Memoranda of Understanding, the conclusion of the Inquiry as to the good faith of service providers and their legitimate exercise of government function, ought be taken into account.**

## 6. OTHER ISSUES

Some other issues arising, directly or indirectly, from the Coroner's report are worthy of more concise treatment.

- The low frequency of reporting of allegations of child abuse is a most important and regularly recurring theme throughout the Inquiry's work. Aspects of this issue are dealt with at chapters 7 and 9.
- Issues concerning sexually transmitted infections, their proliferation, and the relative merits of mandatory reporting, are likewise a highly important issue. They are dealt with in chapters 6 and 18.
- Important issues arise as to the treatment of Susan from a public health perspective. Although not directly raised by the Coroner in his decision, those issues do illustrate another important dimension of service delivery to Susan and her family. The constraints on the Inquiry's time have precluded a full and detailed analysis of those issues insofar as they affected Susan and her family. It would, in any event, not be in the public interest for the Inquiry to detail relevant health and medical issues of those individuals.
- Particular assertions, traversed by the Coroner at various parts of his reasons for decision, against individual alleged perpetrators are, of themselves, beyond the scope of the Inquiry's Terms of Reference. The Inquiry reiterates the observations made in this regard at Chapter 1 of this report. It is to be noted, nevertheless, that evidence from police officers referred to an awareness by WAPS of allegations made against certain individuals, but an inability to progress those allegations in the absence of sufficient admissible evidence. The Inquiry emphasises the importance of the sufficiency of that evidence being the subject of ongoing review.

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*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • Violence Directions for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • 'Black sex-abuse whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse of children in the Kimberley' The West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## The way forward

### SECTION 4

# SECTION

#### **Chapter 15**

*Best practice in government agency responses to family violence and child abuse*

#### **Chapter 16**

*Oversight of the family violence and child abuse service system*

#### **Chapter 17**

*A community focused systematic response to family violence and child abuse*

#### **Chapter 18**

*Overview of the service system*

#### **Chapter 19**

*Deoxyribonucleic acid testing (DNA)*



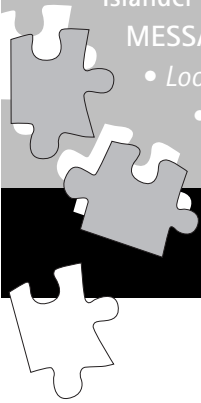
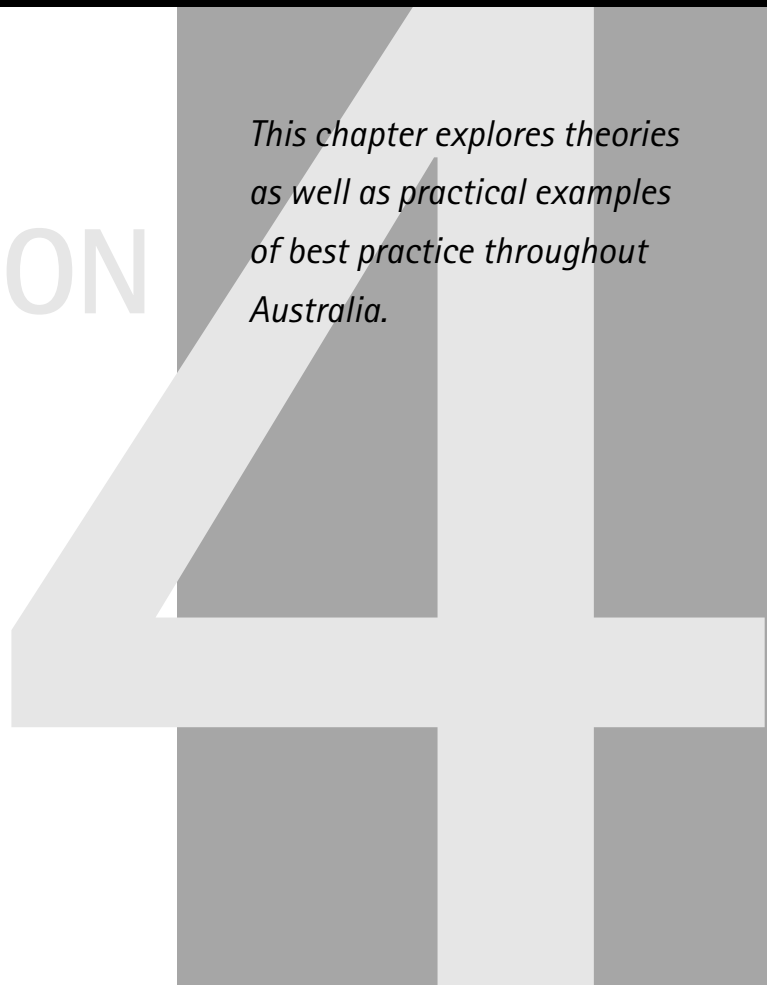
*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • *HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999* • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Tough Young Crack Up Violence Directions for Australia* • *VIOLENCE IN INDIGENOUS COMMUNITIES* • *'Black sex-abuse whistleblower axed'* *The Weekend Australian 22-23 December 2001* • *'Abuse clips edge of West Australian 1 November 2001* • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • *ACT NOW - MESSAGES FROM RESEARCH* • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

**Best practice in  
 government agency  
 responses to Aboriginal  
 family violence and  
 child abuse**

**CHAPTER 15**

**SECTION**

*This chapter explores theories  
 as well as practical examples  
 of best practice throughout  
 Australia.*



**CHAPTER 15**

*Best Practice in Government Agency Responses to Aboriginal Family Violence and Child Abuse*

This chapter examines research and successful strategies to inform the development of potential solutions and best practice principles for governments attempting to address the issue of family violence (particularly child sexual abuse) in Aboriginal communities. There is no panacea for the problems of family violence, but there are clear themes evident in the available literature produced by Australian and overseas indigenous commentators and practitioners.

A number of barriers need to be addressed if interventions are to be effective.

Firstly, prevention and support activities need to be systematic and multi-faceted. The Inquiry has examined the many factors that can contribute to the perpetration of violence. These interact in highly complex ways, and will not be amenable to simple, single-focus, short-term interventions. (Tremblay & Craig 1995)

Secondly, effective solutions will require a 'sea-change' in government policies and practices. There is a need for a philosophical change across the whole of government. The focus of government agencies must not, in the first instance, be on their own structures and programs. Rather they must look to the communities they serve and be prepared to devolve power and decision making to those communities and play a supportive role.

Thirdly, Aboriginal people must be assisted to take responsibility for their communities and the prevention of family violence. The range of problems discussed previously meant that a realistic program of support and skill enhancement must be developed so that Aboriginal people can play their part in developing solutions.

## **1. BARRIERS TO CHANGE**

A number of barriers to reducing the level of violence in Aboriginal communities have been identified in the existing literature.

### **1.1 On-going paternalism in government policy**

Indigenous child welfare policy is still based on the premise that the government should decide what is best for Indigenous people (Sweeney 1995). The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report states that '*Indigenous people can no longer live under a system that defies and inhibits autonomy and self-determination.*' (Robertson 2000: xi)

In the past, government policies have often been misguided and paternalistic, designed to '*protect*' or '*assimilate*' Indigenous people. These have '*damaged or destroyed social systems integral to the healthy functioning of their society.*' (Robertson 2000: 109)

Professor Judy Atkinson, head of the college of Indigenous Australian Peoples at Southern Cross University, noted that '*without reform, the criminal justice system cannot resolve the complex factors contributing to the violence which is increasing and intensifying.*' (*The West Australian* 27 July 2002: 46)

More recently, while many programs implemented by government have been well-intentioned, they have not worked because they were developed and implemented from a Western paradigm (Robertson 2000). Insufficient input from Indigenous people has led to political and social vulnerability, powerlessness and bureaucratic processes governing their lives.

Robertson gives a clear message that *'Indigenous Communities must be afforded the opportunity to be the architects of their own solutions ... so that they can be active participants in initiatives that affect their lives, and not silent recipients ... time is overdue for politicians and service providers to hear and acknowledge the voices of Indigenous people.'* (Robertson 2000: 111)

## 1.2 Services that address the violence

The Australian literature demonstrates a lack of appropriate violence prevention services, and it is quite difficult to locate 'best practice' programs that address Aboriginal family violence.

### 1.2.1 Inappropriate models

Much of the literature that is available relates to Aboriginal issues and programs in Queensland. In the Fitzgerald report it is noted that there are few services in the Cape York communities that can address violence and substance abuse; provide programs for perpetrators; or provide trauma and grief counselling. Further, those services that are available, are based on service models that are not accessible or relevant to Indigenous people in Cape York, having *'arisen out of desperation'* and either provided on a voluntary basis or funded through non-recurrent grants or pilot initiatives (Fitzgerald 2001: 20). For example, one such service, the 'Healing Our Families: Apunipima Family Violence Advocacy Project' has closed due to a lack of funding (Cripps, personal communication). Fitzgerald believes that the lack of assistance *'compounds stress and exacerbates the likelihood of violence.'* (Fitzgerald 2001: 19)

### 1.2.2 Inadequate funding

Again addressing North Queensland issues, Ketchell and Sweetman note that *'the money set aside to combat Aboriginal domestic violence across the entire community this year would not be enough to build two women's shelters'* (Ketchell & Sweetman 2001: 9). Exacerbating the problem, Ketchell and Sweetman report that two key services for victims of domestic violence in North Queensland Aboriginal communities closed in the three months prior to the article's publication (1/7/02). One of these programs which was administered by Apunipima Cape York Health Council and serviced the entire Cape York region, was closed when its \$553,000 three year funding ran out.

The findings from a recent national audit of Australian child abuse prevention programs confirms the scarcity of family violence prevention programs for Indigenous people (Tomison & Poole 2000). The audit found that only 16 per cent of over 1800 identified Australian child abuse prevention programs were reported to be targeting Aboriginal and Torres Strait Islander (ATSI) people. However, more detailed analysis revealed that only one quarter of these identified programs had been specifically developed or tailored for Indigenous people – the majority of programs were actually generalist programs servicing a range of clients. Tomison and Poole note that as Indigenous people *'often prefer to attend*

*services offering culturally relevant programs, staffed and managed by their own communities'*, the failure to adapt or develop services for Indigenous needs is a significant problem. (Tomison & Poole 2000)

Like most funded programs, funding duration is usually for a maximum of three years under state and Commonwealth government grants, with no commitment for a continuation of funding. Thus, by the time programs are established, have developed effective links with the community and community organisations, often only 18 months may remain in which to actually offer services, prior to service closure. (Cripps, personal communication)

Funding concerns are echoed by Fitzgerald, who states that the scarce but complex web of services that respond to family violence in Indigenous families in Cape York have developed through *'ad hoc allocations of Commonwealth and State funds'*. He goes on to say that *'current funding arrangements are complex, highly fragmented, and may in some cases cause competing and conflicting priorities.'* (Fitzgerald 2001: 31)

### **1.2.3 Lack of coordination**

There is little coordination between funding sources that include Commonwealth and state grants and subsidies, and sources of revenue generated by the communities. A 'silo' mentality is often present which restricts the cooperation between agencies and collaborative work. (Fitzgerald 2001)

Robertson also identifies issues around the *'confused and contradictory legislative responsibilities'* that is further complicated by the three levels of government, and a *'serious lack of inter-governmental collaboration and cooperation which has led to duplication of services and wastage of money'* (Robertson 2000: 109). For example, in Queensland there was an annual changing of priorities of funding in the 1980s which meant that there was no sustainable development in Indigenous communities. (Robertson 2000)

It has been argued that the lack of an accepted, sustainable service system has actually led to an increase in communities' problems and levels of violence. (Robertson 2000)

## **1.3 Mistrust and uncertainty**

A range of issues have been identified which relate to the failure of the present system and a resultant loss of confidence by Aboriginal people, leading to a failure to use some services when they are available. Robertson believes that there has been an inability to recognise the need for restorative and reparative processes to counteract the effects of historical wrongs. The lack of restorative processes is believed to lead to some reluctance on the part of Aboriginal families to seek assistance. (Robertson 2000)

Such feelings are exacerbated when services have been provided, but where they fail to take effective action. For example, Robertson notes that there was

*... an alarming number of cases where there was a clear breach of legislative responsibilities on the part of both Queensland Police and the Department of Families, Youth and Community Care.* (Robertson 2000: 185)

Thus, in circumstances where no response, or a very limited intervention occurs, people are left to cope with violence without assistance. Such responses have increased the mistrust of governments and services providers by the Aboriginal community.

Pat O'Shane notes that *'Aboriginal victims of violence do not see the criminal justice system as a place to get satisfaction.'* She further suggests the criminal justice system is not the avenue *'where they might seek justice and relief from the daily attacks upon their personal and physical integrity.'* (*The West Australian* 27 July 2002: 46)

With particular reference to the sexual abuse of children in Aboriginal communities, Greer draws attention to the following issues which present as obstacles to intervention in relation to sexual assault:

- Given past poor relationships with the police, reporting may be viewed as a betrayal
- Even when a report is made there may be a feeling that nothing will be done anyway
- Concern about the criminal justice system and the possible imprisonment of offenders. (Greer 1992)

Reporting family violence generally is often a problem due to:

- a lack of information about the legal process and an unwillingness to seek legal advice (Fitzgerald 2001)
- lack of access to transport or telecommunications in remote communities, thus making it very difficult to leave a violent relationship (Fitzgerald 2001)
- the fear of their partner dying in jail. This is a justifiable fear of women particularly in communities in Cape York, parts of Northern Territory and Western Australia, where tribal law is still practiced and respected. Apart from the trauma caused by the death, such a death in custody would be viewed as being the women's fault and she would be subject to payback from his family which may result in her death or a significant injury. (Fitzgerald 2001, O'Donoghue 2001)

Blagg identifies a problem for Aboriginal women in relation to the difficulty they have in translating their requirements into the language demanded by government agencies. Rather than government involvement, here the solution may be to support the community infrastructure, such as Aboriginal women's groups, by giving them the resources (and professional support) to address the community problems. (Blagg 2000, reporting the Aboriginal Women's Task Force and the Aboriginal Justice Council 1995)

Finally, the Aboriginal Women's Task Force and the Aboriginal Justice Council (1995) noted problems in relation to policing and justice systems and the ability to protect women on remote communities in Western Australia. They identified a lack of police services, racist attitudes of some police, the failure of the police to respond rapidly and appropriately and the inability of all aspects of the criminal justice system to deal with family violence in a culturally sensitive manner. (Blagg 2000)

It must be noted that this research is now seven years old and significant activities have commenced during this time.

## 1.4 The need for action

An Aboriginal & Torres Strait Islander Commission (ATSIC) Media Release in February 2000 said that

*... there have been far too many Government reports on Aboriginal affairs which have been written and simply allowed to gather dust in a filing cabinet. Talk is cheap. It is time for action and we are calling on the State and Federal Governments to respond with enough financial resources to ensure we can adequately tackle domestic violence in our communities.* (ATSIC 2000)

This view is held by other Aboriginal commentators. Robertson points out that Aboriginal family violence was recognised as a top priority last year during the media debate surrounding Geoff Clark (ATSIC Chairperson) and family violence, however, as yet nothing has happened on the ground to address that violence (Robertson 2002). Fitzgerald states that

*... communication between outsiders, including public officials, and the people in the communities is impeded by lack of interest, cultural barriers and justifiable resentment at the constant outside research and debate about their lives without any noticeable improvement in their circumstances.* (Fitzgerald 2001: 52)

The general perception is that there is a need to focus on actual service development 'on the ground', rather than re-assessments of the problems of Aboriginal communities.

## 1.5 Worker trauma

Given the extent of family violence in Indigenous communities, it is likely that child protection workers and other service providers are experiencing trauma from their work (Stanley & Goddard 2002). Recently published research has shown that traumatised workers who also feel isolated in their work have a reduced ability to protect children who have been severely abused. (Stanley & Goddard 2002)

Cripps reports that this is a particular problem in Aboriginal communities as the workers are often in great danger as they live and work in the same community (personal communication). Workers also have to contend with the fact that an offender may be a member of their own family or a community Elder and there may be conflicts of interest and confidentiality to resolve before any intervention or support can be undertaken.

Further, many workers are severely overworked and suffer from burnout, thus making them less able to cope with other forms of stress (Stanley & Goddard 2002). Memmott and colleagues identify both a personal safety risk in relation to violence intervention workers and the problem of stress and burnout (Memmott et al. 2000). For some time a number of Aboriginal workers have also been requesting further professional training and support from government services. Unfortunately, this request has not always received a response. (Tomison, personal communication)



## 1.6 The possible conflict between the welfare of the Aboriginal child and the welfare of the Aboriginal community

A major issue in child protection (and one that is commonly overlooked) is the philosophical conflict between family preservation and child protection. Preserving the family and protecting the child may be incompatible aims in some cases of child abuse (Goddard 1996). It would seem that this problem is magnified in the situation of Aboriginal children, where there is an additional overlay of complexity associated with the clash of two cultures – Aboriginal and non-Aboriginal. That is, there can be a conflict between protecting Aboriginal children from abuse and allowing the Aboriginal community cultural independence and self-determination. Thus, there may be conflict between *'the best interests of the community'* and *'the best interests of the child.'* (Lynch 2001: 506)

This conflict is addressed by Lynch, who describes the problem in relation to Australian Aboriginal people and Canadian First Nation Peoples, and makes some suggestions as to how the issue should be viewed. Lynch argues that the best interests of the child principle is recognised in the United Nations Convention on the Rights of the Child (UNCROC), interpreted in a landmark case, *King v Low*, in Canada.

Lynch notes that *'the dominant consideration to which all other factors must remain subordinate must be the welfare of the child'* (Lynch 2001: 507). Yet to understand the best interests of an Aboriginal child necessitates an exploration of the *'fundamental links between culture and identity and the concomitant importance of family and community to the meaningful existence and survival of First Nations and Aboriginal children.'* (Lynch 2001: 508, 509)

The dominant court system individualises people, abstracting them from their family, cultural and racial contexts, in contrast to viewing children as part of a community identity – a perspective held in indigenous culture. Thus conflict may arise as:

- in both First Nations and Aboriginal communities, responsibility for child welfare and nurturing often resides with an extended family or kinship network and the community as a whole
- mainstream law entails the notion of stability of residence, whereas Aboriginal communities may have a practice of mobility of children between responsible adults
- there is also a risk that in considering Aboriginal and First Nation culture, it will be *'frozen'* and conceived in static terms relating to the origin of the cultures, traditions, norms and customs, rather than as a dynamic and fluid culture
- there is a problem that the law will *'construct'* the culture, by the law shaping and defining it.

Thus, there is a risk that much *'contemporary child welfare law and practice is aimed at "normafication" - assimilation in a veiled guise as the values of the dominant group are imposed on First Nations and Aboriginal peoples.'* (Lynch 2001: 523)

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<sup>1</sup> Citation not available

### 1.6.1 The best in terms of Aboriginal children

Lynch believes that the Aboriginal child's need for safety and security must receive priority.

*Relationships that damage the integrity of a child cannot be justified by a child's identity interests: membership in a community, or involvement in identity-related practices or beliefs, does not eliminate a concern for the dignity of the child.* (Lynch 2001: 523)

The protection of the child should not mean that cultural and identity needs are not also met.

US legislation in relation to Indian child welfare, requires that '*meaningful recognition and application of the rights and interests of an Indian child in his or her community, and vice versa*' (Lynch 2001: 537). Thus, usually the First Nations or Aboriginal community itself will be best positioned to determine whether a child has been neglected. Placement of a First Nations or Aboriginal child should take place only on the advice, recommendation and instruction of that child's Indigenous community.

Indigenous communities need to be funded and equipped to properly attract, assess and train alternative First Nations or Aboriginal carers (Lynch 2001). Lynch quotes Kline who says Indigenous communities must '*be empowered, financially, politically, and otherwise, to develop their own child welfare services outside the framework of existing ... schemes*' (Kline 1992: 216)

Sutton expresses the view that in Australia at present there is evidence of the conflict between child welfare and Aboriginal rights to self-determination. He states that '*more neglect is tolerated for some Australian children than for others, notably Aboriginal children in the more isolated settlements*'. Sutton states that in a community '*enjoying "self-determination" he observed a young woman in advanced pregnancy staggering along a road with a can of petrol to her face*' (Sutton 2001: 141)

## 2. RECOMMENDED SOLUTIONS

The literature proposes a number of solutions to the high levels of family violence and the disproportionate number of Aboriginal children who are involved with child protection services. The solutions range from a complete re-writing of the model of child protection used with Aboriginal communities, to specific suggestions about best practice intervention. The underlying theme throughout this literature is the need for greater involvement and ownership by Aboriginal community members in child protection and anti-violence policy, program design and implementation. The only variation across the literature relates to the extent of the involvement.

### 2.1 Prevention

Until recently, most child abuse prevention strategies have focused on addressing child, parent and family-related factors that are associated with a greater propensity for child maltreatment, with scant attention paid to the societal and community factors that cause harm to children, or that impact on the lives of children and families. (Hay & Jones 1994; Korbin & Coulton 1996; Reppucci, Woolard & Fried 1999)

The eminent US psychologist James Garbarino has argued that there is currently a toxicity of the social environment similar to the toxicity of the physical environment, and that the contemporary social environment, wider society, local communities and neighbourhoods, is particularly toxic for children. Garbarino identified a series of toxic factors including violence in all its forms, poverty, unemployment, poor housing and an under-resourced education system, that may be presumed to lead to an increased potential for abusive or neglectful behaviour in families, or higher incidences of other social ills. He asserted that the management of socially toxic environments should be analogous to the management of the physically toxic environment – requiring a similar, if not greater, level of perceived urgency by the public. (Garbarino 1995)

To be truly effective, consideration must therefore be given to the means to remedy the socially toxic factors that underpin child maltreatment and other family violence via the adoption of community or neighbourhood and society-wide approaches (Parton 1985; Seagull 1987; Limber & Hashima 1992; Harrington & Dubowitz 1993; Rayner 1994; Thompson 1994; Cox 1997). Greater recognition that *'programs focused solely on the individual seem destined to failure if they do not take into account community context'* (Reppucci et al. 1999: 411) has led to the perception that child abuse and neglect cannot be overcome through *'administrative, legal, technical and professional measures which leave social values, structures and dynamics unchanged.'* (Gil 1979:1)

Concomitantly, there has been a move to develop multi-level prevention efforts that typically maintain an individual or family-level component, but which also address the socio-cultural context within which children and families live. (Cox 1997; Reppucci et al. 1999)

## 2.2 Risk and resiliency

Researchers investigating the risk factors that may heighten children's vulnerability to various social ills, such as child abuse and neglect, have consistently identified some children who are able to achieve positive outcomes in the face of adversity – children who are 'resilient' despite facing stressful, high risk situations. (Kirby & Fraser 1997)

Resilience appears to be determined by the presence of risk factors in combination or interaction with the positive forces (protective factors) that contribute to adaptive outcomes (Garmezy 1985, 1993). The interaction of risk and protective factors occurs at each stage of child development and within each ecological level (that is, it is affected by a child or parent's internal characteristics, aspects of the family, and of the wider social environment). (Kirby & Fraser 1997)

Garmezy identified three main types or constellations of protective factors which contribute to the level of resilience or positive outcomes that are achieved. (Garmezy 1985)

- *Dispositional attributes of the child* – the personal characteristics or skills that may foster resilience, such as rapid responsivity to danger, precocious maturity, the use of relationships for survival, the conviction of being loved, and a sense of optimism. (Mrazek & Mrazek 1987; McQuaide & Ehrenreich 1997)
- *Positive family relationships* – resilience is associated with, among other factors, high levels of parental monitoring and high levels of support from at least one parent, a history of good parenting, effective interpersonal communication between family members, and low socio-

environmental stress. (Herrenkohl et al. 1994; Fantuzzo & Atkins 1995; McCubbin et al. 1997 Resnick et al. 1996; Pharris, Kirby & Fraser 1997; Pharris, Resnick & Blum 1997)

- *External social supports from the community* – good social and cultural supports, a strong religious affiliation, few stressful life events, positive life expectations, and ongoing opportunities for positive connections from families, schools, and communities are protective factors associated with more positive developmental outcomes. (Langeland & Dijkstra 1995; Benard 1993; Vinson et al. 1996; Pharris et al. 1997)

These findings reinforce the importance of the socio-cultural context of the child's situation and the ecological nature of child development, vulnerability and resilience.

### 3. ALTERNATIVE MODELS

#### 3.1 Alternatives to the present criminal justice system

With regard to domestic violence, Blagg states that ATSI communities have a clear preference for change strategies that do not require the violent offender to leave the family. He recommends that, wherever possible, intervention should aim to divert Aboriginal offenders from unnecessary contact with the justice system. Emphasis should be given to developing ways to achieve family and community healing. Talking largely about domestic violence, he says that *interventions should:*

- *be delivered by Aboriginal people and organisations*
- *offer culturally relevant support services*
- *respect cultural and family obligations and ties*
- *assist Aboriginal people in determining longer term solutions.* (Blagg 2000: 1)

Robertson draws attention to the importance of providing funding for community groups to develop, trial and assess programs which could be alternatives to sentencing options for lesser offences. It is noted that this has been done in Australia – particularly the academic work of Blagg in WA and the practical applications in Mt Isa, Palm Island and Brisbane (Robertson 2000). It would appear that the ability to offer an alternative to the criminal justice system, such as a system which returns to traditional Indigenous laws, would address issues around a failure to acknowledge violence due to issues of shame and the loss of confidence in present government agencies and processes.

Aboriginal Magistrate Pat O'Shane has reiterated comments made in Atkinson's 1990 book *'Finding the Dream'* that prison is not that answer in domestic violence situations. O'Shane suggests that *'men who abuse and batter women should be made to go on courses to learn how to manage their lives and respect others'* (Koori Mail 25 July 2002: 2). She said *'courts should promote a healthy, happy community by making offenders go through programs to help them build self respect and repair their lives and relationships'* (Koori Mail 25 July 2002: 2). She continued by stating that prisons are a breeding ground for *'violence and misogyny'* and they should be considered as a last resort and only for serious or repeat offenders in sentencing. (Koori Mail 25 July 2002: 2)

Fitzgerald acknowledges that there are a number of emerging models of practice addressing family violence, and that many of these reject the criminalisation of the violence as the sole strategy. He reports that Indigenous communities are currently exploring new approaches to family violence that are based on customary law practices and principles of restorative justice, much information regarding the latter coming from New Zealand (Fitzgerald 2001). Nicholson believes that a Federal Act should be created, which is applicable to all states and territories, which recognises Aboriginal customary law. He goes on to say that *'little or no progress will be made' unless the Federal government is prepared to act.* (Nicholson 1995)

Indeed, it would appear that WA is making some concessions towards this model. It is reported that Justice Carmel McLure in the WA Supreme Court gave a lighter sentence to an Indigenous man as he had already been subjected to a tribal punishment, spearing in the legs and thighs (Kappelle 2002). The Inquiry has met with the WA Law Reform Commission Working Group on Customary Law.

Also of interest is that in WA in 1994, a report on gender bias in the law and administration of the law, was produced (Iorns 1994). A number of key recommendations were made, including the establishment of a permanent committee to monitor how the operation of the courts impact on Aboriginal women, and the establishment of a dispute resolution process, which offers an alternative to litigation, for matters of Indigenous family violence. Iorns notes that unfortunately this report repeats recommendations made in earlier reports which have not been acted upon. (Iorns 1994)

One final alternative to the conventional application of justice may be the use of mediation (Ralph 1997). Mediation, as commonly defined and practiced in an Aboriginal context, is more like the process of counselling and seen as a process which would strengthen an Aboriginal community. (Suave 1996, reported by Ralph 1997)

## **4. SERVICE DEVELOPMENT AND DELIVERY**

The literature offers a number of 'best practice' suggestions for intervention into family violence in Indigenous communities.

There is a common theme in the literature that effective intervention into family violence needs to address both the past traumas and present situational problems and health disadvantages of Indigenous communities. Almost without exception the literature notes the need for inclusion/participation of the local community.

### **4.1 Service delivery principles**

Fitzgerald identifies four themes which he recommends should guide a reform agenda. These are strengthening of individual family and community capacity, creating safe environments, building sustainable environments, and re-orienting service delivery *'to ensure that services are technically competent, coordinated, integrated, flexible and accessible'*. (Fitzgerald 2001: 35)

Blagg says that while there is a lot of criticism of existing intervention models into family violence in Australia, there is not a lot of fully developed alternative models. Blagg notes that the literature supports models of intervention that:

- are tailored to meet the needs of specific localities
- are based on community development principles of empowerment
- are linked to initiatives on health, alcohol abuse and similar problems in a holistic manner
- employ local people where feasible
- respect traditional law and customs where appropriate
- employ a multidisciplinary approach
- focus on partnership between agencies and community groups
- add value to existing community structures where possible
- place greater stress on the need to work with men
- place more emphasis on intervention that maintains family relationships and 'healing'. (Blagg 2000)

*'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report'* emphasises the need for the inter-linking of services to address the multiple forms of violence in the communities, the need to meet the need for healing and the need to be flexible in approach (Robertson 2000). Multi-service delivery centres must be established to provide a coordinated service for alcohol and drug addiction, family violence, sexual assault, grief counselling, advocacy for women, child counselling and support groups for men (Robertson 2000). Aboriginal communities have the notion of 'healing', which describes a dynamic and unfolding process of individual and collective problem-solving.

The report recommends some 'best practice' principles for programs which need to:

- *build on skills of people at Community levels and promote open Community discussion*
- *be based on the belief and practice that any form of violence is unacceptable*
- *include protocols and guidelines for service delivery, and for the behaviour of staff*
- *establish the safety of victims of violence as a first priority in protocols*
- *include trained, skilled workers*
- *provide sound, appropriate training for workers*
- *network across agencies - coordinate between services and agencies, including police*
- *empower people for personal and Community change*
- *inform and help people who have been victimised so that they do not remain victims*
- *build on a partnership between men and women who are involved in increasing the knowledge and skills of the Community*
- *proactively direct crime prevention strategies*
- *ensure the appropriate application of domestic violence/sexual assault legislation. (Robertson 2000: 120, 121)*

## 4.2 Alcohol abuse

The need for services to address alcohol abuse is often mentioned in the literature. Robertson notes that in isolated rural and remote areas in Queensland, services to treat alcoholism can only be described as *'inadequate and pitiful'* (Robertson 2000: 30). Robertson suggests that the isolation of some Aboriginal communities would assist in the surveillance of the provision of alcohol, making it easier to undertake road checks of vehicles and people entering communities. There should be alcohol awareness programs. Indigenous people should be represented on Health District Service Boards. (Robertson 2000)

## 4.3 Program evaluation and research

Another commonly raised recommendation is for the evaluation of programs. *'All services must have built-in evaluation, measurable positive outcomes and accountability'* (Robertson 2000: 119). Part of this process is the determination of base line indicators (Fitzgerald 2001). Sutton reported that of the 130 remedial violence programs in the Indigenous communities in the 1990s (identified by Memmott et al. 2001), only six programs had undergone a *'reasonable evaluation that was in a documented form.'* (Sutton 2001: 143)

This pattern is very much a reflection of the professional community's failure to come to grips with program evaluation, although a greater focus on evaluation is beginning to bear fruit. (Tomison & Poole 2000)

Robertson says that a good example of an accountable service is SAAP (Supported Assistance Accommodation Program). Best practice should be developed at a national level to define the principles of service delivery on matters of family violence in Aboriginal and Torres Strait Islander Communities across Australia. (Robertson 2000)

It was reported in *'The Koori Mail'* that Reconciliation Australia supported public debate on the issue of Indigenous family violence but felt that it was more important for the debate to be centred on the identification of best practice models of Indigenous family violence programs that are already working in Indigenous communities. *'Communities struggling with the issue need guidance on what works and what doesn't. Solutions must be community-driven, and best practice examples of community programs and initiatives would greatly assist.'* (*The Koori Mail* 20 March 2002)

There is also a need for research and theory development on the issues of violence in Indigenous communities in order to achieve greater understanding on the associations between race, gender and age, within a colonial context. *'Without these considerations, poorly researched and prepared programs often create more problems than they solve'* (Robertson 2000: 46). While there are many reports which cover the territory of family violence in a broad way, the authors found little specific research on child abuse within Indigenous families, an oversight confirmed by Muriel Cadd (Stanley & Tomison 2001). Cadd, (Chairperson of Secretariat National Aboriginal & Islander Child Care [SNAICC]) believes that this gap is present partly because there is no person or organisation in Australia who takes special responsibility for the welfare of Indigenous children. The *'Proposed Plan of Action for the Prevention of Child Abuse and Neglect in Aboriginal Communities'* places high priority on the need for more research on child sexual abuse in Aboriginal communities (SNAICC 1996). However, the full recommendations of the Plan have not been implemented.

More specifically, Sanders and Markie-Dodds believe that the Triple P program needs to be evaluated with Aboriginal groups, *'whose mental health needs have been largely ignored by psychology as a discipline'* (Sanders & Markie-Dodds 1996: 81). While Zubrick and colleagues believe that information on the mental health needs of Aboriginal and Torres Strait Islander populations is *'critically needed'*. (Zubrick 2000: 573)

#### **4.4 Education and training**

SNAICC notes that to effectively address the multi-faceted dysfunction/problems plaguing Aboriginal communities, there is a need to develop and support Aboriginal welfare and support services operating within the communities. They advocate establishing a community-controlled Aboriginal children and family resource centre to gather information, develop training and education resources. (SNAICC 1996)

It is important that a strong training program for Aboriginals already working as volunteers or community-based professionals (for example in Aboriginal Child Care Agencies) is developed. Aboriginal and Torres Strait Island Councils are asked to undertake tasks beyond their capacities – administrative skills, time to develop leadership in the community (Robertson 2000). Robertson recommends that tasks should be spread around more community groups and training in the local government system be provided.

Education on violence prevention and the harms of alcohol and drugs is needed throughout the community and in schools. Education is needed on issues such as general education, health, child development and violence. Post-release perpetrator programs are needed. (Robertson 2000)

Training in cultural awareness is needed for non-Aboriginal professionals working with Aboriginal communities. Non-Aboriginal professionals should be trained by skilled Indigenous facilitators. In addition, more Aboriginal workers should be employed in mainstream services and given access to training to increase their skill levels. De-briefing should be available to all workers who may be traumatised by the intensity of their workload (Robertson 2000). Professor Andrew Armitage from Victoria University, Canada, reports the establishment of an Indigenous stream of social work with subjects in Indigenous studies and where reflection on the inter-face between the two cultures is facilitated. (personal communication)

#### **4.5 Community responsibility**

Pearson reports that the solution is not a matter of blame.

*People are caught in an economic and social system which precipitated this misery. But it is a matter of responsibility. Our people as individuals must face their responsibility for the state of our society – for respect and upholding our true values and relationships. Our own laws and customs.* (Pearson 2000: 19)

This argument is supported by Ah Kit, who notes that *'Aboriginal organisations must bite the bullet and develop innovative strategies to overcome the cancerous ideology of despair'* Ah Kit (2002: 15). One measure to take responsibility is a 21-member National Indigenous Working Group on Violence which is presently being convened by the Aboriginal and Torres Strait Islander Commission. (ATSIC 2002)



As well as the Indigenous community taking responsibility, there is a need to involve the broader community in regional summits between Aboriginal groups, the government, Community Councils, mining companies and private businesses to develop strategies and objectives for the social and economic developmental needs of Aboriginal communities. The government should aid small business enterprises in Aboriginal communities. (Robertson 2000)

## **4.6 Current solutions and programs**

### **4.6.1 Programs currently in operation**

It is very difficult to identify programs which address family violence, let alone understand the success of the program and the 'best practice' issues which can be learnt from the program. This problem has been identified by a number of writers (for example, Memmott et al. 2000, Tomison & Poole 2000). This is partly because of the limited number of programs; the ad hoc nature and the limited life of the programs; as well as the impression gained by the authors that much effective work is being done at the grass-roots and community level but not necessarily being 'officially' recognised. In addition, many programs do not necessarily identify themselves as 'violence prevention programs' as they have the aim of addressing, for example, recreation or health needs, and alcohol prevention services. (Memmott et al. 2000)

In 1998, Memmott and colleagues (2000) recorded 131 family violence prevention programs with Indigenous people in Australia, 25 operating in WA. They offered the following categories of services: support; strengthening identity; behavioural change (men and women's groups); night patrols; refuges; justice programs; dispute resolution; education and composite programs. Information is provided on some of the types of programs, and programs, which appear to be successful.

Another publication, the *'Through Young Black Eyes'* handbook (SNAICC 2002) provides a very useful Australian-wide list of Indigenous services.

### **4.6.2 Men's groups**

A number of men's groups have been formed in the last five years, throughout Australia (*The Koori Mail* 10 January 2001). The Yarrabah Men's group in Queensland has had at least 15 men referred to them by the courts under intensive correction orders or probation, none of whom have re-offended. The group aims to teach the men self respect, encouraging them to take responsibility for overcoming violence, as well as having socialisation and learning objectives, such as the art of fishing and hunting (*The Koori Mail* 10 January 2001). This group has recently produced a promotional video to send a message of self-respect, anti violence, and anti-substance abuse to the community.

Robertson (2000) reports on a Palm Island Men's Group which formed to work in conjunction with the Local Justice Group, the Katana Women's Shelter and Queensland Police. Following 17 suicides on the island the previous year, there was not one suicide after the group was established. Similar joint efforts by men and women have been made at Kowanyama, Yarrabah, Mt Isa and Cherbourg.

#### **4.6.3 Aboriginal night patrols**

The first night patrol originated in Tennant Creek, in 1989, and was established by the Julalikari Council. From there the concept has spread and been adopted and adapted to meet the needs of communities throughout NT, WA and in some parts of NSW and Queensland (Memmott 2001: 68). Operating in cooperation with police, the patrols attempt to address family violence situations and may be an alternative to police intervention. (Blagg 2000)

The majority of night patrols use volunteers that include community Elders and leaders who travel around the township to resolve and settle disputes, particularly in areas where alcohol abuse is a major problem (Wright 1997). The night patrols also assist police when required and transport victims of alcohol and/or abuse to hospital (Wright 1997). The sobering-up shelters are used to enable aggressive drunken men to 'cool-off'. The night patrol in Derby, WA, which has been in operation since 1995, has recently expanded its Numbud service to include picking up children from local communities and ensuring they get to school, in an attempt to prevent the extent of drinking and violence by young people. (Blagg 1999: 19)

In 1997-1998, ATSIC spent \$946,000 on the funding of 23 night patrols (MacDonald 1999). However, the situation with at least one of the night patrols can demonstrate some of the problems these units face. Warden schemes operating in the Kimberley region of WA were identified as failing to cope with the demands placed on them. Blagg believes this situation may have been resolved if the schemes had been properly resourced, staffed by properly trained people, had the backing of the community and council, supported by outside agencies, achieved a gender balance and reflected tribal groupings. (Blagg 2000)

#### **4.6.4 Education programs**

Indigenous responses and program initiatives on family violence have, in many cases, been education driven. For example the Awabakal Aboriginal Medical Service, Hunter Health's Aboriginal Health Team and the Hunter Centre for Health Advancement worked in partnership to develop and launch a special education program known as Walkabout Learning. The program aims to build community awareness of the issues of family violence, alcohol and drugs and to support and build the capacity of Indigenous workers to address these issues when working with clients who may be at risk. Practical guide books have been developed, service directories, as well as an interactive touch screen computer kiosk, housed in the waiting room of the Awabakal Aboriginal Medical Service for clients and their families to access. (*The Koori Mail* 11 June 2001)

Other communities and community organisations are also developing similar educational material to raise awareness of family violence in the community. The Domestic Violence Advocacy Service located in New South Wales produced a resource booklet for Aboriginal women about domestic violence and the law in New South Wales, entitled '*Our Dream ... Stopping The Violence!*' (*The Koori Mail* 12 January 2000)

Palm Island has an annual domestic violence week and march organised by the Kootana Women's Organisation (Howes 1999). Men, women and children joined together to march for the first time in 1998. The Kootana Women's Organisation reports that the designated week and the march develop an awareness in the community about family violence. It is reported that the Kootana Women's Organisation also raised funds for emergency accommodation, an idea developed by the local children. (Howes 1999: 23)

The National Child Protection Clearinghouse Audit (Tomison & Poole 2000) reports that a number of schemes have been undertaken to provide cross-cultural awareness training for non-Indigenous workers (for example, Deemal-Hall & McDonald 1998; Firebrace 1998). The Audit also reports that Indigenous cultural issues have been incorporated into a variety of programs, such as the Protective Behaviour Curriculum and training materials. A number of government and non-government agencies have employed Indigenous workers to work with local communities. The example is given of a program developed by 'The Education Centre Against Violence', Parramatta, NSW, which provides training and resources for NSW professionals working with children and adults working with family violence. The Audit also notes that the centre was developing a course on Aboriginal family violence for Aboriginal family health workers.

In 1999, the 'Education Centre Against Violence' produced, and has since distributed, two videos tackling the 'taboo' subject of child sexual assault, and the equally difficult subject of domestic violence. 'Big Shame' is a story about child sexual assault involving a young girl who is being sexually abused by her grandfather, a well respected Elder in the Aboriginal community. The second video, 'Who's the Loser?', is a story about the impact of family violence on children. (*The Koori Mail* 17 November 1999)

#### **4.6.5 Family support**

In June 2001, the Victorian Government announced the launch of an Aboriginal Family Preservation Program which would provide intensive support to help overcome parenting or family problems. The \$224,000 program would help families in crisis by delivering support at home and reunify children already separated from their families. With the support of the Victorian Aboriginal Child Care Agency this program will provide an intensive home based service to families for up to three months, with longer extensions if necessary. (*The Koori Mail* 13 June 2001)

#### **4.6.6 'Healing Our Families', Apunipima Family Violence Advocacy Project**

The Apunipima Cape York Health Council launched the '*Healing our families: Apunipima Family Violence Advocacy Project*', in 1999 (Condie 1999). The project has since closed down as funding ceased in September 2001. The main features of this project included the Council:

- taking on the role of intermediary between Cape York communities and service providers
- assisting in the development of health promotion strategies

- working to improve response times to Indigenous women and children who experienced family violence
- using the existing value systems in a community to develop violence prevention strategies
- ensuring community women are involved in intervention policies targeting families who are repeatedly at risk.

Under the project, women who were victims of family violence received appropriate legal assistance, referral advice, community support, and safe relocation out of a community, if required. Perpetrators of family violence were dealt with by Elders' Justice Advisory groups who made the decision about the appropriate course of action, which, in the case of imprisonment would involve post release support to stop the cycle of violence.

#### **4.6.7 Tuckandee - using Aboriginal Art to teach**

This program, which anecdotal evidence suggests is most successful, uses traditional Aboriginal stories and production of paintings to educate the community in issues such as parental responsibility and promoting shared responsibilities for child protection. Part of the program is a travelling art exhibition. The program is run by Aboriginal artist, Tex Skuthorpe and colleague, Anne Morrill. (Taylor 2002)

#### **4.6.8 Partnerships Against Domestic Violence Programs**

Six new programs have been funded within the Indigenous community under the 'Partnerships Against Domestic Violence' Programs (Partnerships Against Domestic Violence 2001). The services have a preventative focus as well as a crisis response, and have the aim of addressing violence in the communities.

#### **4.6.9 'Best Start' program**

Lambert and colleagues note that the program, 'Best Start', which offers early intervention in the form of family support and parent education, appears to have had a positive impact on Aboriginal families and the rate of child abuse. An evaluation of 16 Best Start projects was to commence in 1999. (Lambert et al. 1999)

#### **4.6.10 Stronger Families Programs**

The Federal Government's Stronger Families Fund project has allocated \$20 million over four years to be used with Indigenous families (Stern 2002). The principles underlying these projects were planned at an 'Indigenous Community Capacity Building Roundtable'. It is planned that these programs will use, and build on, community strengths and empower Indigenous leadership. (Stern 2002)

A key facet of the government support is provided through the Australian Institute of Family Studies, who have set up a Stronger Families Learning Exchange, specifically designed to provide action research evaluation support to the various funded projects. In the first Bulletin of the Learning Exchange, (*The Koori Mail* 20 March 2002) describes a program that

has begun operation in Derby, WA. Commenced in 1994, and established by the Jalaris Aboriginal Corporation, this service provides a drop-in centre for the local children, offering them food, education, recreation, and attention to health needs. Funds from the Stronger Families Fund will enable this service to be extended and provide education and advice to the service.

#### **4.6.11 Mens development – ongoing groups**

Yamatji Mens Program – a health forum that covered a wide range of associated areas including housing, mental health and violence. (Yamatji Men's Program)

#### **4.6.12 Noongar Mens Health Conferences**

Noongar Men's Health Conferences, ongoing since 1996, include:

- Mens roles and responsibilities
- Family violence – abuse, sexual abuse
- Grief, trauma, depression
- Substance abuse
- Self and community development. (Noongar Men's Manual Project)

#### **4.6.13 Midland Aboriginal Men's Groups**

Midland Aboriginal Men's Groups, initiated in 2001, involved a collaboration of government and non-government representatives with an ongoing agenda for personal and social development in the Midland region, aiming to promote and create services benefiting Aboriginal men and families. (personal communication)

### **4.7 Models used with indigenous communities overseas**

Like the situation in Australia, while there is some literature on models of child protection used with Indigenous communities, this literature is small and difficult to access. Sweeney gives some information on models of child protection services in Canada, New Zealand and the United States, where part, or all, protective responsibilities have been transferred to the Indigenous population (Sweeney 1995). Pallett provides an overview of the position of child protection in relation to indigenous communities in many countries, although the information is somewhat dated. She records an overall world trend towards less intrusive protective practice and notes that indigenous communities in Australia, Canada and the US are seeking legislative change. (Pallett 1991)

#### **4.7.1 Canada**

Since the late 1970s, there have been attempts to develop child protection and family support services run by (and for) the First Nations peoples. Hill outlines some key issues for consideration when developing services for the protection of children in Aboriginal communities. Underlying this approach is recognition of the:

*... cycle of poverty and dependency perpetuated by the very services designed to resolve the social ills of First Nations communities ... [and that] First Nations people*

[have] *had to become active participants in the resolution of social problems that impacted them.* (Hill 2000: 163)

Subsequently, Aboriginal foster care programs and child protection services – staffed and run by the Indigenous community and with statutory authority – were provided in a way that recognised the cultural integrity of the people. The new services were developed under the auspices of the mainstream child protection body, but were not a unit of the department.

Underpinning the service development was the following:

- recognition of the need for formal training and professional education for Aboriginal workers
- adoption of 'least intrusive' approach to child protection work (unless over-ridden by risk of harm) and the greater emphasis placed on seeking to work with extended family as an alternative to placement, thereby maintaining the child within the family and cultural community. *'However, accepting these new opportunities also required First Nations to embrace the legal system in situations where involuntary interventions were necessary to protect a child.'* (Hill 2000: 166)
- recognition of collective Aboriginal rights – if court intervention is necessary for protection of a child, the child's tribe is entitled to be notified and has the right to send a representative as a third party to the court proceedings.

In addition, a variety of family support programs were developed, particularly culturally appropriate parent education programs for Indigenous parents, and the development of ancillary services, such as an Indigenous cooperative day nursery.

It is interesting to note that the development of all these services, including the statutory services, could be characterised as conflictual, as *'at every step ... there emerged political clashes, formal and informal, for decision making power.'* (Hill 2000: 166)

Overall, many of the tenets of the approach described by Hill have been embraced by Indigenous groups/agencies (and to an extent, government departments) in Australia. However, a statutory child protection service controlled and run by the Indigenous community has not been trialed yet.

Unfortunately, implementation of such a model is not easy, nor has it necessarily led to significant improvements in Canadian First Nation communities' health and wellbeing or a reduction in violence. Although providing an example of how to move forward with more effective services, Hill's model has some serious 'gaps'. It does not seem to address issues of how to place a child within their Indigenous community if the community is beset by familial violence, substance abuse etc. Nor does it provide a solution to the mainstream statutory authority's (or Aboriginal authority's) reluctance to intervene with Aboriginal families, which may leave children in serious harm. Finally, it does not address the issue of effective prevention and/or community development to minimise the removal of children and violence in the first place.

Lynch believes that the '*standards and interests of the dominant paradigm have been applied to First Nations and Aboriginal peoples, particularly children, with insidious effect*' (Lynch 2001: 506). He supports the call by many First Nation and Aboriginal groups that there is a need for them to make decisions for themselves from within their own legal, political, cultural and social frameworks, in relation to child placement and protection principles and laws, and management of their own child welfare agencies and services. However, until this happens, there is a need to adapt the prevailing '*best interests principle*' (Lynch 2001: 505). There also needs to be the option available that some Indigenous groups will remain within the mainstream legal system.

## 4.8 Conclusions

There are many examples in the literature of the failure of programs and services to address Aboriginal family violence and child abuse. The need for much greater involvement of Aboriginal communities in the design, implementation, delivery and evaluation services is emphasised. The need for a radical thinking of current models of service delivery is required. This challenge is addressed in the remaining chapters.

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ATSIC (Aboriginal & Torres Strait Islander Council)

SNAICC (Secretariat of National Aboriginal Islander Child Care)

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## Oversight of the family violence and child abuse service system

### CHAPTER 16

# SECTION

*This chapter recommends a range of bodies to oversee the family violence and child abuse service delivery system, as well as advocate for the needs of children, particularly Aboriginal children.*



**CHAPTER 16**

*Oversight of the family violence and child abuse service system*

## **1. OVERSIGHT OF GORDON INQUIRY RECOMMENDATIONS**

The research and the evidence given to the Inquiry by government departments attest to the complexity of the delivery of child protection and family violence services generally. Some individual departments focus directly on responding to incidents of family violence and child abuse, others focus on services to address problems that are related to family violence and child abuse. This can include drug, alcohol and substance abuse, dealing with a past history of abuse, inadequate housing, poor health and other factors that create vulnerabilities in families.

Some departments provide services to Aboriginal communities and respond to their particular needs, such as enhancing governance, resources, land and planning. In addition, Aboriginal communities receive services from the Aboriginal and Torres Strait Islander Commission (ATSIC), other Commonwealth agencies, non-government service providers and local government. The first portion of each of the chapters in Section 3 outlines areas of service delivery of the seven identified departments. Chapter 13 in Section 3 outlines the range of coordinating activities that occur in relation to the problems of family violence and child abuse that are dealt with directly or through providing services which respond to underlying factors.

The complexity of the service systems responding to family violence and child abuse, the levels of family violence and child abuse and the other significant problems facing Aboriginal communities, call for mechanisms, with a degree of independence, to oversee the systems responding to family violence and child abuse.

Taking into account the range of recommendations made in this report, the Inquiry believes that it is imperative that an implementation body, having the status of a high level committee or taskforce, be established to oversee the implementation of the recommendations. The Inquiry is of the view that this body should have a limited life, with stringent reporting requirements.

**142. The Inquiry recommends the establishment of an implementation body at the highest level of government, reporting to the Premier. The implementation body should provide a progress report no later than 12 months after the formation of that body.**

**143. The Inquiry recommends that the implementation body should include membership from outside government. This is to ensure that a range of perspectives are brought to the reform process, whilst recognising the vital importance of government agency membership. The Inquiry strongly recommends the appointment of the Aboriginal and Torres Strait Islander Commission (ATSIC) State Chairperson to the implementation body, particularly noting the importance of the Statement of Commitment and the Indigenous Affairs Advisory Committee (IAAC).**

**The Inquiry recommends that each government agency affected by the recommendations be required to report on their plans to implement the recommendations within at least three months of this report. Any government agency which does not intend to implement a recommendation should have to justify their position to the implementation body and provide an alternative strategy to overcome the identified problem. Thereafter, at least every six months, government agencies should be required to report to the implementation body on progress of the implementation of the recommendations.**

## **2. ESTABLISHMENT OF INDEPENDENT BODIES**

The position of Ombudsman is now widely recognised as an important accountability mechanism throughout Australia at the state and Commonwealth level. Other jurisdictions have developed a further range of oversight mechanisms to enhance accountability systems which deliver services to vulnerable clients, such as people with a disability and children. New Zealand, Queensland and New South Wales all have children's commissioners to enhance conditions for children. Victoria and New South Wales have child death review teams. In the United States, most states have some form of child death or child fatality teams. In those jurisdictions with a children's commission there has been a significant focus on the rights and needs of children and a capacity to make independent comment on systems in place to protect and support children.

The Inquiry notes Australia's obligations arising from the United Nations Convention on the Rights of the Child. (UNCROC)

Article 3 states

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies the best interests of the child shall be a primary consideration.* (Office of the High Commissioner for Human Rights 1989: Article 3)

Thomas points out that the provisions of the convention are not enacted through legislation and are therefore reliant on '*mandatory reporting procedures to ... the United Nations Committee on the Rights of the Child*' (Thomas 2002: 3)

The Human Rights Commissioner, Dr Ozdowski stated:

*In many states, young people raised the need for an advocacy structure for children to be put in place. Participants ... recommended the creation of Children's Commissions at State and Federal level.* (Ozdowski quoted in Thomas 2002: 4)

Thomas concurs that '*more specific state and federal institutions dealing with children's rights need to be established*' (Thomas 2002: 4)

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

**144. The Inquiry recommends that a Children's Commissioner be established which is independent and reports directly to the Premier. The implementation body should consider the structure and responsibilities of other children's commissioners to decide on the most appropriate model for Western Australia.**

In view of the level of family violence and child abuse that is present within Aboriginal communities and in recognition of Aboriginal children's vulnerability the following is recommended.

**145. The Inquiry recommends the proposed Children's Commissioner should have a Deputy Children's Commissioner with responsibility for issues in relation to Aboriginal children.**

Jill Cameron and Associates and Jo Stanton Consultancy prepared a report for the Western Australian Child Protection Council on Child Death Review Register and Review Teams which indicated that there was support both within and outside government for the concept of a child death register and review process. That report indicated that agencies saw that such a body would assist communication and collaboration and would achieve better outcomes for children. Their recommendation is

*It is therefore recommended that consideration be given to the development of a child death register and review process for deaths of children aged 0-18 years which:*

- a. Adopts a developmental approach and could be implemented in stages with the development and trial of the child death register being the first stage*
  - b. Builds onto the existing Perinatal and Infant Mortality Register in the Health Department which is currently a primary source of data*
  - c. Could be incorporated into the Health Act or other appropriate legislation in the longer term.*
- (Jill Cameron Associates, Jo Stanton Consultancy 2000: 21)

**146. The Inquiry recommends a Child Death Review Team should be formed to review the deaths of all children but particularly where there is suspicion of abuse or neglect. The Terms of Reference need to be established after consultation with the community and taking into account child death review teams in other states. The child death review team is to be the responsibility of the proposed Children's Commissioner.**

### **3. LEGISLATIVE IMPACT STATEMENTS**

The Inquiry notes that some jurisdictions have 'Legislative Impact Statements', or 'Impact Statements' which require an assessment of the impact of any proposed legislation or policies on particular groups or areas.

*At present, government departments are required to produce environmental impact statements which outline the effects of particular actions on the environment. It is argued that Child Impact Statements would fulfill a similar function, forcing government departments or non-government agencies to consider the effect of particular actions on children, thus keeping child rights and role of the child in society at the forefront of debate around social issues. (Tomison and Wise 1999: 22)*

The Inquiry was presented with instances where Aboriginal communities believed that some legislation passed by government had a disproportionate effect on Aboriginal people. One example was the changes to legislation which removed driving licenses for failure to pay fines. This prevents parents and other caregivers from being able to access medical service, extended family and meeting cultural commitments outside the community. While lack of a driver's license is an inconvenience in urban areas it compounds disadvantage in remote communities. These additional stressors are likely to have an adverse impact on family violence and child abuse.

The Inquiry finds that there is a need for such an assessment process regarding the impact of proposed legislation in WA on Aboriginal people and children.

The Inquiry has formed a view that a legislative impact statement on Aboriginal people by itself will not pay sufficient attention to the needs of children.

**147. The Inquiry therefore recommends that legislative impact statements be introduced into Western Australia, in particular in relation to Aboriginal people and in relation to children.**

#### **4. CHILDREN'S COURT**

The Inquiry recognises the particular importance of the Children's Court (established under the *Children's Court of Western Australia Act 1988* (CC Act)) as the body which gives effect to child protection legislation allowing the removal of children from their parents. (see *Child Welfare Act 1947*)

The original intention of the CC Act was to enhance the status of the Children's Court. It was taken from the jurisdiction of the then Department of Community Development under the jurisdiction of the then Crown Law Department. It was arguably the most powerful Children's Court in Australia, yet now this appears to have waned. The consequences of this are that temporary appointments are made of Judges and/or Presidents who are not involved in Care proceedings where decisions on, in most cases, the entire lives of children are made. This is arguably the most important area of work which a permanent President should be involved in. Aboriginal parents often appear unrepresented in Care proceedings against experienced prosecutors and have to deal with numerous and mostly professional witnesses which is most unsatisfactory. Parents are therefore arguably not being properly accorded natural justice<sup>1</sup>. At the same time children should always be represented (as in other states).

Having regard to the history, including the legislative history (see the *Aborigines Act 1905*; the *Native Administration Act 1905-1936* and the *Native Welfare Act 1954*) covering the removal of Aboriginal children in Western Australia, and being aware of the sensitivities and special requirements of all children and families who appear before the Children's Court following allegations that children are in need of care and protection, the Inquiry believes that there is a need to enhance the status of the Children's Court.

The Inquiry is of the view that the position of President of the Children's Court pursuant to Section 7 of the CC Act should be a permanent appointment. The DOJ supports this position.

**148. The Inquiry recommends that there be a permanent appointment to the position of President of the Children's Court.**

<sup>1</sup> *Parents of the child are properly interested in the subject matter of the proceedings, with the right to appear and be heard in defence of their custodial rights in respect of their child. They are entitled to be accorded natural justice in that capacity. They must be given the opportunity to see and challenge all evidence and information before the court relevant to that finding*; Page v Pilkington [1993] ACL rep 205 WA6 SCL 930650.

**149. The Inquiry recommends that parents who risk having their children removed should be offered the opportunity to be legally represented in the Children's Court.**

**150. The Inquiry in support of the separation between judicial activities and support activities in the courts finds that court conferencing in care matters should be run independently of the magistracy.**

## **5. EMPLOYMENT SCREENING**

Other states, for example Queensland and New South Wales (NSW), have legislation requiring various categories of employees to have criminal history checks before commencing employment where there is a particular type of contact with children. (NSW Commission for Children and Young People 2002)

In addition, the Inquiry was advised of problems with employees on Aboriginal communities whose background was inappropriate to be employed in a trusted position within Aboriginal communities. The Inquiry has not had an opportunity to fully explore the issue of employment screening.

**151. The Inquiry recommends that further investigations occur in relation to employment screening to better protect Aboriginal communities, particularly Aboriginal children.**



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Tomison, AM & Wise, S (1999) *Community-based approaches in preventing child maltreatment*, Issues in Child Abuse Prevention Number 11 Autumn 1999, National Child Protection Clearinghouse, viewed on 10 May 2002. <<http://www.aifs.org.au/nch/issues11.html>>

## ACTS

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Aborigines Act 1905 (WA)

Children's Court of Western Australia Act 1988 (WA)

Child Welfare Act 1947 (WA)

Native Administration Act 1905-1936 (WA)

Native Welfare Act 1954 (WA)



Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • *Crisis Intervention in Aboriginal Family Violence* • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes • *Violence Directions for Australia* • VIOLENCE IN INDIGENOUS COMMUNITIES • 'Lower axed' *The Weekend Australian* 22-23 December 2001 • 'Abuse claims mar image of campaigner' *The West Australian* 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • A Question of Safeguards • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES

**A community focused  
systemic response to  
family violence and  
child abuse**

**CHAPTER 17**

**SECTION**

*This chapter outlines proposed changes to the service system so that it focuses on the community and is able to respond holistically to the needs of children, families and communities.*



**CHAPTER 17**

*A community focused systemic response to family violence and child abuse*

## **1. THE EXISTING SERVICE SYSTEM IN WESTERN AUSTRALIA**

In examining services that respond to family violence and child abuse in Aboriginal communities, the Inquiry has been impressed by the commitment of agencies and individuals within those agencies to deliver services to children and families who experience family violence and child abuse. The proposals put forward in this chapter do not reflect a failure of individual agencies rather they reflect the weaknesses of the system that is meant to prevent family violence and child abuse and intervene and support children and families when that abuse or violence occurs.

Research and other inquiries clearly show that Western Australia (WA) is not alone in experiencing difficulties in responding to the escalating rates of reported family violence and child abuse in Aboriginal communities. Other Australian states and territories are also struggling to comprehend and deal with this epidemic of Aboriginal family violence and child abuse. They too experience their systems' inability to impact on the violence in Aboriginal communities. Indeed other countries where indigenous peoples have been subject to a colonising experience are also struggling to respond to violence within these indigenous communities and the overrepresentation of indigenous children within their state care systems.

The goodwill and good intentions of individual government agencies is not, and it is suggested will never be, sufficient to respond to the problems that the Inquiry has identified. The level of disadvantage in some Aboriginal communities is such that all children must be considered to be at risk. In one remote Aboriginal community, with approximately 300 residents, an Aboriginal woman talking to the Inquiry said that she occasionally saw little girls aged around five playing without supervision. She told them to *'go home, go home now, you'll be raped'*. The idea that in a country like Australia, children in their own small communities can be so endangered is a concept so frightening that the full force of the government's authority must be brought to bear so that Aboriginal children in WA can be safe in their communities. This fear is not unfounded as research examined in Section 2 indicates that although rare, sexual attacks on young Aboriginal children are increasing in frequency. The Inquiry urges government to take strong action to allow children to grow up safely and without fear in their communities.

Noel Pearson has said *'ours is one of the most dysfunctional societies on the planet today'* (Pearson cited in Robertson 2000: 71). While the Inquiry does not make this judgement itself, it recognises the seriousness of the situation when an Aboriginal spokesperson feels so strongly about the crisis of family violence and child abuse that he would make such a judgement. There have been two major Australian reports, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the Human Rights and Equal Opportunities Commission (HREOC) *'Bringing Them Home'* report, and two significant reports in Queensland (Robertson 2000 and Fitzgerald 2001) that outlined similar significant problems within Aboriginal communities. These problems also included services that are provided to attempt to address and remedy those problems. This Inquiry has formed a view that significant changes are required. While more resources to individual agencies may assist, simply expanding current service delivery will be inadequate.

## 1.1 Government service delivery and Aboriginal communities

The reviews of relevant literature in earlier chapters have made clear the problems with existing mainstream service delivery. These problems are exacerbated when services to Aboriginal communities are considered. In particular the following features are barriers to effective service delivery to Aboriginal communities by government agencies.

### 1.1.1 The individual agency approach, commonly referred to as working in 'silos'

Individual agencies focus on one particular problem area (for example health or housing) when the problems experienced by Aboriginal communities are not separate and distinct. They are multifaceted and interactive. An individual agency approach will never be able to respond adequately. While the Inquiry has examined reforms that will assist, significant changes are required in relation to planning, resource allocation and service delivery to Aboriginal communities.

### 1.1.2 Aboriginal community structure vs government agency structure

There is a mismatch between centralised bureaucratic top down approaches to planning and service delivery by government agencies and the Aboriginal communities discussion and consensus model of decision making. The structure and practices of bureaucracies are designed to ensure consistent decision making and service delivery. Aboriginal communities are diverse with different customs and practices.

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*They basically feel exploited and are not trusting of government.* (Remote area nurse)

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Government agencies rely heavily on written communications and directions. Aboriginal communities are traditionally a verbal culture. Government agencies rely on processes and procedures in which 'fairness' and 'equity' are designed to eliminate what are seen as bias or favouritism. Aboriginal culture has survived more than 40,000 years based on particular and specified obligations to kin and country.

*The emphasis of the Aboriginal culture on self-regulation and agreement means that Aboriginal communities must also make difficult adjustments to deal with western impersonal, reasonable political and administrative systems.* (North Australia Research Unit 2000: 12)

### 1.1.3 Coordination and planning across bureaucratic structures

The standard response to many of the issues outlined is to develop systems of coordination among government agencies and in some instances non-government agencies. The Inquiry has examined many processes which are assisting with coordination. Indeed the Inquiry has endorsed many of those processes. However they are often *ad hoc* measures which have been put in place to meet specific needs and purposes. More comprehensive solutions are required.

Coordination has proven difficult and has often been ineffective in mainstream child protection and family violence service delivery systems. The Inquiry has consistently heard of the difficulties in delivering coordinated services to Aboriginal communities. Each agency

has in place a range of planning processes. While the Inquiry heard of many models for the coordination of programs and indeed supported many of those models, they focus on coordination of specific service delivery rather than integrated, holistic, community focused service delivery which is necessary to make an impact on the problems of family violence and child abuse.

The Inquiry has heard consistently from communities, and a range of agencies, that services within communities are often insufficient, uncoordinated and funded for short periods of time. Communities argue that what they need are long term integrated services (often referred to as 'social infrastructure') within each community. Gordon and Dobson comment on the plethora of uncoordinated programs run by federal, state and territory governments and agencies, saying requirements are often so complex they could be '*overwhelming at the community level!*' (Gordon & Dodson 2001: 1)

The Inquiry has also examined a number of 'pilot projects' for the delivery of more coordinated services. These pilot projects are generally designed to 'test' a model of service delivery in a limited area. The projects are not only limited by a pilot area, but also by limited funding and legislative or procedural supports to the project agencies. The Department of Community Development (DCD) agrees that 'pilots' as described by the Inquiry are '*not necessarily the best method for testing and achieving outcomes*' (Counsel representing Agencies Further Closing Submissions: 1). The nature of some pilot projects do not provide a basis for ongoing, sustained, consistent service delivery. However, in some instances, these pilot projects appear required to take that role on.

#### *1.1.3(a) Case planning and management*

The responsibility for protecting children must, of necessity, be a shared one. Responsibilities which are shared require clear planning, implementation and monitoring processes.

The Inquiry has formed a view that case planning and management are vital to effective service delivery. In particular the case of Susan Taylor, as well as other cases brought to the attention of the Inquiry highlighted the need for a clearly specified case planning process which identifies a lead agency to take responsibility for overall coordination of each case and includes the individual client, the family and all relevant agencies. DCD agreed with this position in their final submission.

The information sharing process needs to be capable of allowing a jointly developed case plan to be used by all agencies involved with the family.

#### *1.1.3(b) Cross jurisdictional issues*

While cognisant of a range of agreements between states on matters relating to child welfare, the Inquiry was told of problems with services and case planning which occurred across borders, particularly with the Northern Territory and South Australia. Further discussion needs to occur with agencies that offer cross border services such as Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPYWC) to ensure these barriers are explored and overcome.

#### 1.1.4 Consultation

Government agencies discussed their efforts to consult with communities and adapt programs to meet the needs of Aboriginal communities. In many instances, language, distance and different world views prevent real communication from occurring. Given the previous challenges outlined the Inquiry believes that existing strategies do not meet the clearly identified need for Aboriginal communities to have a leading role in determining the provision of services.

#### 1.1.5 A 'fly in – fly out' service

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*They're like seagulls – 'fly in – fly out' (Aboriginal Community)*

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Communities consistently spoke of the inadequacy of quick, infrequent visits with little time in the community. Agencies themselves spoke of the difficulty in driving many hours to a community and then leaving soon after to drive back. Visiting remote communities during the wet season is also problematic, with workers expressing concerns about their inability to provide services at that time.

Therapeutic, counselling and similar relationships are generally only effective if there is trust, respect and understanding. The Inquiry believes that while some Aboriginal communities' negativity towards government agencies is based on the past, much relates to the difficulties in developing relationships with agencies based on trust, respect and understanding. There may be a range of reasons for this but the prime reason is the inability of government agencies to spend sufficient time in communities. One remote nurse explained to the Inquiry that when she asked the community who they would go to for help with family violence and child abuse they said 'you there'. The Inquiry believes that Aboriginal communities need and have a right to appropriate service delivery within their communities—people they trust.

#### 1.1.6 History and location

This report has identified a number of factors affecting government service delivery through consultation or research and other reports. These include:

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*They feel very threatened whenever this department [DCD] becomes involved with them and their children [even though it is needed] (Remote area nurse)*

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- Location

A significant number of Aboriginal communities are in remote, regional or rural locations. Small isolated communities present challenges to government agency service provision.

- Historical issues

Many government agencies providing services are the same ones (historically) that were involved in providing 'services' which traumatized Aboriginal communities. Activities such as the removal of children (the 'stolen generation'), the relocation of Aboriginal people, harassment and intimidation, have all had an impact on Aboriginal people's views of non-Aboriginal institutions.

- Size

There are in excess of 300 Aboriginal communities in Western Australia.

### **1.1.7 Resourcing**

The Inquiry was provided with information on the inequality of funding to Aboriginal communities compared to local Shire councils.

The Inquiry was advised that Jigalong, with a population which varies between 350 and 2000 receives \$550,000 per year to deliver basic services. The Shire of Cue, with a population of 500 receives \$2.3 million. The Shire of Cue covers a lesser geographic area. Similar comments were made by Jody Broun, then Director, Aboriginal Housing and Infrastructure Unit in evidence (Transcript of evidence by Jody Broun 10 June 2002). *'Revisiting the Old in Revitalising the New'* states

*Financial resources appear to be unevenly applied between Aboriginal communities. Specific information related to the relative distribution of resources between communities could not be obtained. (North Australia Research Unit 2000: 13)*

Although *'Revisiting the Old and Revitalising the New'* refers to general funding, in many instances this is also true of funding for social infrastructure.

Many communities mentioned their lack of understanding about how funding occurred, and why some communities received money for programs and others did not. In addition, some communities during consultations expressed concern at funding activities, particularly for pilot programs which were short term, sometimes inadequate to employ a full time staff person, and did not continue, even when the community had perceived the program as a success. Communities also received small amounts of money from a number of sources which made accountability both difficult and time consuming. There was a clear link articulated between the short term and diverse nature of funding and the communities' inability to take a long term strategic view. Whilst this is not the only reason, the nature of funding activities does not promote an all important strategic and coordinated approach to addressing family violence and child abuse.

*The adequacy of service provision to Indigenous communities also requires review on the basis of need. There is a public perception that indigenous people "get heaps". In fact, where studies of comparisons of level of need and level of service provision are undertaken, there is evidence that in a number of significant areas Indigenous people are significantly underserved. (Telethon Institute for Child Health Research Submission 8 July 2002: 15)*

### **1.1.8 Governance and structures (particularly social infrastructure)**

The literature states clearly that there are serious and fundamental problems with the governance and leadership in Aboriginal communities. In stating this, the Inquiry is very mindful of the range of assaults on Aboriginal people, their culture and the undermining of strengths within Aboriginal communities that has led to this situation. However a denial of this reality does not assist in solving and responding to the problems of family violence and child abuse. It is imperative that as part of the prevention and support activities attention is paid to governance and support for leadership within Aboriginal communities.



Unless this occurs, it will be extremely difficult, perhaps impossible for Aboriginal communities to share responsibility for taking action to respond to family violence and child abuse. The lack of a coordinated service delivery system, comprising people, physical structures and programs and services on the ground presents an enormous barrier to dealing effectively with family violence and child abuse.

The current methods of planning are akin to a poorly stocked supermarket. Communities can only choose from a range of predetermined programs on the 'shelves'. What is needed is for communities to have the tools, materials and capacity to be able to build their own 'house' of services which will sustain the community. This allows for continued development over time, and adaptation according to changing community need.

### **1.1.9 Customary law**

The Inquiry has been told that it is important to consider breaches of customary law as breaches of the harmony within the community. Family violence and child abuse, as breaches of customary law, destroy the harmony in communities and there needs to be a mechanism to restore that harmony. It is only communities that can develop appropriate ways for this to occur (personal communication Cheri Yavu-Kama—Harathunian, Project Manager, Law Reform Commission WA). This has implications for the use of the non-Aboriginal justice systems.

Many communities spoke of the need to follow customary law in dealing with the problems of family violence and child abuse. The Inquiry has had discussions with members of the Law Reform Commission's Aboriginal Customary Laws Project.

The Inquiry supports any actions by government agencies that assist communities to explore ways that customary law can be appropriately used to support and enhance the way Aboriginal communities respond to family violence and child abuse. This matter is being explored in detail by the Law Reform Commission.

### **1.1.10 The conditions in Aboriginal communities**

The conditions in many Aboriginal communities are reflective of developing nations. The level of disease and ill health, the average life expectancy, child deaths and childhood illnesses, and in many cases access to the amenities that mainstream Australia takes for granted are more akin to those of developing nations rather than first world countries (McLennan & Madden 1999). In addition many Aboriginal communities are in remote areas with harsh climates, and are a significant distance from necessary services.

### **1.1.11 Standards for service delivery**

There is a strong need to have benchmarks for the delivery of services relating to family violence and child abuse.

*A system of social cohesion benchmarks, featuring measures such as health, criminality and substance abuse, would provide a means of tracking the social welfare of each Aboriginal community. (North Australia Research Unit 2000: 8)*

*1.1.11(a) Evaluation*

The Inquiry supports the emphasis on the evaluation of programs. However, it appears that some evaluations focus on the process without adequate emphasis on the outcomes. Evaluation of service delivery must include outcomes as well as process measures. Communities noted that sometimes programs to assist one group on the community (for example women's programs) had a detrimental effect on community relationships as other groups felt excluded.

**152. The Inquiry recommends that the full impact of any programs are considered before implementation in Aboriginal communities.**

## 1.2 The magnitude of the problem

The reported statistics for violence and abuse within Aboriginal communities are shocking and difficult to comprehend.

- With some 3 per cent of the population Aboriginal women account for 50 per cent of the domestic violence incidents reported to police. (ATSIC Submission Received 12 July 2002)
- Aboriginal communities *'were subject of substantiated child abuse at more than 7 times the rate of non Aboriginal communities'* in WA. (ATSIC Submission Received 12 July 2002)
- Aboriginal communities living in rural and remote areas are 45 times more likely to be victims of domestic violence than non-Aboriginals. (Ferrante et al. 1996 WAPS Initial Submission 8 March 2002)

These figures stand within a context of under reporting.

The statutory child protection service cannot be expected to deal with the problems that are present. Statutory child protection is a safety net service and it will always be overwhelmed when the infrastructure is not in place to deal with the fundamental needs and priorities of families and communities. This Inquiry has heard many complaints from individuals, agencies and communities, about the failure of DCD in cases of child abuse. While the Inquiry is of the view that some changes are required, and these changes are outlined in chapters 7 and 18, essentially the expectations on DCD are inappropriate and beyond what any child protection agency would be able to do.

Chapter 18 outlines the Inquiry's views on mandatory reporting. These views must be held against the backdrop of the existing pressure on DCD and the challenges it currently faces in providing child protection services. Further, knowledge of children who have been abused will not stop the abuse or ensure services are provided unless there is service delivery infrastructure in place.

The current interventions, including recruiting Aboriginal staff, creating committees and funding more programs are not able to address a problem of this magnitude.

## **2. FINDINGS IN RELATION TO THE EXISTING SERVICE SYSTEM**

In analysing these barriers to service delivery, the Inquiry makes the following findings:

153. The Inquiry finds that while individual departments place considerable effort on planning and coordination, from the perspective of Aboriginal communities, planning and coordination need to be improved. The focus needs to move from planning within individual agencies and coordination of those activities to planning and provision of services that is sector wide and responds to each community's needs. Communities need integrated service provision that results from an integrated planning process.
154. Within this overall integrated service delivery, communities need to have a more significant role in shaping the service response, rather than choosing from a range of predetermined programs.
155. The Inquiry finds that the projects which are time limited, with insufficient funds and inflexible service specifications, are not desirable. Some projects are overly dependant on the supervisor or manager and may lapse when that person moves. The Inquiry finds that Aboriginal communities need ongoing planned and consistent service provision and the nature of certain 'pilot projects' currently being implemented are unlikely to have that outcome.
156. The Inquiry finds that evaluations and reviews of programs and service delivery should include a focus on the outcomes as well as the process of implementation.
157. The Inquiry finds that there is a need for agencies to examine the implications of programs for Aboriginal peoples and ensure each program's suitability to that cultural group.

### **2.1 Findings in relation to resourcing**

158. The Inquiry finds that resource distribution to provide services to communities are not fair and equitable. Communities of equal size do not have the same social infrastructure and supports. The Inquiry further finds that departments are not funded in such a way that they can provide adequate services, staff and infrastructure in all rural, regional and remote communities.

### **2.2 Findings in relation to direct service delivery**

159. The Inquiry finds that the departments face particular challenges in responding to abuse or neglect of Aboriginal children. The recognition of past inappropriate actions by government departments has made workers very sensitive and in some cases fearful of doing further damage rather than focussing on improving conditions for children. In recognition of this particular difficulty and taking into account a number of submissions which assert that Aboriginal children are dealt with differently, recommendations will be made in relation to the need for clarity of response when Aboriginal children are at risk or have been abused or neglected.

## 2.3 Findings in relation to governance

160. The Inquiry finds that the complexity and breadth of problems faced by Aboriginal communities provide challenges in relation to governance and leadership in Aboriginal communities. The Inquiry notes the plans of Department of Indigenous Affairs (DIA) to respond to this problem and finds that there is a need for a comprehensive response across government agencies given the fundamental problems caused by difficulties in governance and leadership in communities.

## 3. THE WAY FORWARD

The Inquiry has not seen that its role is to develop the detailed systemic response to family violence and child abuse. Rather, the Inquiry is proposing a way forward that will establish the groundwork for an integrated service system in relation to the prevention and early intervention in family violence and child abuse and a coordinated, multidisciplinary response when family violence and child abuse occurs.

Much research and indeed many submissions to this Inquiry have emphasised the need for a holistic systemic response to what has been described as an epidemic of family violence and child abuse.

The Inquiry is mindful that it is not just appropriate but essential for government agencies, the non-government sector and relevant agencies, such as Aboriginal and Torres Strait Islander Commission (ATSIC), to be involved in further developing an integrated response to prevention and early intervention, and the coordination of those services delivering supports to families and children who have experienced family violence and child abuse. The considerable expertise of professionals within those agencies and groups are required to further develop a system that will begin to impact on the magnitude of violence and abuse in Aboriginal communities in Western Australia.

Individual agencies have stated clearly their commitment to prevention and early intervention. Submissions from government agencies, particularly DCD and the Western Australia Police Service (WAPS), emphasised the need for service delivery systems which covered the full spectrum of intervention and prevention services. Counsel Assisting, in his closing submission, made note that the evidence provided to the Inquiry contained a consistent theme of the need for an overarching model which responds in a holistic way to the problems of family violence and child abuse.

What is needed is a new and systemic response to the underlying factors, the existing social problems as well as intervening after Aboriginal family violence and child abuse have occurred. This response requires

- New ways of funding
- Different formula for allocating resources
- The integration of prevention, early intervention and support services
- Enhanced services to children and families after abuse has occurred
- The development of a range of teleconferencing, video conferencing and other electronic support services by professionals to those who are delivering services directly to the community.

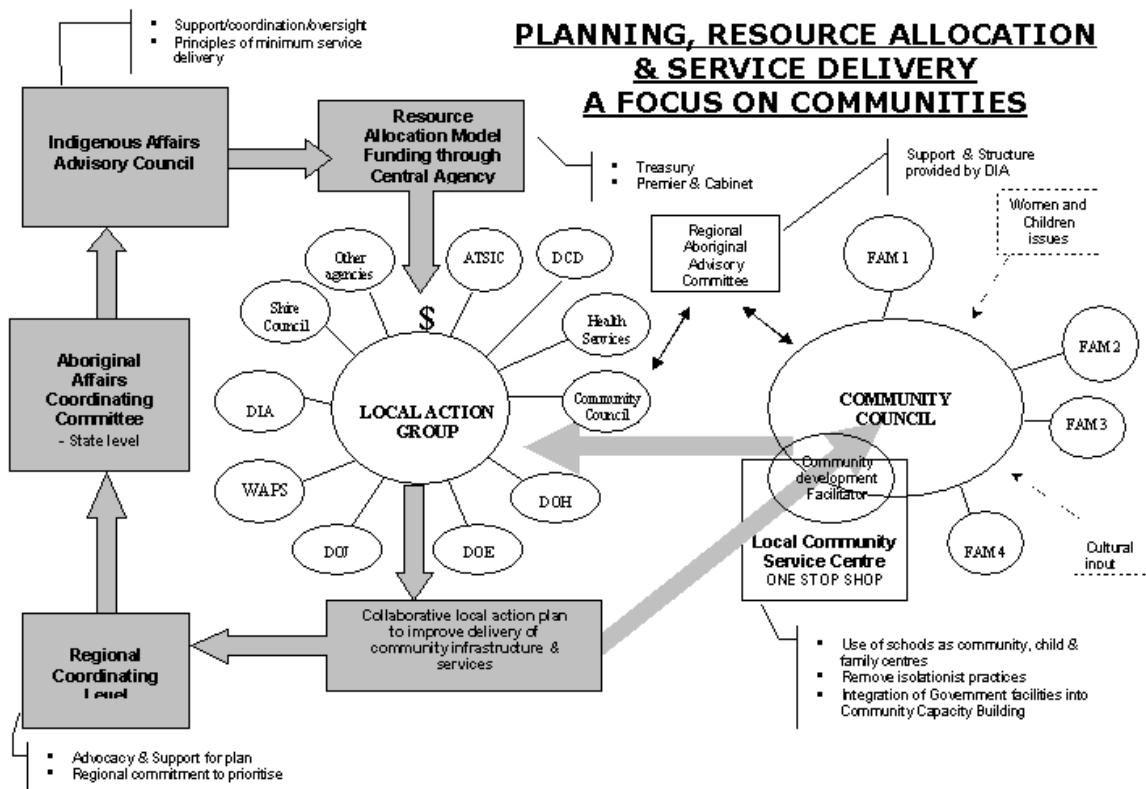
There are significant costs associated with the adoption of a new and systematic response to family violence and child abuse. However, there are also immeasurable costs of not stopping family violence and child abuse. One consequence is the destruction of the current generation of Aboriginal people.

The Inquiry recognises the need to cost these proposals, and assumes the implementation body will address this as a matter of priority.

These recommendations are about building a service system from the ground up. They are about starting with the community whilst putting in place oversight, monitoring and support combined with the establishment of minimum standards for the delivery of services. The oversight to this system will outline benchmarks for service delivery but will allow flexibility in how those services are delivered. Government agencies must support service providers in the communities as well as provide clinical and professional expertise to those service providers.

The diagram Attachment A below outlines a new planning, resource allocations and service delivery model.

**Planning, resource allocation & service delivery. A focus on communities**



**3.1 Partnership with communities**

There is not one piece of research that suggests that government agencies or other service providers can deal with this problem on their own. It is clear from the research, consultations with Aboriginal communities, submissions provided by government agencies and others, that Aboriginal people and Aboriginal communities must be involved in shaping the solutions to the epidemic of family violence and child abuse.

While this principle is regularly espoused and stated, it is much harder to find examples where communities and leaders within those communities have been able to successfully tackle the problems.

## **3.2 Supports for communities**

### **3.2.1 Community councils**

Government agencies need to be giving support and encouragement to Aboriginal communities to assist them to review their community constitutions and governing laws, to ensure broad representation by all family groups in the community. This representation on the council will assist by allowing traditional responsibilities to kin to become part of the structure and management of the community.

Government agencies need to assist groups within the community who may need help to have their views considered (for example women's and children's issues), and encourage councils to seek the input of significant members of the community (for example, cultural input).

### **3.2.2 Regional Aboriginal Advisory Council**

The Inquiry believes that membership from each council within the region to form a Regional Aboriginal Advisory Council (RAAC) would enable community councils to take a greater responsibility for directing and shaping responses to family violence and child abuse.

The Inquiry does not have a firm view on which government agency should resource the community council. However, the Inquiry suggests that DIA is well placed to facilitate support to councils and the RAAC<sup>1</sup>.

## **3.3 The one stop shop concept**

The Inquiry believes that there has to be a physical presence in each community that delivers integrated prevention, early intervention and support services. This group can then form the link to specialist services and assist as appropriate with the delivery of services after family violence and child abuse have occurred.

This physical presence must include appropriate people including a person whose skills include a firm foundation in community development. Existing staff in the community should be relocated to this community centre where possible. There must be a building or centre to house the staff which is seen as supportive, welcoming and where attendance is seen as non-stigmatising by the community.

Existing buildings may be able to be used or adapted in many communities. The building of such a centre should be a priority, without detracting from other essential services. This community centre resourced with appropriate staff will provide the resourcing, support and impetus to allow

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<sup>1</sup> Chapter 12 explores, in more detail, the role of DIA.

<sup>2</sup> Schools as Community Centres is a New South Wales (NSW) and Australian Capital Territory (ACT) program which uses the schools as a focus for community activities.

the community to take action to address family violence and child abuse. The bringing together of existing staff and the development of a different funding model (discussed in 3.4) will allow more permanent staff to be employed within communities thus addressing the concerns about short term project based staff. The staff in the community centre provide the basis for service provision to the community.<sup>7</sup> Other government facilities such as Health Clinics must also be incorporated in the One Stop Shop model to ensure participation in the communities.

### **3.4 Resource allocation model**

The Inquiry believes that it is vitally important for a different model of resource allocation to be implemented. All monies currently utilised for primary and secondary health and welfare services should be pooled and allocated to communities according to a resourcing allocation using appropriate indices of disadvantage.

Allocation to communities should occur centrally through either the Treasury or Premier and Cabinet. Subject to agreement by other relevant bodies it may be possible in time to involve other service providers to enhance this integrated system. The Commonwealth Coordinated Care Trials (CCT) are one example of integrating funds to allow for better coordinated services. (Commonwealth Department of Health and Ageing 2000)

Integrating funding sources to allow for better integration of services, more community control and less overly bureaucratic accountability is widely recommended in the literature. Putting this into practice has been much more difficult. The implementation challenges in the CCTs should not detract from the importance of developing better models of funding.

### **3.5 Local action groups**

The model is dependent on Local Action Groups (LAG) developing plans for each community taking into account broad priorities that are set centrally, but primarily responding to local identified needs. Funds allocated using the resource allocation model need to support the local community service centre 'one stop shop' as well as purchase or fund addition activities required for that community. The LAG has representatives from the following areas: ATSIC, Health, Community Council, Housing, Education, Community Development, Aboriginal Affairs, local shire council and any other agencies involved in service provision.

The LAG develops a Local Action Plan (LAP) which direct the work of the community centre particularly in relation to prevention and support activities. The LAP also guides the work of individual government agencies in the provision of the core essential services. The LAP provides the opportunity to develop coordinated services which respond to community need and build on the prevention and support activities of the community service centre. Using these strategies it will be possible to build a comprehensive, culturally appropriate strategy, to respond holistically to family violence and child abuse at the local level.

### **3.6 Regional and state level**

The importance of local control and direction cannot be overstated. However, it is also important that the government has means to ensure that priorities identified at a state level are incorporated

in to local planning. Experience in mainstream service delivery has demonstrated that local service provision can omit important priorities to the detriment of disadvantaged local groups.

The government agencies at the regional level need to prioritise funds and activities according to the LAG. They must also play an important role in advocating and supporting the LAG. Middle management can stifle and constrain activity and provide a barrier to information flow. This has led to calls for better structures in organisations. This has not always led to the intended results. A model which encourages regional level staff to prioritise and support according to local planning process provides an important role for regional staff.

### **3.7 Indigenous Affairs Advisory Council**

The Inquiry endorses the importance of the Indigenous Affairs Advisory Council (IAAC) in providing overall guidance and direction in the delivery of services impacting on family violence and child abuse.

### **3.8 The need for incremental implementation**

It is suggested that two regional pilot projects be used to commence the implementation strategy. An action learning approach should be used in the implementation process to guide and inform later information. Consideration should also be given to a pilot in the metropolitan area.

### **3.9 Conclusion**

This model provides only a brief outline. It is important that government agencies, non-government agencies and Aboriginal communities develop it further. The important principles are:

- the allocation of resources using a model based on disadvantage and need rather than based on capacity to lobby and argue for funds
- the use of LAGs.
- the integration funding associated with primary and secondary services to allow for proper continuous integrated service delivery based on clear plans that can make a consistent and holistic attack on family violence and child abuse
- the use of a community development approach, which uses successful strategies from developing countries, whilst acknowledging the centrality of local culture, traditions and structures
- the overarching and strategic role of the IAAC in providing direction and support.

## **4. RECOMMENDATIONS**

161. The Inquiry recommends that a formula for resource distribution by government agencies including both direct service delivery and funding activities needs to be developed. The resource distribution formula needs to include indices of social disadvantage.
162. The Inquiry recommends that once the funding has been nominally allocated according to the agreed resource formula, communities and government and non-government agencies should then develop service provision plans in accordance with the community plans of each



community and in consultation with those communities. The community plans should build on the regional plans developed by ATSIC. The resource allocation formula and actual allocation needs to be made public, so that communities can plan within the real constraints of available funds, allocating priorities within those constraints.

163. The Inquiry recommends that there needs to be a 'top down bottom up' (involving strategic direction coupled with local planning) approach to the planning, management and delivery of services. The attached model outlines this process.
164. The Inquiry recommends that prevention and early intervention and other support activities must be integrated and delivered according to each community plan. This must include the development and enhancement of social infrastructure within that community. The model provided by Gerritsen and colleagues (2000), the Aboriginal Suicide Prevention Steering Committee and the Institute of Child Health is a useful model which has been adapted by the Inquiry.
165. The Inquiry recommends that there needs to be a Statement of Service Provision for each community by all agencies. This must include both the planned service provision for the following year and the actual service provision that was provided in the past year. This Statement of Service Provision must respond to community plans, be based on the resources allocated according to the allocation formula, the agreed core service delivery functions and the integrated prevention and early intervention services.
166. The Inquiry recommends that outcome and output measures relating to family violence and child abuse must be set. The performance reviews of the Director Generals (DGs) of each of the key agencies must include an assessment against benchmarked measures. The performance of key staff in agencies must include a review of the impact that the officer has had on family violence and child abuse in communities, using agreed outcome performance measures, not just meetings attended or committees established.
167. The Inquiry recommends that Aboriginal communities must be offered the opportunity to regularly comment on the quality of service provision delivered in their community, by Government agencies. This should relate to the statement of service provision and address the appropriateness of the service delivery. Most businesses have a feedback mechanism separate to the complaints mechanism. Government agencies servicing communities should have such a mechanism to evaluate the service delivery to communities.
168. The Inquiry recommends that pilot projects should not be used when there is no intention to test the model of service provision. The intention of pilot projects is to test out aspects of the program before a roll out into the wider community. Pilot projects must have a specific model that is being tested and which fits into the community plan for the development of social infrastructure within that community.
169. The Inquiry recommends that there be further examination of the role of DIA as a result of recommendations made in this report about capacity building and support for councils.
170. The Inquiry recommends that the 'one stop shop' concept be developed in communities and deal with the range of factors and problems that are linked to, and result from, family violence and

child abuse. This would include drug abuse, the misuse of alcohol and other substances, gambling, early parenting, suicide, and other health and welfare activities. This one stop shop could also take responsibility for oversight of services to young people within the justice system as well as those children and young people who have protective needs.

171. The Inquiry recommends that different models for the delivery of basic social services should be developed dependent on remoteness, and size. The basic models could then be implemented according to community wishes and taking into account existing infrastructure.
172. The Inquiry recommends that the one stop shop to be supported by specialist teams who could use video and other tele-links to support workers at the one stop shop. Specialist teams could then visit the community and work with the one stop shop workers to provide the more specialist therapeutic and other programs that are not appropriate to be delivered by the more generalist workers at the one stop shop. This could include tele-medicine, where the specialist medical practitioners are available to offer advice to on site medical staff. This 'tele-service' could also be used to support the workers to whom children report abuse so that children are not only disclosing to someone they know but having the advantage of specialist expertise provided by competent professionals who would not otherwise be able to access those communities.
173. The Inquiry recommends that departments where the expertise and control is based in Perth need to develop an outreach function so that they are able to respond to the tele-conferencing, video conferencing and electronic service concept.

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## Overview of the service system

### CHAPTER 18

## SECTION

*This chapter explores the service systems including mandatory reporting and support services for children reporting abuse as required by the Terms of Reference*



CHAPTER 18  
Overview of the Service System



## 1. OVERVIEW OF SERVICE PROVISION

The Inquiry has received submissions and heard evidence from seven key government departments. They are Department of Community Development (DCD), Department of Justice (DOJ), Department of Health (DOH), Western Australian Police Service (WAPS), Department of Housing and Works (DHW), Department of Education (DOE) and Department of Indigenous Affairs (DIA). In Section 3 of this report, a chapter was devoted to each of these departments as well as contemplation of best practice models in responding to family violence and child abuse, and the coordination mechanisms within government.

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*'These factors are interrelated and compound on each other. They are underlying the distress experienced by Aboriginal people and communities.'* (NAPCAN WA (Inc) Submission: 7)

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In examining the services provided by government agencies in response to family violence and child abuse the Inquiry has been impressed with the commitment of agencies, and individuals within those agencies, to delivering those services. The Inquiry believes that this commitment will assist the government and agencies to put in place a service system which will provide the appropriate mix of integrated community-based services to respond to the underlying factors and address social disadvantage. There will be re-invigorated tertiary services which will develop a more proactive approach and support services in communities with an emphasis on teleconferencing and video conferencing. The Inquiry has previously examined the causes of child abuse and neglect. They are far reaching, multifaceted and interact with each other. Therefore the service system will need to be comprehensive with aspects of service delivery integrated and other services delivered within a model of collaboration, cooperation and coordination.

### 1.1 Primary responses – awareness raising

There are some education and awareness programs which were brought to the Inquiry's attention by the departments examined. The Inquiry did not commit a significant amount of time to considering these broad issues of education and awareness raising.

It was clear to the Inquiry through its visits to remote communities and consultations with Aboriginal communities that education and awareness raising programs which may be effective for metropolitan areas and non-Aboriginal communities need to be 'rethought' with regard to all Aboriginal communities.

The Inquiry notes programs such as the Kimberley Aboriginal Family Violence Community Education Project (KAFVCEP). This project was established by the Kimberley region's Domestic Violence Committee to better educate the community about family violence. The project was funded for three years and provided by an Aboriginal non-government service provider.

The Inquiry supports DCD's submission that specific material has to be developed for different communities that meet the specific community requirements such as the use of local language. They have advised that additional resourcing would be required to ensure that the appropriate expertise is available to develop the material. (Counsel Representing Agencies 22 July 2002) The Inquiry has made a recommendation in Chapter 7 in that regard.

Another form of awareness raising is the Community Nursing Program. The features of this program are:

- Self-determination for clients
- Empowerment of clients to make decisions on health issues
- Accessible to all
- Equitable to all
- Community participation in planning and evaluation of services. (Witness Statement of Christine Harling 6 May 2002)

The Inquiry notes that the provision of direct awareness raising through community nursing seems to be a relatively effective manner of raising awareness in Aboriginal communities. There are other examples of awareness raising and education at the local level, in particular many of the DCD early intervention programs appear to have a component of awareness raising.

What has been clear to the Inquiry is that existing education and awareness programs do not appear to be effective in raising the level of awareness about options for responding to family violence and child abuse. The Inquiry has made recommendations in relation to programs to offer protection to children, such as Protective Behaviours in schools. The Inquiry believes that there should be further exploration of programs that could be offered in schools but also in local youth groups, which would place an emphasis on anti-violence strategies and dealing non-violently with conflict.

These strategies will be ineffective unless there are long term culturally specific appropriate programs to raise awareness in the whole community about family violence and child abuse, and strategies that communities can take to deal with these devastating problems. The Inquiry does not imply that Aboriginal communities are not extremely concerned about these issues. During consultations, they expressed deep concern about the levels of violence in their communities. However they expressed real concern about their capacity to impact on this problem and make changes. They expressed the need for considerable help but were very clear that this help must be provided in such a way as to allow them to work with the agencies in developing strategies.

**174. The Inquiry recommends that the implementation body oversee the exploration by the departments of programs which educate and raise awareness in Aboriginal communities. These programs need to involve Aboriginal community members in the design phase, and target all members of the community, with particularly focus on children and young people.**

## 1.2 Secondary responses – dealing with underlying factors and current social problems

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*That emergency psychiatric services for Aboriginal people be given top priority and upgraded to protect and prevent a major crisis.*

(Aboriginal Community 2002)

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The Inquiry has identified a wide range of programs dealing underlying factors and current social problems. It is impossible to overstate the importance of dealing with these factors effectively. They are the key not just to preventing family violence and child abuse but also to preventing the range of other devastating outcomes such as suicide, depression, mental health problems and the range of other factors explored in previous chapters.

In previous chapters the Inquiry has examined

- Funding activities of the DOH through 'Aboriginal Medical Services'
- The work of the Office of Aboriginal Health (OAH) and the Community and Child Health Branch (CCHB)
- The work of Aboriginal Psychiatric Services (APS) at Graylands Hospital
- The Child and Adolescent Mental Health Services (CAMHS) which particularly supports children and young people with mental health problems resulting from family violence and child abuse
- The Drug and Alcohol Office (DAO) which also funds community drug service teams
- Sobering up services
- Programs which address parenting such as Best Start and Best Beginnings programs
- A range of housing support programs provided by DHW
- Programs from the DOE, such as;
  - The Students At Educational Risk (SAER)
  - The 'Aboriginal Strategic Plan Creating the Vision' to improve school attendance
  - Aboriginal pre-schools providing early childhood programs
  - An Aboriginal Support Network
- Attendance officers

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*If the disclosure is likely to trigger community feuding or disruption, mediators need to be readily available to deal with the likelihood of violence. The mediators need to be highly mobile and accessible and effective. (Service provider)*

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- The range of programs provided by DOJ including
  - mediation and alternative dispute resolution programs
  - support for offenders including anger management and substance abuse as well as
  - assisting individuals within the justice system to access appropriate services
  - the Drug Court

- WAPS indicated that 40 per cent of their activities are directed towards prevention and support activities. These are often responsive to locally identified needs and offer a range of supports because they are often the first service that is available when a problem arises. In particular,
  - Aboriginal Police Liaison Officers (APLOs) and Aboriginal police officers liaise between WAPS and the Aboriginal community to resolve problems
  - The Delta Program has a range of proactive policing activities such as WAPS officers regularly visiting schools
  - Police and Citizens Youth Clubs
  - Mediation services

The Inquiry commends these service providers and their work. However the Inquiry is of the view that these services need to be better integrated and offered more widely. Many rural, regional and remote communities are unable to access these services. Chapter 17 has outlined the need for better integration of primary and secondary services. In response to the proposed models of funding, secondary services need to be considered from the perspective of each community. It is imperative that the proposed Local Action Groups (LAG) negotiate the integration of relevant services so that each community has appropriate access to the important range of prevention services that are considered important.

In small communities people will never be able to access a full range of services. Nevertheless a properly staffed community centre offering 'one stop shop' services will be able to develop a skill base so that the range of underlying factors and social disadvantage can be met from that team. Government agencies as well as non-government service providers have the skills and expertise to support the local delivery of services. Their role will be to provide a range of clinical and other professional expertise to service providers on the ground. Unless this occurs, people living in cities will have access to a range of services, leaving those in regional, rural and remote areas lacking the capacity to meaningfully address the factors that contribute to family violence and child abuse.

**175. The Inquiry recommends that the proposed Local Action Groups focus on ways to integrate services which address long term underlying factors and social disadvantage which lead to child abuse and neglect.**

### **1.3 Tertiary Responses – responding to incidents of family violence and child abuse**

The majority of tertiary interventions are provided by DCD, WAPS and DOH in response to family violence and child abuse. Those tertiary responses are discussed in detail in chapters 8 and 9 respectively, and will not be re-addressed in this section.

The Inquiry has particularly addressed the lack of therapeutic and counselling services.

### **1.3.1 Therapeutic services**

The Inquiry believes that there is a need to further examine models, theories and practices which explore ways to create therapeutic change in Aboriginal people after they have experienced violence. The Inquiry has been advised by experienced Aboriginal psychologists Tracey Westerman and Darrell Henry, both of whom have sound knowledge of Aboriginal culture and therapeutic services. They have both emphasised the need for culturally appropriate therapeutic services.

The Inquiry acknowledges there is a need for services which assist clients to deal with the immediate trauma of violence or sexual abuse. This need has been described as being similar to that identified for people who have experienced natural disasters where people are in a state of shock and their basic functions, such as sleeping and eating, are affected. It is after this shock has passed that therapeutic services are particularly valuable. People may also experience a range of emotions that they feel unable to manage.

Throughout the course of the Inquiry, professionals have highlighted the importance of long term 'healing' services. Aboriginal people have been traumatised many times over. The experiences of colonisation, assimilation and removal of even the most basic rights is not just something that happened in the past. It is alive and real and each succeeding trauma such as violence or sexual abuse brings back the early traumas that have occurred over the generations (Aboriginal psychologist). Therefore the services that are provided need to recognise not just Aboriginal culture but take account of the extensive trauma suffered by Aboriginal people over the last 200 years.

The concept of 'Healing Centres' was mentioned during consultations. Community members indicated the need for funding assistance in establishing these centres. They believed that their traditions, culture and spirituality were imperative in designing and implementing these centres within communities. Tracey Westerman also spoke of the need for an integration of western clinical expertise and Aboriginal knowledge of culture, tradition and spirituality. (Tracey Westerman personal communication, 24 June 2002)

**176. The Inquiry finds that there is a need for both more services, and greater access to existing services, particularly therapeutic services, for children and families who experience family violence and child abuse.**

**177. The Inquiry recommends that government agencies explore, with Aboriginal people, the concept of 'Healing Centres'.**

**178. The Inquiry recommends that services to perpetrators of violence acknowledge the sense of powerlessness and cultural loss, racism and prior physical and sexual abuse that have been part of many Aboriginal men's experience.**

**179. The Inquiry recommends that the delivery of therapeutic and counselling service encompass both children and families.**



Aboriginal people have consistently described a view of the world which is essentially holistic. Western service delivery therefore needs to better integrate the services that are provided, paying particular attention to the need for communities to direct the way services are provided. The Inquiry believes that the LAGs will provide such an opportunity. The Inquiry also believes that it is important for health providers within Aboriginal communities to have a range of skills and expertise in accordance with community expectations.

**180. The Inquiry recommends DOH consider supporting the design and development of an enhanced professional role and career development path for Aboriginal Health Workers and Aboriginal Mental Health Workers that incorporates a primary therapeutic role. This should be reflected in work responsibility and remuneration.**

A particular gap identified by the Inquiry during consultations lies in the provision of services to children who do not disclose abuse, but whose behaviour demonstrates, or who indicate in other ways, that they either have been abused or are at significant risk. Traditional responses by DCD, WAPS and DOH have been ineffective because the child had not specifically disclosed abuse to those agencies.

**181. The Inquiry finds there is a need to review service provision to children where abuse is not disclosed but the child has clearly identified needs.**

The Inquiry notes the importance of building long term relationships with those families and the need for highly skilled professional practice to engage families who have high needs but where specific instances of abuse might not have been disclosed.

## **1.4 Support measures for children reporting abuse**

There are a range of protocols between government agencies in relation to the reporting of child abuse. These have been outlined in earlier chapters, particularly chapter 13. The Inquiry has noted the need for changes to therapeutic services for victims, family members and perpetrators.

During community consultations the Inquiry heard many requests for therapeutic services for child victims of abuse, particularly sexual assault. Mothers were particularly concerned about changes to their child's behaviour which they linked to the abuse. Young people who had been abused spoke of their deep trauma resulting from the abuse and the problems obtaining counselling and therapy. Advice was provided that '*repairing damaged children beyond initial physical safety is often not attended to until they are symptomatic ... years later*'. (Cameron & Associates 2001)

The Inquiry believes that there is a need to raise awareness in professionals who have contact with children, such as teachers and child care workers, so that they are better able to respond when children attempt '*to tell what is happening to them*'.

Children will feel more comfortable 'telling their story' if there are people they trust willing to listen and support them. The one stop shop or family centre recommended in Chapter 17 would provide a group of trusted people within the community who are known to the children and who can be provided with support from government agencies to assist them to deal appropriately with disclosures of abuse.

Children also need to be kept informed about what is happening as a result of the disclosure of abuse. For some children court appearances will occur many months, sometimes years later. While the Child Witness Support Program is very effective for children giving evidence, there are long periods when children are unaware of what is happening. (Community Consultations)

The Inquiry is of the view that Protective Behaviours programs in schools, as well as preventing abuse will assist both children and teachers to be able to deal with disclosures of abuse.

Project Axis in Queensland found that '*most children who do disclose sexual abuse tell their mother first*' (Queensland Crime Commission and Queensland Police Service, 2000: xii). This raises the importance of general awareness raising of issues of abuse within the Aboriginal community generally.

## **2. OTHER ISSUES OF SERVICE DELIVERY**

### **2.1 Service provision in remote communities**

The Inquiry notes the comments of Counsel Assisting, Mr Hooker, in Closing Submissions that:

*... time and time again the sheer size of the state of Western Australia, issues arising from distances of travel, climate and, indeed, diversity of different Aboriginal groups and communities, is one of the most substantial and serious complications to effective service delivery. (Counsel Assisting Closing Submission 22 July 2002: 1785)*

As previously quoted, the Director General of DOJ acknowledged that:

*...clearly we need a collective re-think of the ways in which we work together to ensure that the communities are empowered and provided with equitable access to government services. (DOJ Final Submission 16 July 2002: Attachment 6)*

The Inquiry has addressed specific issues of service delivery in remote regions with regard to each department in Section 3. Further, Chapter 17 discusses a model for the delivery of services to Aboriginal communities.

As noted in Chapter 9 of this report, WAPS has recently conducted a review of services to remote communities to '*evaluate and assess our current provision of policing services to remote/discrete communities*' ('the Galton-Fenzi Report'). (Galton-Fenzi June 2002: i)

The Galton-Fenzi Report stated that there was no real indication of consistent community based policing strategies in remote communities (Galton Fenzi, June 2002). Whilst the Inquiry has not had an opportunity to fully consider the Galton Fenzi Report, it views the provision of services in remote or discrete Aboriginal communities as an important issue. Much of the work done by Senior Sergeant Galton Fenzi could equally apply to other departments.

DOJ provides a number of services specifically for remote or discrete Aboriginal communities. These include Aboriginal Community Supervision Agreements (ACSA), remote bail facilities, prison work camps in regional areas and regional based justice projects. However, residents of remote communities are not able to access Juvenile Justice Teams (JJT), and ACSAs for juveniles, both of

which are the subject of proposed legislative amendments to allow extension to remote communities.

DOE has provided evidence to the Inquiry that one of the problems with the provision of services in remote communities is attracting staff to take positions there (DOE Supplementary Submission 12 July 2002:15). Whilst the Inquiry has made a specific recommendation with regard to DOE in that regard, it views the attracting and retention of government staff in remote communities as a problem for many of the departments which the Inquiry has examined.

**182. The Inquiry recommends that agencies examine the range of incentives available with a view to attracting and retaining experienced staff who have an interest in the delivery of regional and remote services to those localities.**

The Inquiry notes the work of Elaine Sharplin of the Graduate School of Education of University of Western Australia (UWA) who is looking at the retention of effective teachers in the regional and remote schools.

More generally, DCD stated that it did not have sufficient manpower or logistical resources to have a presence and respond to the needs of remote communities in a truly effective way (DCD Letter, 4 July 2002: p4). Similarly, DHW state that there is a need for more housing in remote communities, which may be met by more resources being provided to DHW or a shift in resources away from other areas to remote communities. (Transcript of evidence of Jody Broun 10 June 2002)

Other departments who have given evidence to the Inquiry have also identified the relationship between resources and remote service delivery. Given current funding allocations, it may, and often will be that providing additional staff and resources to remote communities necessitates a reduction of services in other areas. The Inquiry has not conducted inquiries that might enable it to assess a needs-based comparison between particular areas within the state, or particular services. Rather it notes that a number of departments acknowledge that insufficient services are currently available in remote communities.

## **2.2 Alternative methods of contact**

A number of departments provided evidence to the Inquiry as to how they went about contacting Aboriginal community members. Some departments acknowledged significant difficulties in contacting Aboriginal people, which, in part, can lead to Aboriginal people being less likely to access services.

For example, the Victim Support Service (VSS), Child Witness Service (CWS) and Victim Notification Service provided by DOJ usually contact Aboriginal people by mail in the first instance. It was noted that this was regularly not effective, and alternate methods of contact were sometimes used.

**183. The Inquiry finds that Aboriginal people do not respond as often to typical methods of initiating contact as non-Aboriginal people. The Inquiry recommends that a policy be developed to address different mechanisms of contacting Aboriginal people. The Inquiry finds that services provided by the Child Witness Service could better reach Aboriginal people with the employment of an Aboriginal worker. The Inquiry supports the creation of an Aboriginal specific position to work predominantly in the metropolitan area.**

The Inquiry has not considered the 'methods of contact' in such detail for other departments, but it has formed the view that alternative means of contact were needed for Aboriginal people in certain situations.

Further, it has received evidence from a number of, if not all, departments which indicates that Aboriginal workers are employed in order to encourage more effective contact between the department and the Aboriginal community. For example, WAPS employs APLOs, DCD and DOH employ Aboriginal service delivery officers, and DOE employs Aboriginal Education Officers (AEO) and Aboriginal Liaison Officers (ALO).

Whilst a number of departments have identified that Aboriginal clients can be difficult to contact and engage in services, there does not appear to be an across-government model to improve that engagement. Each department that the Inquiry examined showed some particularly good strategies aimed at encouraging and assisting Aboriginal people to access its services, but there was not a model which government agencies could use to improve that engagement.

### 2.3 Making Best Use of Services

A number of departments gave evidence to the Inquiry which indicated that some Aboriginal people had problems using the services the departments provided. This may be for two reasons:

- The service provided is not culturally appropriate or designed to meet the needs of the Aboriginal community
- The Aboriginal community members whom the service is provided do not have the 'tools' to use the service effectively.

An example of a service, which may fall into the first category described above, is the Aboriginal Medium Program run by DOJ for incarcerated Aboriginal sex offenders. This service is currently being reviewed by DOJ. Designing services to meet the needs of the Aboriginal community is addressed in more detail at Chapter 17.

Evidence has been provided to the Inquiry that some members of the Aboriginal community do not benefit from intensive program support. For example, DHW is preparing and delivering programs to assist Aboriginal people to maintain tenancies by maintaining the property, arranging regular rent payments and dealing with behaviour which may be perceived as anti-social by neighbouring tenants.

Another example is the provision of Aboriginal Education Officers by DOE to assist the Aboriginal community in maximizing the educational opportunities available to Aboriginal students.

### **3. PLANNING**

#### **3.1 Changes to Management Structures**

A number of the departments considered by the Inquiry have recently been, or are being, subject to significant managerial change.

The first of these 'change agents' to be considered by the Inquiry was the *'Machinery of Government Taskforce'* which provided a report to government on building and maintaining a strong public sector. A number of the recommendations of that Taskforce have specific application for the agencies which have been examined by the Inquiry. The implementation of the *'Machinery of Government'* report has resulted in some restructuring of government departments and ministerial portfolios. Further, recommendations of the report centre on the streamlining of government departments and the provision of service to reduce duplication. Specific recommendations to departments central to the Inquiry include that *'the Community Development portfolio should shift from a predominant focus on the provision of welfare and safety-net services towards a greater emphasis on building the capacities and strengths of individuals, families and communities.'* (Hicks 2001:99) The DOH was to undergo a separate review and report back to the government.

Departments have also undergone departmentally based reviews and changes to management structures. Examples are the Health Administrative Review Committee's (HARC) review of health services conducted of DOH, the Delta Reforms which are being implemented by WAPS and the 1996 reforms to DCD child protection procedures.

The theme of all these reviews is a simplification of 'process' and 'management' and a renewed focus on service delivery that is not entirely dictated by 'incident based' responses. This shift in focus is supported by the Inquiry, and indeed is pivotal to its proposed systematic prevention model. However, the Inquiry would prefer that agencies saw this as a widening of their responses to family violence and child abuse rather than a 'shift' away from incident response toward more preventative service delivery.

#### **3.2 Consultation with Aboriginal Communities**

A number of departments have advised that they consult with communities when establishing services.

One such example is the Memoranda of Understanding (MOUs) used by DCD, particularly in the Kimberley region to form the basis of mutual cooperation between communities and the Department, and aim to improve and strengthen the general well-being of families and children in the communities. (DCD Initial Submission 5 April 2002)

DCD have also put in place the Best Practice Consultation Framework for the Provision of Services to ATSI people. This Framework is to assist the Department to improve culturally appropriate service responses to ATSI children and families receiving DCD services.

WAPS also have a consultation framework available to officers-in charge of WAPS stations, however it is a less formal framework. Rather, WAPS has included consultation with the Aboriginal

community as a duty of the officer-in-charge, and established a framework for Community Police Relations Committees. There is no compulsion on officers-in-charge to adopt the committee framework in order to consult with communities.

Each department considered by the Inquiry has different approaches to establishing consultation with the community. These range from memoranda of understanding, formal agreements and partnerships, committees and conferences or presentations. A whole of government model of consultation is proposed by the Inquiry in Chapter 17.

### **3.2.1 Who to consult with?**

During consultations with Aboriginal communities it was stated that government departments would often consult with *'the wrong people in the community'*. There were also suggestions that some leading community figures were responsible for the family violence and child abuse in some communities.

The Inquiry has not explored these latter allegations during the course of its inquiries, indeed it is not within the scope of its function to do so.

Government departments may find it difficult to identify the 'right people' in the Aboriginal community to consult with. Indeed, who the 'right people' are in a community will vary between communities and may even vary regularly within communities.

One solution put to the Inquiry was that 'all' members of a community should be consulted as part of any consultation process. The Inquiry sees this as being an unreasonable burden to place on departments which are limited in the amount of time that they spend in communities. Departments need to be able to establish, with ease, who the appropriate members of communities are to consult with. In many instances the Department will assume the correct body to be the local community council. This has been criticised by some of the individuals who have met with the Inquiry.

The Inquiry has also heard suggestions that a list or register of local law men and women be established for departments to contact in the course of consultation. Indeed, this may be a better approach to compliment the existing 'local council' structures in many communities where council members are often younger members of the community rather than more elderly law men and women. The Inquiry is not aware of the logistics of creating such a register, or indeed if this task has already been undertaken in whole or in part. A proposed consultation mechanism is discussed in Chapter 17.

## **3.3 Aboriginal Specific Divisions**

Of the seven departments considered by the Inquiry, the vast majority had *'Aboriginal specific directorates'* or were considering putting in place such a unit or division.

The role of those Aboriginal specific directorates varied. The Aboriginal Housing and Infrastructure Unit (AHIU) in DHW delivers both policy advice and implements programs aimed at improving housing options for Aboriginal people. By comparison both the WAPS and DOJ Aboriginal specific directorates focus more on the provision of policy advice and only provide some specific and limited programs.

The Aboriginal Housing And Infrastructure Unit (AHIU) provides policy advice and implements programs designed by the Aboriginal Housing Board (AHB) aimed at improving housing options for Aboriginal people. These programs include supporting tenants who are either applying for Homeswest tenancies or are already in tenancies; supplementing the mainstream Homeswest program with Aboriginal specific housing in urban areas and supporting Aboriginal communities by providing new housing, infrastructure and management and maintenance programs.

DCD is currently in the process of setting up an Aboriginal specific division built upon the current Aboriginal Strategy and Policy Unit. Mr Danny Ford, Director, Aboriginal Strategy and Policy, acknowledged that DCD was one of the last departments to create such a high level aboriginal specific directorate that 'provided Aboriginal services and coordination and strategy and planning ... working with the other directorates'. (Transcript of Evidence of Danny Ford, 7 May 2002: 895)

The creation of an Aboriginal specific Division is part of DCD's response to the *'Machinery of Government Taskforce's'* report.

The Inquiry supports the establishment and maintenance of Aboriginal specific directorates within departments. The Inquiry does not propose to make a finding or recommendation in that regard as the requirements of the Aboriginal community and departments vary and as such the role, name and structure of an Aboriginal specific directorate need to be responsive to that. There are however, some clearly identified issues that need to be addressed by departments in establishing, and maintaining, effective Aboriginal specific policy units:

- The Aboriginal specific directorate should focus on operational policy, program development and supporting officers of the department in delivering culturally appropriate programs.
- Directorate heads should have sufficient seniority to impact on senior management decision making, it is preferable that a directorate head should have a place on the 'executive' body of the department.
- Aboriginal specific directorates should establish strategic policies with reference to the Indigenous Affairs Advisory Council (IAAC) and the Statement of Commitment.

### **3.4 Access to services by Aboriginal communities**

A number of departments identified issues concerning the use made of services it provided to Aboriginal communities. One example was given by Paula Chatfield, Manager, Sexual Assault Referral Centre (SARC) who stated that Aboriginal people generally only accessed part of the services provided by SARC and would often not seek 'follow up' services. Further, SARC stated that it had collected data that indicated that there was a high proportion of Aboriginal people who did not access SARC services at all after sexual assault. (Transcript of Evidence of Paula Chatfield 16 May 2002)

Similar sentiments were expressed by other departments and officers from within those departments. Generally, departments identified that services were less likely to be accessed by Aboriginal potential clients than by non-Aboriginal potential clients.

The Inquiry noted that the response to this proposition varied between departments, which range from conducting studies of client behaviour, changing reporting mechanisms, employing Aboriginal liaison officers or improving education programs. The Inquiry has not evaluated those responses, and notes that many of these initiatives may have merit.

### **3.5 Benchmarks for Service Delivery**

The Inquiry has heard from a number of departments concerning the performance indicators and benchmarks that they use when evaluating the services they provide to Aboriginal communities.

The Inquiry has also heard evidence from Dr Ross Field, Acting Executive Director Policy Office, Department of the Premier and Cabinet (DPC) concerning the 'State Strategic Plan' which is currently being prepared. That document concerns:

*enhancing the development of regional Western Australia. There'll be very high level programmes and goals that will be established in that plan and it will also refer to some benchmarks and indicators and will list priorities for the government to tackle in the next few years.* (Transcript of evidence of Ross Field, 26 June 2002: 1707)

The submission from DPC addresses the issue of indigenous benchmarks and indicators. (DPC Initial Submission 18 June 2002) It was stated that the government's indigenous affairs policy notes that 'outcomes and indicators of success are central to the future of each and every program of government'. (DPC Initial Submission 18 June 2002: 2.5)

The Council of Australian Governments (COAG) made a resolution in November 2000 to develop benchmarks, performance reporting strategies and action plans as part of the process for Aboriginal reconciliation. (DPC Initial Submission 18 June 2002)

As a result, the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA) has prepared a proposal for whole-of-government indicators addressing indigenous disadvantage. Cabinet has also requested that IAAC negotiate detailed benchmarks and link these to the 'drivers of public sector business'; the budget; the performance management process and an integrated planning process across government. (DPC Initial Submission 18 June 2002: 2.5)

DPC has advised the Inquiry that government is pursuing these benchmarking approaches in concert. The Inquiry also notes that consultation with Aboriginal representatives is seen as a part of establishing these benchmarks.

The draft benchmarks prepared by MCATSIA are grouped into three areas:

- Headline indicators such as life expectancy, literacy and numeracy and imprisonment rates
- Strategic change indicators such as early childhood development and breaking the cycle of alcohol abuse
- Cross portfolio linkages which address how government agencies and sectors work together. (DPC Initial Submission 18 June 2002)



The Inquiry has not had an opportunity to fully consider these benchmarks, however it notes the importance that such benchmarks are settled as a matter of urgency. The Inquiry is also mindful of the value of communities establishing their own benchmarks. The Inquiry supports such projects within communities and encourages government agencies to do likewise.

### **3.6 Budgetary Processes for Funding non-Government Agencies**

During consultations with Aboriginal communities and non-government agencies it was made clear to the Inquiry that some Aboriginal non-government agencies and community bodies had concerns about the budgetary process for government funding of non-government agencies.

These concerns centred around:

- Application processes being complex
- Funding being available for limited and specific services, and not allowing for administrative and associated capital costs within the agency
- Funding being provided for short periods and therefore not allowing for strategic planning and making staff retention difficult
- Onerous audit and record keeping requirements.

The Inquiry has not had an opportunity to review this budgetary process. It can make the following observations:

- Applications processes need to be accessible to Aboriginal communities and non-government agencies so as to ensure the most appropriate service provider is selected
- Funding needs to be provided which allows for both the delivery of the service and some, in not all, associated administrative costs – in particular meeting government reporting requirements
- Funding needs to be provided to programs for a significant period of time so as to allow those programs to reach their potential. This does not obviate the need for appropriate checks being put in place to ensure that the success of the program is evaluated regularly, and funding reviews to ensure that the government is receiving best value for money by funding that service provider
- Reporting requirements for the service provider need to meet government requirements, however should not vary significantly between government departments.

The Inquiry is of the view that a review needs to be conducted of the funding provided by government departments to non-government agencies providing services to Aboriginal communities. The Inquiry has not considered the matter to such a degree as to make a finding. It is also limited in its view by its terms of reference, and indeed such a review may be beneficial for non-government agencies providing services to all members of the community.

### **3.7 Information collection and management**

All departments considered by the Inquiry undertake data collection and management. The success, or otherwise, of these systems and policies varies between the departments. Almost without exception, departments also provided advice as to 'ways forward' in data collection and management.

The collection and interpretation of data plays two important roles:

- On a micro level, the collection of data allows for the use of the data with regard to an individual to identify needs and share information as necessary and appropriate. This is discussed further under section 8 of this chapter
- On a macro level, the collection of data allows for statistics to be created which can then be analysed and used in the departments planning processes.

All departments have different approaches to the collection and management of information. The majority have recently put in place an electronic data management system. For example, WAPS is implementing a new Incident Management System which will allow more data to be collected about each incident attended by WAPS. (WAPS Initial Submission March 2002) Currently that information is stored in a number of ways, including manual reports and electronic data.

Another example is DOJ, which has recently upgraded its data management system to enable better tracking of offenders through the justice system. This was, in part, a result of the Greenberg Report on data management and collection.

A program particularly relevant to Aboriginal children, with their high levels of mobility, is the student tracking system which is a cross-government and non-government approach to identify and monitor transient and truant students across government and non-government education sectors. DOE has recommended a national standard be implemented to aid the effectiveness of this system.

A prohibitive factor regarding data collection is its expense and time consumption. Often a paucity of resources requires those funds available to be directed to providing services rather than collecting data. However, the Inquiry believes that adequate data collection is necessary both to evaluate the services delivered by a department, and to enable that department to interact effectively with other bodies concerned with service delivery to the same clients. (Chapter 10)

There is a lack of standardisation of data, compounded by different meanings and terminology. Moreover there are issues of confidentiality to overcome.

WAPS Submission states that race and cultural background of a child subject to alleged abuse is not recorded (WAPS Initial Submission 8 March 2002). WAPS have recently put in place an Indigenous Data Collection and Reporting Project to improve the collection of information concerning Aboriginal people. It is clear that data collection by departments to date has not included the collection of 'indigenous status' information. The collection of such data is necessary to analyse trends in the Aboriginal community and the impact of programs on the Aboriginal community.

More generally, Ferrante & Fernandez note that during the course of their research they found that there was a:

*scarcity of information about the 'true' level of child sexual victimization in the community, not only in terms of the prevalence of child sexual victimization, but also in the incidence of victimization. Inevitably, this places much greater reliance on alternative data sources, in this case on data derived from official administrative sources such as police recorded crime data and related criminal justice records. However, as we found, these data collections are also limited. If our knowledge and policies are to be based on what is known about child sexual offences (that is, based on reported offences and reported offenders) then some of the information gaps and technological deficiencies identified throughout this report need be improved. (Ferrante & Fernandez 2002: 32).*

The Telethon Institute for Child Health Research (TICHR), in conjunction with the Australian Bureau of Statistics, is conducting a survey of 3000 Aboriginal children and their families which focuses on mental health, physical health, behavioural problems and adverse health behaviours (drug, alcohol and tobacco use) in children and youth. The survey is not complete, and is significantly behind schedule, but the Inquiry notes that it is one of the first surveys of its kind and will provide significant assistance to many government agencies in shedding light on the needs of the Aboriginal community. (Chapter 11)

## **4. MANDATORY REPORTING AND INFORMATION SHARING OF CHILD ABUSE**

### **4.1 Current Situation Regarding Reporting of Child Abuse**

Western Australia is the only state in Australia that has not introduced mandatory reporting of child abuse. Instead, as Goddard notes, *'as a consequence perhaps of the voluntary reporting system, more attention appears to be paid to procedures for specific disciplines'* (Goddard 1996: 100). That is, referrals to child protection services about possible harm to children are facilitated by a series of reciprocal protocols which are negotiated between government and non-government agencies.

Although the rate of substantiated child abuse has been increasing since 1995/96, from 1.7 cases per 1,000 children, to 2.5 cases per 1,000 children in 2000/01, Western Australia still had the second-lowest rate of substantiated child abuse (AIHW 2002). Because of differences between the way the various Australian jurisdictions count notifications (reports) of child abuse, it is no longer possible to directly compare the States or to create national statistics (AIHW 2002).

### **4.2 Overview of Intra-departmental Guidelines**

All relevant departments currently have practices, policies or protocols in place to guide their staff on the issue of both intradepartmental and external reporting of child abuse.

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<sup>1</sup> This 'indigenous status' field is based upon the national standard for the collection of such data.

DOJ requires that *'should any staff member become aware of abuse of children they are obliged to report the matter'*. As a result, it is this department's view that any legislative scheme of mandatory reporting would only underpin the existing practice. (DOJ Final Submission, 16 July 2002: 21)

According to the DOH's Guidelines for the *Clinical Management of Child Abuse and Neglect (1993)*, health care providers are expected to report suspected child abuse allegations at their discretion, but are not currently mandated to do so.

DOE has a Child Protection Policy (CPP) in place which requires staff to report suspicions or allegations of child abuse to the School Principal or, if the Principal is subject to the allegation, directly to the District Director. The Principal is also obliged to inform the District Director of allegations made.

The Policy contains latitude for staff to make important discretionary decisions as to what may be a concern of child abuse. Once apprised of the report, the guidelines allow the Principal or District Director discretion on whether the report is taken to DCD, the Police, whether the parents are contacted and whether case management processes are enacted. (DOE Initial Submission Attachment 3, 4 April 2002: 8)

If WAPS or DCD are involved, the relevant department would lead the response. It should be noted that the DOE protocols conflict with the policy manual in regards to reporting of abuse outside of the department. This is discussed in greater detail in Chapter 11.

The WAPS policies and Commissioner's Orders and Procedures on family and domestic violence were written in 1996 and updated as the need arises.

The Child Abuse Investigation Unit (CAIU) mainly deals with allegations of child abuse within the metropolitan area. If necessary, the CAIU, or relevant Police Officer, will contact the Crisis Care Unit (CCU) to arrange care for the child.

The main body of policies and procedures applicable to DCD Officers is the Case Practice Manual, first released in 1993 and updated most recently in 1998. More detail of the DCD response to child abuse allegations is contained in Chapter 7.

### **4.3 Overview of Inter-departmental Protocols and Procedures**

A number of child protection protocols are in place between agencies, namely, the:

#### **4.3.1 Reciprocal Child Protection Procedures 1997**

These procedures are a reciprocal agreement between DOH and DCD, providing for both departments to cooperate in identifying and providing child protection services to children identified as being at risk of harm. The agreement, which has been in place since 1992, sets out procedures for referrals and case management between the departments, and how to resolve differences, should they arise, in the process of joint intervention and management of cases.

The main challenge to the effectiveness of the 1997 Procedures are perceived or actual legislative restrictions on agencies regarding the sharing of information.

#### 4.3.2 Family and Children's Services, Western Australian Police Service Joint Response to Child Abuse Protocols 1999

The Joint Response Protocols were established in 1999 and outline principles of joint response for WAPS and DCD and procedures to follow. The Protocols are based on the premise that the protection of children is a shared responsibility between the wider community and government agencies, in particular the two signatory agencies, DCD and WAPS.

DCD also stated that where information indicates a possible criminal act, the matter is referred to police for investigation or is investigated jointly by DCD and WAPS.

**184. The Inquiry finds that there is a need to better educate and train workers on the need to report family violence and child abuse to appropriate authorities.**

**185. The Inquiry finds that there is a need for workers to understand how to respond to disclosures of family violence or child abuse.**

#### 4.4 Issues with the Current Procedures and Policies

It is the Inquiry's view that parents and guardians of Aboriginal children are less likely to report abuse. This view is supported by DCD statistics provided to the Inquiry. (DCD Initial Submission 5 April 2002) There are many reasons for this, of particular significance is a fear in Aboriginal communities that their children will be removed if they report child abuse.

Many Aboriginal communities have retained a deep suspicion of DCD, previously Family & Children's Services, and their child removal policies. Indeed, some Aboriginal community members *'feel very threatened by FCS.'* (Community Nurse 26 February 2002)

Further than not reporting child abuse, it has been suggested that *'Aboriginal communities may have responded to perceptions of continuing child removal practices by developing tactics to keep children in their care by means which prove to be detrimental to the children.'* (The Social Responsibilities Commission 22 April 2002)

A health worker in an Aboriginal community told the Inquiry that community members did not support the nurse reporting issues of abuse to the government unless they felt it was warranted. If reporting is condoned, the community is happier to involve the police *'but only as a last resort, or if they are "angry" enough.'* DCD are seen as *'those people who take our kids away.'* (Community Nurse 26 February 2002)

In order to address this barrier, *'DCD need to take allegations seriously, while not needlessly separating family members.'* (The Social Responsibilities Commission 22 April 2002) This does not seem to be at odds with the approach that DCD currently takes. Indeed, there has been some criticism that DCD will not separate families even when there is a clear need.

Added to this fear of family dislocation, reporting of child abuse from within Aboriginal communities will be limited until Aboriginal families can overcome the 'shame factor' or fear of retribution from other family members and/or the Aboriginal community in general. (Submission

from regional council). These barriers are discussed in more detail in Chapter 4 of this Report.

It is clear that in order to overcome these barriers, government needs to consult with Aboriginal people to devise culturally appropriate ways of providing protection and latitude for reporting. (The Social Responsibilities Commission 22 April 2002)

The Inquiry acknowledges, therefore, that the issue of mandatory reporting for Aboriginal communities is a vexed one – perhaps even more so than in the non-Aboriginal community which does not have the same issues.

Of major importance is the manner in which this information is used and the result of mandatory reporting. Confidentiality and information sharing between agencies is of concern here and these issues need to be examined in more detail in order to ascertain the effects of mandatory reporting.

#### **4.5 Sharing of Information**

Representatives of DOE, WAPS and others indicated to the Inquiry that one of the major barriers to effective collaborative service delivery is the lack of ability to share information between departments. This is discussed in greater detail in Chapter 13.

This issue is also relevant to mandatory reporting of child abuse.

DCD is taking steps to provide a legislative framework to enable the exchange of information relevant to the health, safety and wellbeing of a child. Further the legislation will provide a basis for interagency policy and protocol based reporting. (DCD Final Submission 26 June 2002: 5)

'Statutory restrictions' on the exchange of information was described by the Police witnesses before the Inquiry and by communities as a key barrier to more effective service delivery (Witness Statement of SJ Robbins 26 March 2002 and Witness Statement of Rebecca West 22 July 2002). WAPS acknowledges that a large number of government and non-government agencies have developed protocols to respond to child abuse allegations and the suspicion of child abuse. In some cases these protocols are more effective than others. In its Final Submission, WAPS notes that the experience of other jurisdictions when introducing a mandatory reporting regime was that a 'flood' of reports was created which were unsubstantiated. The WAPS Final Submission notes the concerns of other agencies with regard to the potential number of reports and differentiating between urgent matters and those requiring a different type of intervention. (WAPS Final Submission 12 July 2002: 21)

As previously discussed, legislative and policy frameworks need to be established which will allow for, and perhaps compel, the sharing of information between agencies. Chapter 13 dealt with the need for legislative and policy changes relating to the sharing of information.

**186. The Inquiry finds that there is a lack of information sharing between agencies in relation to family violence and child abuse, giving rise to considerable impediments in service delivery. The Inquiry recommends that further consideration be given to legislative and administrative changes to ensure information sharing between agencies.**

## 4.6 Diversity of views on mandatory reporting

The Inquiry received views and information from Aboriginal community and public submissions in relation to mandatory reporting. There was a balance between those who believed that mandatory reporting should be law because it would better protect children and those who did not agree with mandatory reporting.

These two positions are also argued strongly in literature reviews. Those who support mandatory reporting suggest that children *'have the right to be protected'*, that it *'makes a public commitment to child protection'* and increases the general public's awareness of child abuse (Goddard 1994: 6). Those in favour also suggest that mandatory reporting assists in establishing the true nature and incidence of child abuse (Goddard 1994).

It has been suggested that professionals generally have a reluctance to *'break well-entrenched and long established habits of professional confidence'* and have an *'unwillingness to become involved in legal proceedings, which may expose them to professional discipline and criticism by their peers'*, factors which may contribute to a disinclination to report (Quinton 1991: 5).

Legislation can overcome this reluctance to become personally involved by imposing a public duty to do so. Indeed, mandatory reporting laws have been said to provide safeguards for professionals involved in cases of child abuse and serve to protect relationships with parents because professionals can explain that they are compelled to report. However, in reality very few people are ever prosecuted for not reporting child abuse, even if mandated (Goddard, Saunders, Stanley & Tucci 2002).

In general non-professionals tended to support mandatory reporting. They often linked this position to a belief that it *'should'* happen. There was not always an articulation of the implications of this position.

In contrast, arguments against mandatory reporting suggest that such laws may:

- drive families underground and discourage them from seeking help for fear of being reported to *'the Welfare'*
- remove discretion from workers who are in a sensitive position
- be used by governments as a cheap substitute for services for prevention. (Goddard 1994)

Information provided to the Inquiry during consultations and submissions suggested those who were opposed to mandatory reporting tended to be so for two reasons. The first reason is that it would prevent children from receiving services. This comment largely came from the medical profession. Secondly mandatory reporting, it was believed, would lead to a diversion of resources from support and treatment to investigation.

DCD expressed certain reservations about mandatory reporting and stated that its approach is supported by experts in the field. The reasons given by DCD for opposing mandatory reporting include increased resources taken up with substantiating reports and the adverse consequence in terms of relationships with the families concerned when the rate of reporting increases.

A submission received by the Inquiry referred to the 'Child Sexual Abuse Task Force Report' of 1987 chaired by Carmen Lawrence which reviewed the literature in relation to mandatory reporting. That Taskforce found that mandatory reporting should not be put in place, rather it recommended that interagency coordination be improved instead.

#### 4.7 Consequences of mandatory reporting

The predominant view of researchers, since the 1990s, is that mandatory reporting substantially increases the number of reported cases of child abuse (Quinton 1991; Tomison 1996b). This increase in reports has resulted in system overload for some child protection services, with a resultant inability to adequately assess and support those families most in need. As a result, the child protection system may respond by seeking more resources or raising the child protection 'threshold for intervention'. (see Chapter 2) That is, stricter 'gate-keeping' is employed to ensure that only those most in need are accepted for investigation and case management. For example, a recent Victorian study (Goddard et al. 2002: 13) found that in response to mandatory reporting requirements, *'statutory child protection services appear to have responded by steadily restricting the criteria which trigger a protection.'*

In addition, in order for mandatory reporting to be effective mandated professionals need to be aware of their responsibilities. The Victorian study found that 19 per cent of a sample of community professionals did not correctly identify their obligations to report cases of child abuse, and 29 per cent of community professionals in the sample were misinformed or uncertain about their obligations to report cases of child abuse under Victorian law (Goddard et al. 2002). Further, few mandated professionals in Victoria found the decision about whether or not to report a child to be straightforward, with 63 per cent finding this decision to be difficult or complex. Being a mandated professional did not make the reporting decision any easier. For many, the decision was based on a range of factors which included expectations about the outcome for the child, factors relating to the child's family, such as cultural factors and fear of parental response, and factors associated with the professional's work. (Goddard et al. 2002)

#### 4.8 Mandatory Reporting of Sexually Transmitted Diseases

Other countries, such as the United States of America, have legislation for the mandatory reporting of sexually transmitted diseases (STD)<sup>2</sup> in minors across every state for more than 30 years (Baker 1978). Australia has no specific legal requirement to report STDs. The mandatory requirement of medical practitioners to report child abuse and neglect in every state except WA, does provide a certain measure of protection for children with STDs in these states. Thus, the absence of mandatory reporting of child abuse and neglect in WA, means that children who have contracted STDs, possibly through sexual assault, may not come to the attention of child protection services.

The State Coroner presiding over the inquiry into the death of Susan Taylor stated that:

*in my view in every case where a young person has been infected with a sexually transmitted disease there should be mandatory reporting by medical practitioners and other health*

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<sup>2</sup> Sexually transmitted diseases are usually referred to as sexually transmitted infections in the literature, however the Inquiry has adopted the term 'sexually transmitted diseases' pursuant to its Terms of Reference.



*workers to the Department of Community Development and the Police Service and statistics should be maintained as to the outcome of any investigations. (Coroners Report 22 October 2002)*

This comment was made following evidence presented at the Coroner's Inquiry by Dr Sandra Thompson, Medical Co-ordinator of the Sexual Health Centre of the Western Australia Department of Health.

Her evidence, and a background paper that was submitted to the Inquiry by the Sexual Health Centre (SHC unpublished), offered detailed insight into the WA guidelines for the reporting of Sexually Transmitted Infections (STI) in young people. That Background Paper states that *'at present health care professionals are not mandated to report signs or suspicions of child abuse to child protection authorities'* (SHC unpublished). It also states that the Department of Health has a set of Guidelines for the Management of STIs including a section on appropriate actions when a child is diagnosed with an STI. It states that

*based upon reasonable suspicion, Health Care Professionals (HCP) should report cases to the Department of Community Development for investigation and action as necessary, however, there is no legal obligation for a health care professional to do so. (SHC unpublished).*

The 'Sexual Health Centre Background Paper' also gave some arguments in favour of mandatory reporting of STDs. These include the fact that it would send a clear message that the government does not condone child sexual abuse, and more cases of abuse may be uncovered and interventions made to protect children.

The Background Paper provides significant discussion on the arguments against introducing mandatory reporting of STDs. These reasons include the fact that *'there are other physical and/or medical presentations which may also signal sexual abuse, including pregnancy in a minor ... as both live births and terminations of pregnancy in children under the age of 16 are indicators of carnal knowledge and potential sexual abuse.'* (SHC unpublished)

The Background Paper also warns, that *'we would not want legislation that discourages individuals from being tested for an STI. This would seem to be a risk with linking STI diagnosis with mandatory reporting'* (SHC unpublished). It also suggests that the introduction of mandatory reporting would undermine current practices where, if a child who presents to a health care professional is considered mature enough to accept or decline treatment, they may do so without fear of the matter being taken further. At present a health care professional must seek a sufficient mature child's consent before disclosing abuse or suspected abuse to a third party. The Background Paper also raises the issue that *'if reporting were to be mandated up to a certain age, an appropriate age for the use of discretion by the medical practitioner would need to be determined. At what age should the presence of an STI prompt a suspicion of sexual abuse?'* (SHC unpublished). The issue of the capacity of mature minors is discussed in further detail in Chapter 7.

Finally, some concern is expressed regarding the introduction of mandatory reporting in Western Australia, based on the experiences of other states, where *'mandatory reporting (not just upon diagnosis of an STI) leads to an increased concentration on forensic aspects of case work which alienates the reporting professionals and the child's family, reducing trust and engagement with services'* (see above).

Overall, it is clear that a number of issues would need to be resolved prior to the introduction of mandatory reporting. However, in the Inquiry's view, these issues do not, of themselves amount to a compelling case for not reporting. It must never be forgotten that, in such situations where a child is being abused, a criminal offence is being committed, from which a child has the right to be protected. Most of the relevant professionals, whether they are mandated to report or not, have a professional obligation to ensure that the most vulnerable members of our society who have been subject to violence, are given the assistance and protection they deserve. The introduction of mandatory reporting of STDs would send this message to the community and provide better information on the scope and nature of the sexual contact and sexual assault against children in WA communities.

In DOH's 'Guidelines for the Management of Sexually Transmitted Infections 2001', it stipulates that *'the occurrence of an STD in a child is strong circumstantial evidence that abuse is occurring (and that) based upon reasonable suspicion', these cases should be reported to DCD for investigation and action.'* (HDWA 2001b: 10)

*'It is the legal requirement under the Health Act 1911 that diseases gazetted as notifiable are notified to HDWA'* (HDWA 2001b: 11). These notification are placed in a central notification database. However notification to child protection authorities, that is DCD and WAPS, of STDs in children was not widely supported as DOH felt that this could jeopardise the *'support for testing of STIs in minors and the trust of notifying health care providers'* (DOH Initial Submission 19 April 2002: 27) If mandatory notification is to go ahead, the DOH stated that this would need to be supported by clear legislative framework. Indeed it is the Inquiry's view that any form of mandatory reporting would need to be subject to clear legislative guidelines, and services be adequately resourced to respond to those reports.

It is the view of DCD that, in some circumstances where the health and wellbeing of a child is threatened to such an extent, the matter should be reported. That is, a 'discretion' as such, should not exist. Young children infected by sexually transmitted diseases as a direct consequence of adult sexual behaviour, is one such circumstance. (Counsel Representing Agencies 22 July 2002:198) This submission implicitly acknowledges that there are some circumstances where such a discretion should exist – this would seem to refer to issues, at least in part, concerning mature minors.

One option suggested to the Inquiry was to build upon the Reciprocal Child Protection Procedures between DCD and DOH, and developing a new protocol for other health professionals outside the DOH. This method would allow for mandatory reporting without recourse to legislation. (DCD Supplementary Submission, Attachment 16, 15 March 2002)

#### **4.9 The mandatory reporting of Sexually Transmitted Diseases and its effect on Aboriginal Communities**

The 'Sexual Health Centre Background' paper states that the rates of STDs are high across all Aboriginal age groups, including minors. The Coroner reported that the rate of gonorrhoea infection in 10-14 year olds is approximately 186:1 for Aboriginal to Non-Aboriginal notifications (Hope 2001). He also stated that the rates of chlamydia infection in the same age group is 124:1. (Hope 2001)

It appears that the impact of introducing mandatory reporting of STDs *'will impact proportionately more heavily on Aboriginal Communities. The higher rate of STI in Aboriginal minors is an indication that sexual activity – consensual and non-consensual – is more frequent in young Aboriginal people in some communities'* (SHC unpublished). Given the high rates of STDs in Aboriginal Communities, the introduction of mandatory reporting of STDs has the potential to effect Aboriginal children in particular.

However the Centre also warns that *'if reporting of STI in children were to be made mandatory, professionals currently aware of abuse and likely to begin reporting would be those in culturally and/or geographically remote areas where a nurse or Aboriginal Health Worker is the primary health provider'* (SHC unpublished). It suggests that this would be problematic as *'those professionals in remote areas may find that although they report suspected abuse, the services are not in place to investigate and protect the child. In addition, health care professionals in remote communities themselves may be ostracised and/or endangered'* (SHC unpublished). The Inquiry acknowledges that the 'ostracising' of these health care professionals would be a significant issue. The Inquiry does not adopt the view that mandatory reporting should not be put in place because of the lack of child protection services, rather where mandatory reporting is considered necessary resources need to be directed to respond to those reports.

One health care worker told of grave concerns in relation to the proposed mandatory reporting of STDs. It was suggested that young people in remote isolated areas would not come in for treatment if they knew reporting would happen. (McBride P, Letter, 15 May 2002)

Dr. Frank Ainsworth told the Inquiry that while

*No one finds the sexual exploitation of children or juveniles tolerable...it is far from clear that extending mandatory reporting to cover the issue of sexually transmitted diseases is needed. Health care personnel treating a child or juvenile for this type of condition must suspect that sexual abuse has occurred and as this is a crime they already have a responsibility to report this to the relevant child protection authority.* (Ainsworth, Dr. F. Letter to The Inquiry 22 May 2002)

While the failure to have an effective professional support system in place is cause for concern, and may lead to negative outcomes for the children, families and professionals involved, the solution is not to oppose mandatory reporting, rather it is to put in place a professional support system contemporaneous to a mandatory reporting regime. A decision not to introduce mandatory reporting may send the community the message that government is not concerned with the high rate of sexual abuse and STDs. Further, consideration needs to be given to the harm that may be caused by the failure to report or with a failure to take action. Mandatory reporting would highlight the nature and size of the problem (especially in Aboriginal communities) and may be a vehicle to increase funding for support and investigative services in these areas, rather than merely sending services into crisis.

A submission received by the Inquiry from a health service suggested that *'the mandatory reporting of STI infections could be put to use in a dater [sic] base, the next step will be cross referencing and contact tracing this could lead us to an STI cluster with members of the same family*

*or community. Which may indicate the presence of a core carrier.' The use of mandatory reporting for this purpose is not one that is being fully considered by the Inquiry.*

The Inquiry is aware of the issues raised by the recent Ombudsman's decision in relation to mature minors. The Inquiry has also received an advanced copy of the report on mandatory reporting from the Honourable Minister Sheila McHale. In recognition of the complexity of this issue and balancing the range of views put to the Inquiry, the following recommendations are made.

#### 4.9.1 Sexually transmitted diseases

**187. The Inquiry recommends that all medical personnel likely to come into contact (directly or indirectly) with children under 13 years who have a sexually transmitted disease be obliged to report the presence of the disease to DCD.**

The Inquiry does not have a view on which legislation should be used to enact this obligation.

**188. The Inquiry recommends that medical personnel likely to come into contact with children over 13 years who have a sexually transmitted disease are given appropriate information and training so that they are aware of the possibility of sexual abuse and understand the importance of reporting that abuse.**

#### 4.9.2 Other indicators of abuse

**189. The Inquiry recommends that serious consideration be given to the requirement for medical personnel to report suspected abuse in children under 13 years as part of the consideration of the report on mandatory reporting for the Child Protection Council.**

**190. The Inquiry recommends that (as a minimum) the protocols for reporting all other forms of abuse be strengthened and further consideration of the matter of mandatory reporting occur upon the release of the report on mandatory reporting for the Child Protection Council.**

## 5. HUMAN RESOURCE ISSUES

### 5.1 Staff Attraction and Retention Strategies

Most of the departments examined by the inquiry identified the high turnover of staff, particularly in rural or remote areas, as having a major impact on the provision of service. An example of this was seen in a regional government health service, where a senior manager of a remote area health service noted that it was extremely difficult to get nurses to remain working in a particular location for longer than say three or four years. (Witness Statement of Ian Smith 22 July 2002). Similarly DOE provided the Inquiry with information concerning difficult to staff schools (DTS schools). Whilst these DTS schools are located in some metropolitan and regional centres, such as the Kalgoorlie Goldfields area, the majority of them are located in remote regions. DOE find it particularly difficult to attract staff to those areas, and to retain experienced staff there.

WAPS does not report significant difficulties in recruiting or retaining staff in remote or rural regions. Similarly DOJ has not reported such difficulties to the Inquiry, this may be due to a smaller staffing requirement in rural and remote regions, and the fact that DOJ employs regional service providers in many instances to provide support services to their clients.

Most departments provided the Inquiry with information concerning salary packages and incentives provided to staff to encourage them to accept positions in areas which are difficult to staff. On the information provided to the Inquiry these incentives could be quite significant. Clearly the provision of monetary incentives however, is not the sole mechanism for attracting and retaining staff in rural or remote regions. Regularly other influences such as distance to family or friends can influence the decision making of staff, particularly of younger staff who may be more attracted by the financial incentives.

**191. The Inquiry recognises and appreciates the particular challenges to effective service provision in remote areas. The Inquiry recommends the provision of enhanced financial and other incentives to retain experienced workers in direct service delivery, particularly in remote areas.**

Another alternative which remains open to departments, and indeed has been taken up by many departments, is to recruit service staff directly from the local population. This in itself also has inherent difficulties relating to whether staff have suitable experience and relationships that pre-exist between staff, clients and others related to service delivery. This is a particular problem in remote Aboriginal communities where it may not be culturally appropriate for that service provider to provide services to certain clients.

The problem with attracting and retaining staff in the public sector however is not limited to remote Aboriginal communities. Indeed the Community and Public Sector Union/Civil Service Association (CPSU/CSA) states that recent loss of contractual positions, increased staff stress due to funding problems and increasing complexities of cases have resulted in a higher staff attrition rate at DCD. These issues also face other public sector employees faced with difficult jobs, such as those dealing with family violence and child abuse in aboriginal communities.

Case loads may increase for a number of reasons. The Inquiry is particularly mindful that strategies are put in place to encourage reporting may increase case loads, and will often undoubtedly lead to a need for more human resources.

## **5.2 Staff Support**

The departments identified staff support as a key issue for service delivery. This was also noted in the CPSU/CSA submission concerning the working conditions of DCD officers. Julie Newsham, Kimberley Zone Manager, DCD gave evidence that support was not only required within departments, but in remote locations, was also required between departments. She noted this to be particularly the case where officers were dealing with child protection issues which they were not used to dealing with. Similarly, this was noted above in section 4.9.

DOE acknowledge that it has had problems with staff in remote Aboriginal regions who have not been adequately prepared to deal with children who speak English as a second language and have no experience in the communities which they are appointed to work in. The Inquiry notes that these kinds of problems can extend to all departments. The Inquiry further notes that DOE is conducting research into attracting and retaining suitably qualified and experienced employees to work in remote communities. This research may be of interest for a number of departments which provide remote services.

However, the need for staff support is by no means limited to remote Aboriginal communities. Indeed the CPSU/CSA makes submissions with regard to all zones in the DCD structure. It informed the Inquiry that

*The Department has not had an increase in staffing levels since the mid 1980s. Over this time there has been a significant increase in the core work of the Department. In the last few years there has been an attempt to shift resources to the service delivery end of the Department however, this process is finite in its ability to identify the required resources and has not delivered to field services the staffing levels required to meet the ever increasing demand.*  
(CPSU/CSA Submission 13 June 2002:1)

Further, the CPSU/CSA told the Inquiry that *'staff report that it is difficult for them to work in anything other than crisis mode'* due to staffing problems. (CPSU/CSA Submission, 13 June 2002:3) The result of these staffing pressures has *'resulted in many staff leaving and the Department being unable to attract experienced staff.'* (CPSU/CSA Submission 13 June 2002:4)

The Inquiry notes that DCD has put in places additional staff to assist case workers such as Senior Officer Aboriginal Service. This officer oversees case practice concerning Aboriginal children, but also provides a valuable tool to case workers when dealing with difficult situations.

One further point of the CPSU/CSA submission was that 'supports' were needed due to case loads, and were less available given the attendant work loads of supervisors.

## **5.3 Training**

The Inquiry notes that there are significant differences between the training provided by different departments to their staff with regard to identifying child abuse and cultural sensitivity.

### 5.3.1 Child Abuse Training

For example DOE provide training on issues associated with child abuse to at least one staff member per school. By comparison, all WAPS officers are provided with training on child abuse as part of the initial training they receive as cadets.

Of further concern is the information received by the Inquiry regarding the effectiveness of the training in child abuse responses by employees of DOE. Individual submissions suggested that departmental procedures are not always fully understood or followed by DOE staff, indicative of the need for more appropriate training.

These differences do not only occur in the number of staff members trained by each department, but also in the training that is provided to them. The Inquiry recognises certain necessary differences in approaches to training in light of agencies' respective functions. There is nevertheless real value in a certain standardisation across-government of the training for a basic understanding of child abuse and appropriate responses.

**192. The Inquiry finds that some staff do not fully understand the signs and symptoms of violence and abuse, and may therefore not identify the need for services for victims. The Inquiry recommends that course providing training to agencies in the areas of family violence and child abuse need to be readily available.**

### 5.3.2 Cultural Sensitivity Training

Again, from the information received by the Inquiry, cultural sensitivity training varies across departments. Indeed, with regard to DOH it was not clear what training was provided or how frequently that training was updated.

DCD has acknowledged to the Inquiry that the department currently has a *'lack of culturally sensitive models and programs tailored specifically to training in healing, therapeutic and counselling methods and approaches for Aboriginal people experiencing trauma as a result of sexual abuse and/or violence.'* (Counsel Representing Agencies 2002 22 July 2002: paragraph 108)

DOE has implemented cultural awareness training with their program, *Our Story* (DOE Initial Submission, 25 March 2002), which was finalised in 1997. Trained staff from district offices deliver cultural awareness training to all DOE employees and in some instances, the training program utilises specific local community Aboriginal speakers to provide a regional context at the school level.

By comparison, DHW has compulsory cultural sensitivity training for all its staff, and provided details of that training to the Inquiry. This allowed the Inquiry to make a specific finding about DHW's cultural sensitivity, the absence of similar findings with regard to other departments reflects a lack of information rather than implied support for their programs.

DOJ, having the most varied workforce in terms of services provided, provides different cultural sensitivity training to different officers. WAPS provides standard cultural sensitivity training during initial training, and also additional training at intervals and training to APLOs.

Again, it is the Inquiry's view that the cultural sensitivity training needs to be of a similar standard across government. Indeed, it would seem that the establishment of a standard cultural sensitivity training package, which is updated regularly, would reduce the cost associated with each department designing its own training package.

**193. The Inquiry finds that an understanding of the diversity of Aboriginal peoples is essential for government workers. The Inquiry further finds that previous interventions by governments, particularly examples such as the forced removal of Aboriginal children, has led to widespread distrust of government agencies by Aboriginal people. Government workers therefore need to demonstrate exceptional skills and sensitivity to respond to this longstanding distrust.**

## 5.4 Aboriginal Employees

Most departments considered by the Inquiry have Aboriginal employees, including in Aboriginal specific roles.

DCD gave evidence to the Inquiry concerning the department's Aboriginal Service Delivery Traineeship program which commenced in 1998. At this time, DCD sought to recruit and train 22 Aboriginal people over a period of three years in order to provide permanent employment, training and career development opportunities for Aboriginal people throughout the State. The scheme is ongoing, but has not resulted in significant increases in Aboriginal staff in the department, due to attrition and attractive opportunities provided to staff by other departments. (DCD Initial Submission, 5 April 2002: 16) The Inquiry has recommended the expansion of the program. (See chapter 7)

**194. The Inquiry finds there is a need for cross government traineeships and career path progression for Aboriginal people.**

WAPS employs Aboriginal Police Liaison Officers (APLOs) to assist in better service delivery to Aboriginal communities. Similarly DHW employs Aboriginal staff to assist in service delivery. The department's AHU has 70 per cent of all its positions at all levels held by Aboriginal people (DHW Initial Submission, 20 May 2002). DOH and DCD also have positions filled by Aboriginal people.

The Inquiry notes the need for both Aboriginal staff and for Aboriginal staff to fulfil particular roles in delivering services to the Aboriginal community.

However Aboriginal officers should not be put into roles and positions for which they are not trained or experienced enough to fulfil, merely on the basis that the client is 'Aboriginal' and therefore an Aboriginal service provider is needed.

In those instances the Aboriginal officer may need to work with other officers within the department who are more experienced. The Aboriginal officer would bring knowledge of Aboriginal culture and an ability to gain the views of the family or client to the decision making process and the requisite experience or professional skills would also be available.

Aboriginal staff may also be the best to fulfil community liaison and educational roles in many departments with regard to Aboriginal communities. In those instances, again, the staff need to



be provided with appropriate training, resources and professional support to deliver those services to a high standard. The development of such training needs to be done in consultation with the Aboriginal specific directorate in the relevant department as well as with the Aboriginal community.

**195. The Inquiry finds that an increase in Aboriginal staff is required both in direct service and senior positions in departments.**

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## Deoxyribonucleic acid (DNA) testing

### CHAPTER 19

# SECTION

*This chapter examines any limitations of DNA testing in the Aboriginal community as required by the Terms of Reference*



CHAPTER 19  
DEOXYRIBONUCLEIC ACID (DNA) TESTING

## 1. UNDERSTANDING DNA TESTING

DNA is essentially a tool for personal identification. The Western Australian Centre for Pathology and Medical Research (PathCentre) defines DNA as:

*A substance found inside the cells of the body that is inherited from your biological parents. Specific sites on the DNA molecule are analysed to determine a forensic DNA profile. (Path Centre Forensic Biology Laboratory [PCFBL] Submission 11 April 2002: 4)*

DNA testing is sometimes compared to fingerprints, however Rudin states

*... because only a small portion, perhaps one millionth, of the three billion units of human DNA are even available for examination by current methods, the result is better compared to a partial fingerprint. (Rudin 1995: 1)*

Because of this limitation, current methods of collection means that perfect 'matches' are not possible. Therefore identification of a person through 'matched' samples of DNA relies on statistical relationships. (Rudin 1995)

Only identical twins share the same DNA type. Other siblings share more genetic material with each other than with anyone else. The more distant the relationship the less genetic material is shared. The closer the relationship between people, the closer their DNA will be (Rudin 1995). It therefore follows that when children are born to relationships within communities where people are closely related then the capacity to identify people using DNA testing requires additional statistical consideration (Zhivotovsky et al. 2001).

Western Australia has recently passed legislation—*Criminal Investigation (Identifying People) Act 2002*<sup>1</sup>—which allows police and other officers to obtain certain information for forensic and related purposes, including DNA testing.

PathCentre, which conducts all forensic DNA testing in Western Australia, uses two types of DNA testing. The first is human identity testing. This involves the collection of evidence such as blood, semen, saliva, urine, faeces, hair or skin cells left at the scene of a crime, which is then compared with DNA material from a suspect.

The second is testing for parentage when this is required as part of a criminal investigation. DNA material needs to be obtained from the child, the mother of the child and the alleged father. Because only a 'half profile' comes from the father, in parentage testing results

*... the statistical weight that may be placed upon the result is not as great as is typically obtained in human identity testing (where the whole DNA profile is examined). (PCFBL Submission: 10)*

<sup>1</sup> 'Criminal Investigation (Identifying People) Act 2002': An Act to enable personal details and identifying particulars of people to be obtained by police and other officers for forensic purposes, and for related purposes.

## **2. CONCERNS ABOUT DNA TESTING**

### **2.1 Small populations**

Concerns were raised in the Zhivotovsky article about DNA identification in communities where children are born to people who are related by birth or descended from the same parent or ancestor (PCFBL Submission 11 April 2002). This concern has been addressed by developing three different statistical databases in Western Australia. PathCentre has databases of 2645 Caucasians, 659 Aboriginal people and 115 South East Asian people. PathCentre advises that information from statisticians in the field of DNA testing argue that samples of 80 to 200 individuals are suitable for estimating DNA frequencies and are therefore suitable to be used in forensic DNA interpretation. These databases were developed in Western Australia on the basis of people being included in that database having self-identified as belonging to that population group. These individuals are in no way identified but simply form the basis against which other DNA samples can be compared using statistical analysis. The statistical index is defined in the *Criminal Investigation (Identifying People) Act* as follows:

*"Statistical index" means an index of information –*

- a. That is obtained from the analysis of material obtained from people under this Act or under the corresponding laws of participating jurisdictions*
- b. That does not contain the personal details of any person whose DNA profile is in the index*
- c. That is compiled for statistical purposes*
- d. That cannot be used to discover the identity of people from whom the material was obtained. (Criminal Investigation (Identifying People) Act 2002: P10 s76 p67)*

Section 77 of the *Criminal Investigation (Identifying People) Act* allowed PathCentre to maintain their already developed databases.

### **2.2 Collection and storage of DNA material**

The Inquiry has heard, particularly from the Ngaanyatjarra Shire council, that the collection, storage and transport of forensic material from remote areas present difficulties. This relates to distances involved, the expertise of those taking samples and the availability of suitable collection and storage facilities for forensic material. They have particularly raised this issue in relation to DNA material (Shire of Ngaanyatjarraku 2002). Path Centre also stresses the importance of collecting adequate samples and protecting them from contamination and degradation. (PCFBL Submission 11 April 2002)

## **3. ANALYSIS OF LIMITATIONS OF DNA TESTING**

Concerns about the small population base and the potential difficulties in conducting any DNA testing in Aboriginal communities were considered by Simon J Walsh of Science and Justice Consulting, New South Wales. In essence, the Zhivotovsky article raises questions about the appropriateness of statistical analysis using general databases. Zhivotovsky argues that the databases used for

comparative purposes must use appropriate sub-populations. The Zhivotovsky article refers to Pakistani communities, however the issues have relevance for DNA testing in Aboriginal communities. (Zhivotovsky et al. 2001)

Walsh's analysis indicates that

*Databases of random samples, and the estimation of population subdivision coefficients derived from them, may not adequately or accurately apply to endogamous communities such as those described in this paper. (Walsh 2002: 5).*

As previously stated PathCentre uses sub populations in its statistical analysis.

In response to this advice from Walsh, Dr Gavin Turbett of Path Centre wrote to Inspector Mulligan of the Western Australia Police Service (WAPS), 12 February 2002, indicating that the conclusion of Mr Walsh and his review of the statistical databases of PathCentre has validated them for forensic use.

*Mr Walsh has recently analysed our statistical databases and validated them for forensic use.*

*The general forensic community agrees that an  $F_{st}$  value [used in the statistical analysis of DNA results] of 0.03 is a very reasonable and conservative figure to use, which was recommended in the NRC2 report (The evaluation of Forensic DNA evidence 1996). However, Zhivotovsky et al. (2001) suggest that in some occasions, an  $F_{st}$  value of 0.13 should be employed.*

*Note:  $F_{st}$  is a correction factor used in statistics to make allowances for populations that have restricted migration and breeding.*

*In essence, Mr Walsh agrees that there may be specific occasions that the standard statistical approaches may not be adequate. We will continue to routinely employ an  $F_{st}$  value of 0.03, but will, in appropriate cases, redo our calculations with an  $F_{st}$  of 0.13 as recommended by Zhivotovsky. These revised statistics will be available to the Court if required. (Turbett 2002: 1)*

PathCentre indicates that the statistical formulae that it uses are recommended in the 'National Research Council 1996 Report' (PCFBL Submission 11 April 2002).

*The Path Centre Forensic Biology Laboratory is NATA (National Association of Testing Authorities, Australia) accredited for Forensic Biology technique (DNA analysis, Hair analysis and Species determination) and operates under Australian Standard ISO/IEC 17025:1999 General requirements for the competence of testing and calibration laboratories as well as the Supplementary requirements for Accreditation in the field of Forensic Science. (PCFBL Submission 11 April 2002: 7)*

The following summary by PathCentre outlines clearly their views on any limitations of DNA testing.

*There are no limitations to DNA testing. Forensic DNA testing is performed on Australian Aboriginals in exactly the same way as any other population group in the world.*

*The occurrence of specific sub-populations of people (due to inbreeding, selection or migration) does not invalidate forensic DNA testing methods or the conclusions that are drawn from the results of forensic DNA testing.*

*The forensic analysis of crime samples that may have originated from people who have been shown to come from particular sub-population groups does require additional statistical*

*consideration. There are clear guidelines in place for analyzing and reporting the results in these situations.*

*Where possible, population-specific databases are maintained to ensure that all statistical interpretations provided to the Courts are as conservative as possible.*

*The Path Centre Forensic Biology Laboratory is a NATA-accredited facility that uses the same Forensic DNA techniques that are employed throughout the world. (PCFBL Submission 11 April 2002: 3)*

The Inquiry notes from media reports that differences in state laws create difficulties in relation to cross border DNA testing (Chulov et al 2002).

Whilst evidence was received by the Inquiry of previous problems with DNA testing in Western Australia, evidence has also been received that these difficulties have now been overcome.

This was expressed by the Attorney General.

*There has been over the past few years a little bit of controversy about the makeup of the DNA samples and the extent to which it can be applied with small populations for instance, now I think those issues have been sufficiently cleared up by science to give such a degree of certainty that the scientific evidence can be simply presented to the court and relied upon by the court. I think there has (sic) been enormous advances made scientifically, and also with the appropriate protocols, to make sure that this will be in most cases conclusive evidence. (McGinty, ABC 2002)*

#### **4. RECOMMENDATIONS**

WAPS has indicated that the capacity to use DNA—particularly in relation to testing of prisoners—will enhance their capacity to identify suspects in previously unsolved crimes. In June, the hundredth United States 'death row' inmate was freed because of the outcomes of DNA testing. (Palevitz 2002)

In view of the significance of DNA testing for clearly identifying perpetrators of violence, particularly sexual assault, the Inquiry supports the ongoing use of DNA testing.

In particular, the Inquiry finds the limitations suggested in the Zhivotovsky article have been adequately addressed by PathCentre, and that this has been confirmed by an independent consultant, Simon J Walsh.

*While Forensic DNA profiling is capable of absolute exclusion, it may NOT provide absolute proof of inclusion. It is very important to understand that the statistics supplied by the PathCentre Forensic Biology laboratory in our Court reports is NOT an estimate of the probability of guilt. That is beyond our capacity, nor is it our role to make such a comment, as this is the ultimate issue that must be decided by the Court.*

*We may only make comment about the laboratory findings. In essence, the logic is as follows:*

- *We have obtained a particular DNA profile from the biological material recovered from the item of evidence*

## Chapter 19 Deoxyribonucleic acid (DNA) testing

- The accused person has the same DNA profile
- If the accused did not leave the biological material, then there must be someone else with that same DNA profile.
- Based on the population data we already have available, we can provide an estimate of how likely it would be to find that particular DNA profile in various population groups.

*Therefore, the only limitations of Forensic DNA testing are those inherent to that method of analysis, and these limitations are not in any way associated with any particular population or ethnic group. (PCFBL Submission 11 April 2002: 16).*

The submission from PathCentre advised that

*Adequate training and resources must be available to the WA Police Forensic Division, as well as to any medical practitioners who may be involved in the collection of forensic specimens from victims of sexual assault. (PCFBL Submission 11 April 2002: 17).*

The time frame of the Inquiry has not allowed an opportunity to obtain advice on the adequacy of training and resources from WAPS or the Department of Health (DOH). The following is recommended:

**196. The Inquiry recommends the Implementation Committee receive further advice from Western Australia Police Service as to whether the budget to implement DNA testing legislation is adequate.**

**197. The Inquiry recommends the Implementation Committee receive advice from Department of Health about the adequacy of collection and handling, and the protection, storage and transport of DNA material, particularly from remote communities.**



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## ACTS

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Criminal Investigation (Identifying People) Act 2002 (WA)



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## Overview

## SECTION 5

# SECTION

### Chapter 20

*Overview of findings,  
recommendations and responses  
to the Terms of Reference*

# 5



*Child Abuse Review May-June 2001 • Child Protection Review Discussion Paper May 2002 • Crisis Intervention in Aboriginal Family Violence • HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999 • National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families • Practice Standards for Working with Children and Young People who have lived with Domestic Violence • REVISITING THE OLD IN REVITALISING THE NEW • Through Young Black Eyes - Violence Directors for Australia • VIOLENCE IN INDIGENOUS COMMUNITIES • 'Black sex-abuse whistleblower axed' The Weekend Australian 22-23 December 2001 • 'Abuse of children in the West Australian 1 November 2001 • WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY • Aboriginal & Torres Strait Islander Social Justice Report 2001 • Mandatory Sentencing in WA • ACT NOW - MESSAGES FROM RESEARCH • Project AXIS • Mandatory Sentencing in WA • Looking After Children Grandmother's Way • A Question of Safeguards • Cape York Justice Study Report • Aboriginal & Torres Strait Islander Social Justice Report 2001 • FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES*

## Findings, recommendations and responses to the Terms of Reference

### CHAPTER 20

# SECTION

*This chapter provides a complete list of recommendations and addresses each of the Terms of Reference, as well as the additional requirements contained in the Terms of Reference.*



**CHAPTER 20**

*Findings, recommendations and responses to the Terms of Reference*

The first 19 chapters of this report address issues which collectively respond to the Inquiry's Terms of Reference. The Inquiry has taken an issues focused approach to respond to the range of matters which needed to be addressed in the three enumerated Terms of Reference as well as the range of additional matters which the Inquiry was required to consider. This Chapter addresses each of the enumerated Terms of Reference specifically as well as the additional matters included in the direction from the Premier.

## Term of Reference 1

Examine the issues raised by the Coroner's inquiry into the death of Susan Taylor in relation to the way that Government agencies dealt with the issues of violence and child sexual abuse at the Swan Valley Nyoongar community.

The issues examined by the Inquiry include

- The activities of a range of agencies involved in providing services to Susan, with the conclusion that there should be no adverse finding regarding any individual, but that there should be systemic attention given to the management of difficult and complex cases
- The Western Australia Police Service (WAPS) investigation subsequent to Susan's death which was found to be unsatisfactory, in line with a WAPS Internal review
- The widespread misuse of substances in parts of the Perth metropolitan area and the urgent need to provide services which address this social problem
- Access to the Swan Valley Nyoongar Community (SVNC), and the importance of the finalisation of Memorandum of Understanding should be developed between the SVNC and relevant government agencies

## Term of Reference 2

Examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally.

*The Interim Report* (Gordon et al, 2002) outlined the extraordinary problems faced by government agencies in delivering services to Aboriginal communities. *The Interim Report* (Gordon et al, 2002) also noted that communities were struggling to manage the social problems within their communities.

The Inquiry found that the seven main government agencies [Western Australia Police Service (WAPS), Department of Justice (DOJ) Department of Health (DOH), Department of Indigenous Affairs (DIA), Department for Community Development (DCD), Department of Housing and Works (DHW), Department of Education (DOE)], under review provide a range of services, however those services are not well coordinated or integrated. Government agencies participate in a range of planning and coordinating activities, however the focus is often on service provision by individual agencies rather than the perspectives of the communities that are being serviced.

- **Examine the activities of State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities**

The Inquiry explored both generally and specifically how agencies address complaints and the reporting of sexual abuse and other forms of child abuse and family violence in Aboriginal communities. The Inquiry has identified a number of changes that are required to enable government agencies to better address the reporting of family violence and child abuse, particularly child sexual abuse in Aboriginal communities.

- The need for specific policies and procedures for all departments to address these issues
- The need for training of staff to better identify and respond
- Training (Aboriginal community members) on sexual assault education and support services for Aboriginal community members
- Expansion of Princess Margaret Hospital's (PMH) Child Protection Unit (CPU) services and the establishment of rural and regional units
- Enhanced provision of ongoing intervention services for children and families including further psychiatric, psychological and counselling services for victims of child sexual assault and their families
- Better information sharing between agencies
- Better access to services in regional and remote areas
- The need to identify different responses to 'mature minors' compared to younger children
- The need to review the resourcing of the Crisis Care Unit (CCU) in DCD
- There is a need for sustained and coordinated intervention in relation to complex cases
- That there be a review of the assigning of priority to reports of child abuse to WAPS
- Supports the permanent status of the Joondalup Family Violence Court (JFVC)
- The interagency management of family violence and child abuse must be community based
- That the 'one stop shop' be developed to enhance services to Aboriginal communities.

- **Identify the barriers and capacity of Government agencies to address the issue of family violence and in particular child sexual abuse in Aboriginal communities**

The Inquiry identified the following barriers which effect the capacity of government agencies to address these issues.

- Inequitable resource distribution with some agencies unable to adequately service some communities, particularly rural and remote communities
- The lack of a capacity for integrated service provision in communities is a significant barrier
- The lack of adequate information systems and the impediments to sharing information presented difficulties in a number of agencies
- Short term, one off, funding prevents long term strategic planning and the development of appropriate social infrastructure
- The distrust of WAPS is a barrier to reporting
- The remote location of many communities presents particular challenges for service provision

- The lack of a full understanding of the diverse of cultural issues is sometimes a problem
  - The lack of 'fit' between "western" bureaucratic structures and Aboriginal community structures
  - The need for better coordination of case planning and management
  - Cross jurisdictional issues, particularly with the Northern Territory and South Australia
  - The challenges of language, culture and a different "world view" can impact on real communication
  - Historical issues with government departments which affect the community's views
  - The challenges of governance and lack of social infrastructure within communities
  - The misinterpretation of customary law to suggest that family violence and child abuse are 'cultural'
  - The perceived threat of the 'Welfare' removing children
- **The Inquiry is to consider current research into the prevalence, causes and solutions to Aboriginal family violence**

The Inquiry found that the true prevalence of Aboriginal family violence is unknown. However, the Inquiry was presented with information which demonstrates clearly that many women and children experience family violence and child abuse at levels that are many times that of the non-Aboriginal community and are at a level that is completely unacceptable. In particular

- Aboriginal women are 45 times more likely than other Australians to be the victims of domestic violence, and eight times more likely to be the victims of homicide
- Sexual abuse appears to be increasing
- Aboriginal children are significantly over-represented in the protection and care system
- There is serious under-reporting of incidents of both family violence and child abuse
- There are significant limitations in the capacity of the criminal justice system to resolve complaints of family violence and child abuse
- There is a need to enhance and systematise data on family violence and child abuse

The Inquiry found that family violence and child abuse in Aboriginal communities arise from multiple factors within individuals, families and communities. The following factors are highlighted

- Marginalisation and dispossession
- Loss of land and traditional culture
- Breakdown of kinship systems and Aboriginal law
- Entrenched poverty
- Racism
- Drug, alcohol and substance abuse
- The effects of institutionalisation and removal policies
- The 'redundancy' of the traditional Aboriginal male role and status, compensated for by an aggressive assertion of male rights over women (and) children
- Trauma and violence over the last two centuries
- Issues of governance and leadership in communities

- Passive welfare
- The portrayal of violence and sexuality
- Gambling

The literature was clear that there are no easy solutions to family violence and child abuse. The Inquiry explored the statutory child protection system and the need for comprehensive models and frameworks. Solutions need to include the following

- A continuum of service provision including prevention, support and intervention as well as treatment which may be long term
  - Aboriginal self-determination
  - The need to support services within communities
  - The need to acknowledge Aboriginal women's different view of the use of refuges and the criminal justice system
  - The use of a 'healing approach' which addresses the whole family and community
  - The need for government to develop structures and processes within and across agencies to allow a holistic response
  - The use of performance indicators and benchmarks to measure success
- **The Inquiry is also to liaise with the Interdepartmental Committee (IDC) on Sexual Assault to avoid duplication and ensure complementary outcomes.**

The Inquiry met on three occasions with representatives of the committee. There was a shared recognition of the problems and a desire to offer a more holistic response in the delivery of services.

### **Term of Reference 3**

**Report to me with recommendations on practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.**

The Inquiry has already addressed research on solutions to Aboriginal family violence under Term of Reference 2. Taking into account the research and advice provided by communities and non-government agencies as well as evidence and submissions to the Inquiry by government agencies, the Inquiry has made a large number of findings and recommendations. These will not be repeated here. Of particular note are

- The need for a range of oversight bodies including a Children's Commissioner and a Child Death Review Team
- The need to make substantial changes to the service delivery system to ensure a continuum of service delivery and to ensure an appropriate community focuses approach
- The need for 'one stop shops' in communities to respond in a holistic way
- The need to respond to the factors which both cause and result from family violence and child abuse such as drug, alcohol and substance abuse, poor housing, past history and trauma
- The need for cultural sensitivity and responsiveness
- The expansion of therapeutic and counselling services



- The need for new child protection legislation
  - The use of a community development framework
  - The need for additional resources
  - The need to respond to the increasing complexity of child protection work
  - A focus on capacity building and governance
  - A focus on a range of alternative strategies such as dispute resolution and mediation
  - The need for greater awareness programs on family violence and child abuse for staff of government agencies and the community generally
  - The challenges of rural, regional and remote service delivery
  - The need for appropriate policies and protocols for staff to report abuse.
- **Comment and make recommendations on the mandatory reporting of sexually transmitted diseases occurring among children and juveniles**

This issue was considered in Chapter 18. Having examined the complex issues surrounding mandatory reporting the Inquiry has recommended that there be a form of mandatory reporting which covers medical personnel likely to come into contact with children under 13 years who have a sexually transmitted disease (STD). The Inquiry further recommends that other situations that are indicative of abuse be considered as part of the further review of mandatory reporting that is currently conducted by the Child Protection Council (CPC).

- **Comment on any limitations of DNA testing in the Aboriginal community**

This issue was considered in Chapter 19. The Inquiry considered a range of research papers and advice, and believes that there are no limitations of DNA testing in the Aboriginal community. The statistical analysis that is used in analysing samples of DNA must be modified to take account of populations where there is a high degree of interrelatedness. This already occurs in Western Australia (WA).

- **Propose support measures for children reporting abuse.**

This issue was considered in Chapter 18. The Inquiry decided that there was a need for a heightened awareness of child abuse and neglect by professionals who have contact with children. There is a need for appropriate people in the child's community to be able to offer support to children. Children also need to be kept informed about what is happening as a result of their disclosure of abuse. The Inquiry supports the use of Protective Behaviour programs in schools. There is a need for general awareness raising in communities so that they are able to respond appropriately to disclosures of abuse.

## **FINDINGS AND RECOMMENDATIONS**

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1. The Inquiry recommends that data on child sexual abuse be collected by government agencies using a methodology that allows for aggregation and illustrates pathways through the justice and child protection systems.
2. The Inquiry recommends that the State petition the Commonwealth Government to include older children (13–17 years) in surveys of sexual assault to obtain prevalence data.
3. The Inquiry endorses the Disability Services Commission's initiative in developing a policy and funding framework with the involvement of key community-based groups, consumers and government agencies through the *Access for Indigenous People Steering Committee* to improve its service provision to Aboriginal people with disabilities.
4. The Inquiry finds that the Office of Aboriginal Health (OAH) does not have any specific policies, procedures or agendas to address family violence and child abuse in Aboriginal communities. The Inquiry recommends that OAH be more involved in the development of programs to meet the three levels of responses (primary, secondary and tertiary) to address these issues.
5. The Inquiry recommends the appointment of a senior officer to lead the Office of Aboriginal Health be expedited as a matter of urgency by the Department of Health.
6. The Inquiry endorses in principle the Department of Health's initiatives to build workforce skills; develop new models of service delivery that would improve interagency referral processes; and enhance interagency cooperation, as proposed for the reconfigured Community and Child Health Branch.
7. The Inquiry endorses in principle, the direction in training currently being undertaken by the Sexual Health Program. It recommends, on the basis of the effectiveness of the community education and sexual health traineeship program for Aboriginal people, to expand this traineeship and provide it on an ongoing basis.
8. The Inquiry commends the establishment of the Aboriginal Psychiatric Services at Graylands Hospital. However it recommends that the services should be widely publicised, especially in the rural and remote regions, and target referring professionals, agencies and Aboriginal groups.
9. The Inquiry finds that the limited information provided by the Department of Health on its Drug and Alcohol programs precluded any findings by the Inquiry on the effectiveness of services provided.
10. The Inquiry acknowledges the Drug and Alcohol Office's current activities, and recommends that their proposals be progressed as a matter of urgency, to address the enormity of the problems associated with drug, alcohol and substance abuse.
11. The Inquiry supports the Department of Health's intention to develop a Volatile Substance Abuse Action Plan (VSAAP) and recommends that the VSAAP adopt a comprehensive approach to the development of strategies that include treatment initiatives in Aboriginal communities.
12. The Inquiry recommends that in developing appropriate strategies, the Department of Health should include a review of the legislative framework and any requirements for change.
13. The Inquiry endorses in principle, options currently being considered by the Department of Health and recommends that resources be made available for the following initiatives to be carried out:
  - Expansion of delivery of sexual assault services in the metropolitan and rural and remote regions

- An increase in counselling services, to include Aboriginal-specific services, provided by government and non-government agencies
  - Improvement of education and training to health care workers, agencies, communities and schools to address sexual abuse issues and provide education on preventative and protective strategies
  - The positioning of the metropolitan Sexual Assault Resource Centre at King Edward Memorial Hospital as the key support agency for all sexual assault services statewide, as well as being responsible for the skill development of workers in the rural and remote regions.
14. The Inquiry recommends that key Aboriginal community members be identified for training in sexual assault education and support services so they become a resource in their own communities.
15. The Inquiry supports options the Department of Health is considering to improve and expand the Princess Margaret Hospital (PMH) Child Protection Unit's (CPU) services, these being:
- Education for all health workers particularly in the range of specialised services that CPU provide
  - Improvement of the working relationship with Aboriginal Health Services, such as Derbarl Yerrigan Health Service, to enable the establishment of a specific clinic with an indigenous focus
  - Establishment of rural regional units to better respond to families and children
- The Inquiry recommends that the Department of Health provides psychiatric, psychological and counselling services for victims of child sexual abuse and their families through CPU at PMH.
16. The Inquiry supports the interim evaluation of the *'Understanding and responding to child sexual abuse in Aboriginal communities'* training workshops, piloted in May 2002 in regional WA. The Inquiry recommends on the basis of that interim report that
- The training is redesigned to target different audiences, such as community members and professional/field workers
  - Training occur on an ongoing basis
  - Training is provided in a series to enable workshop participants, incremental professional development training in responding to child sexual abuse
  - The training should include a follow-up competency assessment element ensuring ongoing application of training objectives
17. The Inquiry recommends that adequate resources be made available to the Sexual Health Program to expand its revised training workshops to all regions.
18. The Inquiry endorses the Department of Health initiative to review its current information sharing legislation to ensure more effective communication practices between agencies responding in the area of family violence and child abuse.
19. The Inquiry strongly supports the Department of Health's proposal to reintroduce regular training for nursing staff in the clinical management of child abuse, which was discontinued in 1993.
20. The Inquiry endorses the cross-cultural training programs proposed by the Department of Health (DOH) that recognise the specific cultural needs of Aboriginal people, for all DOH's service providers. The Inquiry recommends that this Inquiry's proposed Implementation body expedite this initiative as a matter of priority.

21. The Inquiry supports the Department of Health's development of an enhanced professional role and career development path for Aboriginal Health Workers and Aboriginal Mental Health Workers. The Inquiry recommends these incorporate a primary therapeutic role and should be reflected in work responsibility and remuneration.
22. The Inquiry recommends that the Department of Health consider more professional development options for newly employed Aboriginal staff, such as the Aboriginal mentoring programs recently introduced by the Department of Housing and Works and the Department of Education.
23. The Inquiry supports the metropolitan Sexual Assault Resource Centre's (SARC) initiative to reinstate training services that it previously provided. The Inquiry recommends the training package be redesigned in conjunction with experienced and qualified professionals, academics and Aboriginal Health Workers.

The Inquiry endorses the SARC's intention to reintroduce Aboriginal liaison workers as outlined in the Department of Health's (DOH's) Submission.

The Inquiry endorses the Indigenous-specific training program for volunteers to respond to their own community members disclosure of sexual abuse that is currently being implemented by SARC in Kalgoorlie. The Inquiry recommends that DOH consider this initiative, upon evaluation, for statewide implementation.
24. The Inquiry acknowledges the Department of Health's position that its previous structures and policies have inadvertently reduced the efficacy of service delivery, despite the commitment and clear goodwill to improve health outcomes, and supports the department's intent to redress the situation.
25. The Inquiry recommends that the proposed Implementation Body evaluate and monitor the progress towards implementation of the proposed changes outlined by the Department of Health.
26. The Inquiry recommends that as a matter of priority, Healthwatch examines and provides relevant advice to the Minister and Director General of Health to address issues associated with drug, alcohol and substance abuse within Aboriginal communities, which were identified as underlying factors in the incidence of family violence and child abuse.
27. The Inquiry endorses the Department for Community Development's (DCD) recognition of the need for '*... greater emphasis on building the capacities and strengths of individuals, families and communities*'. The Inquiry recommends that DCD continue to increase its emphasis on identifying and responding to the child and family identified, following a report of family violence and child abuse.
28. The Inquiry recommends that the Department for Community Development complete the draft Bill to a stage to enable its public release for comment.
29. The Inquiry recommends an analysis of the gaps in service delivery be conducted and considered as part of the framework for incorporation into the Department of Community Development planning process.

The Inquiry notes that advice is to be provided to the Hon Premier on the initial review and recommends that the advice include additional information regarding funding implications for the identified services.
30. The Inquiry finds that there is inadequate provision of ongoing intervention services for children and families. The Inquiry finds that there needs to be greater coordination and clarity between the Department for Community Development and the Department of Health for the responsibility of providing therapeutic and counselling services.

31. The Inquiry endorses the creation of programs by the Department for Community Development, which identify families, and communities who exhibit 'risk' factors and the provision of services to those identified families and communities.
32. The Inquiry endorses the Department for Community Development's use of alternative methods in working with families with young children who exhibit 'at risk' behaviours.
33. The Inquiry finds that a significant number of Aboriginal women are unable to access family and domestic violence services in the regional and remote areas.
34. The Inquiry endorses, in principle, the design of a 'developmental community process' that is in response to violence against women and children, which the Department of Community Development is currently undertaking in collaboration with Aboriginal community women.
35. The Inquiry:
  - Endorses the content of both the draft Action Plan II on Family and Domestic Violence and the draft Aboriginal Family Violence Strategy
  - Endorses the functions of both the Family Violence Coordinating Committee and the Family Violence Unit
  - Finds to be unsatisfactory the delays in the implementation of these draft documents and the delays in the formal commencement of those two bodies.
36. The Inquiry endorses the concept of the Kimberley Aboriginal Family Violence Community Education Project, which addresses family violence in the region. The Inquiry recommends that education initiatives addressing family violence be continued and expanded statewide.
37. The Inquiry supports the Aboriginal Family Violence initiatives outlined in the Department for Community Development's submissions.
38. The Inquiry endorses the increase in the funding allocated to the Department of Community Development to increase counselling, treatment and support services to Aboriginal people in both metropolitan and country areas. The Inquiry finds that there should be more clarity in the coordination of counselling, treatment and support services delivered to Aboriginal people by the various departments and a lead agency be identified for the delivery of service
39. The Inquiry finds that young people who can be characterised as 'mature minors' often need different government responses than other children. The Inquiry recommends that the proposed implementation body, consider the issue of 'mature minors, using findings in this Report and the report of the review of mandatory reporting conducted by the Child Protection Council.
40. The Inquiry endorses the review, which recommends the continuation of the Aboriginal Placement Project. The Inquiry further recommends that consideration be given to expanding the Project to provide additional support to and monitoring of, Aboriginal foster families in collaboration with other government agencies.
41. The Inquiry commends the role that the Crisis Care Unit plays in providing after hours response to emergency situations in the community. However, the Inquiry finds that there needs to be a review of the resources, functions and effectiveness of the Crisis Care Unit, particularly with regard to its response times and coordination with other agencies.
42. The Inquiry finds that the tasks undertaken by the Department for Community Development staff are becoming increasingly complex. The Inquiry recommends a review be undertaken to determine whether there is parity between formal qualifications, experience and the tasks staff are required to undertake.

43. The Inquiry acknowledges the increasing difficulties faced by the Department for Community Development in recruiting, remunerating and retaining experienced staff.
44. The Inquiry commends the joint working party between the Department for Community Development and the Community and Public Sector Union/Civil Service Association to develop a method for assessing workload to determine an acceptable caseload limit.
45. The Inquiry finds that in order for the Department for Community Development (DCD) preventative, family support and child protection responses and system to be effective, DCD must be appropriately resourced.
46. The Inquiry supports the Aboriginal Service Delivery Traineeship Scheme that enables a clear career development path for Aboriginal people within the Department for Community Development. The Inquiry recommends that consideration be given to the expansion of the Aboriginal Service Delivery Traineeship Scheme and the funding implications of such an expansion.
47. The Inquiry recognises that the complex cases often managed by the Department for Community Development require a high level of sustained and coordinated intervention. The Inquiry commends the Strong Families Project, which targets these complex cases. The Inquiry recommends serious consideration be given to funding the expansion of the effective pilot projects which deal with complex cases.
48. The Inquiry endorses the initiative currently in place to develop Memoranda of Understandings (MOU's) with Aboriginal communities in the Kimberley as a step in fostering mutual cooperation between the communities and the Department for Community Development (DCD)  
The Inquiry recommends that where MOU's are in place with Aboriginal communities, that DCD ensures that the objectives and purpose of MOU's are communicated clearly to these communities and fulfilled.
49. The Inquiry finds that many Aboriginal people have difficulty in obtaining private rental properties. The Inquiry strongly endorses systems designed to move Aboriginal people into home ownership and mainstream housing rather than state housing.  
The Inquiry endorses the State Homelessness Taskforce (2002) recommendations
  - 1.4.4 *'Examine options for incentives for private landlords to accommodate people on low incomes,'* and
  - 1.4.5 *'Department of Housing and Works build on the current pilot project with the Real Estate Institute of WA to enable Aboriginal people and young people to access private rental by head leasing private rental stock, underwriting potential damage and the provision of support.'*

Pending a successful evaluation in December 2002, the Inquiry would also endorse the extension of this program. Furthermore, the Inquiry endorses *'The Government's Response to the Report of the Homelessness Taskforce 2002'* in exploring further options for increasing the access of low-income households to the private rental sector.
50. The Inquiry recommends, pending positive review, an extension of the Supported Housing Assistance Program (SHAP) in size and scope. The Inquiry recommends that consideration be given to adding a counselling component to SHAP.
51. The Inquiry supports the Management Support Program and recommends that the Department of Housing and Works consider a multifaceted approach of:
  - increased maintenance

- processes to increase tenant responsibility
  - greater provision of culturally appropriate housing to address this issue.
52. The Inquiry endorses capacity building in Aboriginal Communities and supports programs, including the Remote Area Essential Services Program and Management Support Program, which foster capacity building.
53. The Inquiry recommends a broader whole-of-community consultation approach to housing and infrastructure provision in communities to be conducted in co-ordination with ATSIC Regional and Community plans.
54. Following the evaluation of the pool installation program in remote communities, the Inquiry recommends that the program be expanded. The Inquiry suggests that a comprehensive plan for the building of recreational infrastructure will assist in reducing family violence and child abuse.
55. The Inquiry supports the maintenance of the Aboriginal Home Ownership Program to encourage home ownership by Aboriginal people.
56. The Inquiry finds that there is a need to accelerate the provision of emergency family accommodation suitable for residency of up to three months. The Inquiry also notes that the Government is providing \$1 million over the next four years to assist people directly into stable accommodation by by-passing crisis accommodation. The Inquiry notes that this issue has also been partly addressed by the *Homelessness Taskforce* in recommendation 1.4.2 *'Review and implement changes to transitional accommodation provided through the Crisis Accommodation Program to enable the tenant to take the lease and a replacement property provided'* and supports this recommendation. The Inquiry finds that there is an area of need for individuals between the provision of emergency accommodation and the provision of Priority Assistance Housing.
57. The Inquiry recommends that Department of Housing and Works increase the scope and frequency of its Aboriginal Cultural Awareness Course for all staff dealing with customers. Specifically, the Inquiry recommends that consideration be given to regular updating of the course, increasing regionally specific content and understanding of the extended family in Aboriginal society.
58. The Inquiry finds that there is a need for a program dedicated to the lifestyle skills appropriate to maintaining a household. The Inquiry endorses the ongoing discussions between Aboriginal Housing and Infrastructure Unit and the Department for Community Development to provide a joint service to this end. The Inquiry endorses the *Government Response to the Homelessness Taskforce*, recommendation 2.1.3, *'Develop practical home support services to assist people in gaining the skills to manage in a home. These services to be developed with the Aboriginal communities and migrant communities where appropriate.'*
59. The Inquiry endorses the findings of the *Homelessness Taskforce* and the *Government Response to the Report of the Homelessness Taskforce, 'Putting People First'*. The Inquiry recommends that priority be given to the provision of additional emergency accommodation.
60. The Inquiry finds that it is desirable for Aboriginal people in the long term to be less dependent on government services and to be able to access mainstream private rental and home ownership in the same proportion as the general population, thereby increasing self-determination and choice.

61. The Inquiry observes that the particular cultural needs of some Aboriginal people are not met by mainstream style housing, and that culturally appropriate housing can diminish overcrowding and maintenance.
62. The Inquiry finds that the issue of providing crisis care, crisis accommodation and permanent accommodation requires a whole-of-government approach.
63. The Inquiry endorses the recommendations of the review of the Joondalup Domestic Violence Pilot Project with regard to the the Western Australia Police Service.
64. The Inquiry finds that the comprehensive collection of data concerning family violence and child abuse is an important element of effective service delivery. The Inquiry endorses the purchase of the 'Protect' data collection program by Western Australian Police Service. Furthermore it recommends that 'Protect' be made available through the Information Management System as soon as possible.
65. The Inquiry recommends that the proposed implementation body, with a view to adapting the model to operate in Western Australia, examine the approach taken in the South Australian Pilot Project, concerning violence restraining orders.
66. The Inquiry finds that distrust of Western Australia Police Service officers is a key barrier to Aboriginal complainants coming forward and making complaints of family violence and child abuse, as acknowledged by Western Australia Police Service witnesses.
67. The Inquiry finds that the Child Abuse Investigation Unit (CAIU) is an integral part of the across-government response to child abuse. The Inquiry endorses the ongoing consideration being given to the role of the CAIU and its resources.
68. The Inquiry finds that the assignation of priority to reports of child abuse is integral to the provision of services to those complainants. The Inquiry recommends that the Western Australia Police Service (WAPS), or another body as the Premier sees fit, conducts a review of the priority system and, in the course of that review, considers the following issues:
  - Whether District Offices should undertake priority three and four recommendations, which has both advantages and disadvantages
  - Criteria upon which the Child Abuse Investigation Unit conducts investigations in non-metropolitan areas
  - Pursuant to a proposal currently being considered by WAPS, whether a procedure should be established concerning the rank, gender and training of WAPS officers interviewing vulnerable witnesses
  - The assignment of priority to cases where a child is itinerant or highly mobile and therefore at a heightened state of vulnerability.
69. The Inquiry endorses the new system of recording interviews with children. The Inquiry recommends that consideration be given to the extension of the new system of recording interviews to other vulnerable witnesses.
70. The Inquiry finds that Community Police Relations Committees are a valuable tool in facilitating communication between Western Australia Police Service officers and the Aboriginal community. The Inquiry recommends that consideration be given to Community Police Relations Committees, or similar bodies, to be established and maintained in all areas of the state.
71. The Inquiry endorses in principle the recommendations of the Koodjal Maar Baldjar: Reaching Out Together – Police and Indigenous Gathering Against Family Violence.
72. The Inquiry recommends that appropriate strategies be put in place to encourage Aboriginal



complainants to use the complaint mechanisms provided by the Western Australia Police Service.

73. The Inquiry finds that Aboriginal Police Liaison Officers (APLO) play an important role in the provision of service by the Western Australia Police Service to Aboriginal communities, in particular remote Aboriginal communities. The Inquiry endorses the creation of 40 new APLO positions over the next four years. The Inquiry recommends that consideration be given to encouraging more women to apply for positions as APLOs.
74. The Inquiry finds that training is essential for effective service delivery by Western Australia Police Service Officers and Aboriginal Police Liaison Officers to complainants of family violence and child abuse. The Inquiry endorses the current training programs in place. The Inquiry recommends these training programs be expanded to cover more material and to be available to more officers on a more frequent basis.
75. The Inquiry finds that policing services should be maintained at all times. The Inquiry recommends that leave and transfer arrangements are managed to ensure the necessary continuity.
76. The Inquiry finds that cultural sensitivity training is imperative for effective service delivery to Aboriginal communities. The Inquiry recommends that in addition to current induction and training, an induction procedure be put in place that provides cultural sensitivity training about, and in conjunction with, local Aboriginal communities when an officer joins a Western Australia Police Service (WAPS) station.
77. The Inquiry recommends that the Western Australia Police Service develop a policy concerning the transfer of APLOs.
78. The Inquiry commends Western Australia Police Service (WAPS) for improving its data collection system. The Inquiry recommends that WAPS be sufficiently resourced to ensure that the data collection system is maintained and updated as required.
79. The Inquiry finds that sex offender programs should be available to all incarcerated persons, including juveniles, convicted of child sex offences.
80. The Inquiry endorses the Integrated Prison Regime (IPR) and supports its implementation in prisons across Western Australia. The Inquiry recommends that Department of Justice incorporate the principle underpinning the IPR, in particular meeting individual needs, through the services it provides in the prison service division.
81. The Inquiry finds that programs should not place excessive reliance on any single officer or employee, and accordingly, risk the program lapsing when that person ceases employment. The Inquiry recommends that focus be given to professional development and succession planning when programs are being planned by Department of Justice.
82. The Inquiry endorses the review of the Indigenous Medium Program
83. The Inquiry endorses the review of the Reasoning and Rehabilitation Program. The Inquiry recommends that the review be completed expeditiously and its recommendations, where accepted by the Department, be implemented as a matter of priority. The Inquiry also recommends that the review vehicle evaluate the specific cognitive patterns of Aboriginal offenders.
84. The Inquiry supports the use of work camps as an example of an alternative to the traditional

- incarceration of Aboriginal adult offenders. The Inquiry recommends that more appropriate options for sentenced juveniles from remote locations be considered as a matter of urgency.
85. The Inquiry finds that the Mission Statement of Juvenile Justice Services – custodial, does not adequately represent its role in rehabilitating juvenile offenders. The Inquiry recommends that the 'Mission Statement' of the Juvenile Justice Services division be amended to include a reference to the rehabilitation of juvenile offenders.
  86. The Inquiry finds that the Adolescent Sex Offender Intervention Program, or a similar program, is a necessary part of the service provided by Department of Justice. The Inquiry recommends that the program, or intensive individual counselling, be available to all incarcerated juvenile sex offenders.
  87. The Inquiry finds that Department of Justice does not have a clear policy for receipt of disclosures of family violence or child abuse by clients of the Department. The Inquiry recommends that such a policy be put in place as a matter of urgency.
  88. The Inquiry recommends that necessary amendments to the *Young Offenders Act 1994* be expedited to allow Juvenile Justice Teams to operate in remote Aboriginal communities.
  89. The Inquiry finds there is a lack of clarity concerning responsibility for the supervision of mentors. The Inquiry recommends that clear reporting and supervision mechanisms be established for mentors.
  90. The Inquiry endorses the work of the Killara Youth Service. The Inquiry recommend that the Department of Justice consider providing additional funding, to address the issues identified by the Killara Youth Support Services.
  91. The Inquiry recommends that juveniles in custody should have ready access to psychological and psychiatric services.
  92. The Inquiry finds that both victims and offenders are better equipped to access the court system and court services when appropriately educated about that system.
  93. The Inquiry endorses the amalgamation of all victims' services into one victim service body and recommends that further strategies be put in place to improve the knowledge of both Public Sector employees and the community about the purpose and spirit of the *Victims of Crime Act 1994*.
  94. The Inquiry recommends that any necessary legislative amendments be made to allow ongoing referrals to be made from the Western Australia Police Service Victims of Crime Unit to the Victim Support Service.
  95. The Inquiry finds that no cultural awareness or sensitivity training about Aboriginal culture is provided to volunteers working for the Victim Support Service or Child Witness Service upon their commencement. The Inquiry recommends that funding be made available for cultural awareness and sensitivity training to be provided to volunteers upon induction into both those services.
  96. The Inquiry finds that Aboriginal people do not respond as often to typical methods of initiating contact as non-Aboriginal people. The Inquiry recommends that a policy be developed to address different mechanisms of contacting Aboriginal people.
  97. The Inquiry finds that services provided by Child Witness Service could better reach Aboriginal people with the employment of an Aboriginal worker. The Inquiry supports the creation of an Aboriginal specific position to work predominantly in the metropolitan area.
  98. The Inquiry recommends that the Child Witness Service be resourced to provide services to all

child witnesses to indictable offences should those resources not already exist.

99. The Inquiry supports the expansion of the Victim Offender Mediation Unit to regional and remote areas to enable more Aboriginal people to access the service.
100. The Inquiry endorses the provision and expansion of the Aboriginal Community Supervision Agreements providing that:
  - appropriate financial and logistical supports are in place for the community
  - appropriate community members are given access to offenders criminal records
  - appropriate training is provided for community members to manage offenders
101. The Inquiry supports the use of Alternate Dispute Resolution Services. The Inquiry recommends consideration be given to the creation of an Alternate Dispute Resolution Services Unit to service the whole of government.
102. The Inquiry supports cultural training for Department of Justice officers. The Inquiry recommends that cultural training be extended to ensure that staff working outside the metropolitan region obtains training appropriate for that region.
103. The Inquiry finds that the maintenance of adequate records and the collection of statistics is important to the service delivery of Department of Justice. The Inquiry recommends that such resources be provided as is necessary to meet a reasonable information collection and management standard.
104. The Inquiry recommends that Department of Education continue to explore and expand mechanisms to increase school attendance by Aboriginal students.
105. The Inquiry recommends that the Child Protection Policy and the 'Child Protection Training for Teachers' Training Package be reconciled as a matter of urgency in order to provide consistent guidance to Department of Education staff.
106. The Inquiry recommends that Department of Education (DOE) establish a mechanism for reviewing, with a view to expanding and clarifying, the Child Protection Policy and the procedures for its implementation, as carried out by DOE staff. The Inquiry recommends consistency in policy and implementation procedures, and greater specificity in reporting procedures.
107. The Inquiry also recommends that training to recognise child abuse be mandatory for all teachers.
108. The Inquiry recommends that Department of Education consider providing intensive cultural awareness and induction programs to staff employed in schools, which have a high Aboriginal population.
109. The Inquiry recommends that the Department of Education institute a risk mitigation program directed towards the protection of their own staff, which would include education of risk, protective behaviours and the creation of a safe work and home environment.
110. The Inquiry finds that current incentives are insufficient to attract experienced staff to remote areas and fail to compensate for the additional costs associated with living in a remote community. Non-financial incentives, such as permanency with the Department of Education, are constructed to attract junior staff, which may be least qualified to work in a demanding environment.
111. The Inquiry endorses the collaborative model addressing non-attendance by Aboriginal students, pending its successful review, and recommends that it be expanded to other educational districts.
112. The Inquiry endorses the inclusion of Aboriginal studies in school curriculum and the

development of Aboriginal language programs. The Inquiry supports the ongoing development and provision of Aboriginal language programs across the State.

113. The Inquiry finds that truanting or non-attending is a significant issue affecting the education of Aboriginal students as identified by the Department of Education (DOE). The Inquiry endorses the current commitment of DOE to increase school attendance by Aboriginal students. The Inquiry notes the establishment of a review committee to consider fundamental changes to the delivery of education and training to WA's Aboriginal youth.  
The Inquiry recommends, pending favourable outcomes, the extension of successful programs and systems to increase school attendance by Aboriginal students. The Inquiry finds that school attendance must be one of the primary focuses of DOE in improving the educational outcomes of Aboriginal students.
114. The Inquiry finds that issues relating to staffing remote and rural schools classified as Difficult to Staff (DTS) impacts upon the education of Aboriginal students. The Inquiry recommends that consideration be given to greater resources being allocated to or directed towards attracting experienced staff to DTS schools. Incentives, in particular, should be attractive to both graduate and experienced teachers.
115. The Inquiry recommends greater assistance, direction and training be provided to Department of Education staff in the reporting and otherwise responding to disclosure and suspicions that may not amount to disclosure of child abuse.
116. The Inquiry recommends the provision of basic education in 'Protective Behaviours' to students in all schools through existing curriculum frameworks in the Department of Education (DOE).
117. The Inquiry supports DOE seeking the services of other agencies, including non-government agencies, to provide assistance in providing education in 'protective behaviours.'
118. The Inquiry recommends that the current review of the *Aboriginal Communities Act 1979*, be finalised, with appropriate detail as a matter of urgency.
119. The Inquiry recommends that the Aboriginal Lands Trust undertake a greater role in the development of management structures and capacity building in communities located on Aboriginal reserve land and that adequate resources be made available to fulfil this role.
120. The Inquiry recommends that the Department of Indigenous Affairs be responsible for instituting proper community development principles
121. The Inquiry recommends that the Department of Indigenous Affairs develop policy and provide staff training to facilitate services that address causes of family violence and child abuse.
122. The Inquiry recommends that the *Aboriginal Affairs Planning Authority Act 1972* be amended to reflect the role and membership of the Indigenous Affairs Advisory Council to ensure consistent coordination of services.
123. The Inquiry recommends that the Department of Indigenous Affairs maintain a formal structure to receive and disseminate information to Aboriginal communities as required by section 18 of the *Aboriginal Affairs Planning Authority Act 1972*
124. The Inquiry finds that the government, through the *Machinery of Government Taskforce* and the implementation of the Indigenous Affairs Advisory Council, has indicated its awareness of the positive benefits of a collaborative approach between service deliverers and is supportive of this strategy. The Inquiry supports this collaborative approach.
125. The Inquiry endorses the work of SAFER WA as an effective model of interagency coordination.

126. The Inquiry finds that the Joondalup Family Violence Court project was evaluated as successful in its pilot stage and its permanent status is supported by the Inquiry.
127. The Inquiry finds that the model of the Strong Families program appears to be a positive program with great potential and recommends that its wider implementation should be encouraged.
128. The Inquiry recommends that the Strong Families program should be independently evaluated with input from the wider Aboriginal community.
129. The Inquiry endorses the *'Agreement for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia, July 2002 – 2007'* and its recognition of the need for improved coordination for the provision of Aboriginal housing and infrastructure and the need for the reduction of the duplication of services and the promotion of resource efficiency.
130. The Inquiry finds that the *State Homelessness Taskforce* is an important initiative by the Government and endorses the recommendations of the Taskforce.
131. The Inquiry finds that for collaboration, and service delivery to be effective, information and policy advice should circulate between frontline officers, middle management and strategic, whole-of-government planning bodies. The Inquiry recommends that a formalised and simplified structure be developed and implemented to allow for this.
132. The Inquiry finds that legislative and policy changes are necessary for the effective coordination of service provision to Aboriginal communities, particularly in relation to the sharing of confidential information. The Inquiry notes that the Government is currently considering issues relating to privacy information, which may impact on the sharing of information. The Inquiry recommends that the Implementation Body (see Chapter 16) progress the required legislative changes as a matter of urgency.
133. The Inquiry recommends that identified community members in remote Aboriginal communities have access to training and resources in the dissemination of information regarding coordinated service delivery within each community.
134. The Inquiry recommends that coordinated service delivery to reduce family violence and child abuse needs to be targeted at the recipients and customised to the needs identified by the specific Aboriginal community.
135. The Inquiry finds that interagency management of family violence and child abuse must be community based. The identified lack of resources available to communities in remote areas limits effective delivery of service. The Inquiry finds that programs must be relevant to the distinct cultural, financial and physical needs of the community. The Inquiry further finds that despite the best efforts of coordinated committees, the current approach is not successful and must be improved.
136. The Inquiry finds that the coordination of Government service delivery to Aboriginal people with regards to family violence and child abuse has not been very effective. The Inquiry makes the following findings of principle:
  - Legislative or policy framework is imperative for effective collaboration between departments and the coordination of service delivery
  - The provision of middle-management committees as intermediaries between the upper level management committees and on-the-ground service providers is imperative for effective coordinated service delivery

- The barriers to the sharing of information between departments has a negative impact on the effectiveness of collaborative service delivery
  - The allocation of an independent lead coordinator to oversee coordinated service delivery is imperative to its effectiveness
  - The difficulties facing coordinated delivery are exacerbated, in some instances, by factors such as remote settings.
137. The Inquiry finds, consistent with the Internal Review of the Western Australia Police Service that the investigation as to the circumstances of Susan's death was most unsatisfactory. Those inadequacies were attributable to a combination of:
- Lack of proper investigative principles relevant to sudden deaths
  - Lack of proper communication between police officers
  - Lack of overall supervision of the investigation
  - A presumption by investigators that the circumstances surrounding Susan's death were not suspicious due to her past history.
138. The Inquiry recommends a review of the assignment of priority to cases of child abuse where a child is itinerant or highly mobile, therefore at a heightened state of vulnerability.
139. The Inquiry recommends:
- There be ongoing monitoring of case loads by the Department for Community Development.
  - The role of the Duty Officers within the department be reviewed
  - Urgent consideration be given to the most appropriate means by which difficult/complex cases, such as those disclosed by the first Term of Reference, be addressed through effective, whole of government collaboration, with one particular agency being identified, from case to case, to adopt a lead agency role.
140. The Inquiry finds that substance abuse is a widespread occurrence amongst Aboriginal children in many parts of the metropolitan area and particularly in the Midland area. Such substance abuse:
- Has a devastating affect on the physical, intellectual and emotional wellbeing of young lives
  - Creates considerable vulnerability to, particularly, sexual offences.
141. The Inquiry recommends that urgent steps be taken to develop Memoranda of Understanding (MOU) between the Swan Valley Nyongar Community and those government agencies, which may reasonably seek access to that community. In developing those MOU, the conclusion of the Inquiry as to the good faith of service providers and their legitimate exercise of government function, ought to be taken into account.
142. The Inquiry recommends the establishment of an Implementation Body at the highest level of government, reporting to the Premier. The Implementation Body should provide a progress report no later than 12 months after the formation of that body.
143. The Inquiry recommends that the implementation body should include membership from outside government. This is to ensure that a range of perspectives is brought to the reform process, whilst recognising the vital importance of government agency membership. The Inquiry strongly recommends the appointment of the Aboriginal and Torres Strait Islander Commission State Chairperson to the Implementation Body, particularly noting the importance of the Statement of Commitment and the Indigenous Affairs Advisory Committee.

The Inquiry recommends that each government agency affected by the recommendations be required to report on their plans to implement the recommendations within at least three months of this report. Any government agency, which does not intend to implement a recommendation, should have to justify their position to the Implementation Body and provide an alternative strategy to overcome the identified problem. Thereafter, at least every six months, government agencies be required to report to the Implementation Body on progress of the implementation of the recommendations.

144. The Inquiry recommends that a Children's Commissioner be established which is independent and reports directly to the Premier. The Implementation Body should consider the structure and responsibilities of other children's commissioners to decide on the most appropriate model for Western Australia.
145. The Inquiry recommends the proposed Children's Commissioner should have a Deputy Children's Commissioner with responsibility for issues in relation to Aboriginal children.
146. The Inquiry recommends a Child Death Review Team should be formed to review the deaths of all children but particularly where there is suspicion of abuse or neglect. The Terms of Reference need to be established after consultation with the community and taking into account child death review teams in other states. The child death review team is to be the responsibility of the proposed Children's Commissioner.
147. The Inquiry therefore recommends that 'Legislative Impact Statements' be introduced into Western Australia, in particular, in relation to Aboriginal people and in relation to children.
148. The Inquiry recommends that there be a permanent appointment to the position of President of the Children's Court.
149. The Inquiry recommends that parents who risk having their children removed should be offered the opportunity to be legally represented in the Children's Court.
150. The Inquiry in support of the separation between judicial activities and support activities in the courts finds that court conferencing in care matters should be run independently of the magistracy.
151. The Inquiry recommends that further investigations occur in relation to employment screening to better protect Aboriginal communities, particularly Aboriginal children.
152. The Inquiry recommends that the full impact of any programs are considered before implementation in Aboriginal communities.
153. The Inquiry finds that while individual departments place considerable effort on planning and coordination, from the perspective of Aboriginal communities, planning and coordination need to be improved. The focus needs to move from planning within individual agencies and coordination of those activities to planning and provision of services that is sector-wide and responds to each community's needs. Communities need integrated service provision that results from an integrated planning process.
154. Within this overall integrated service delivery, communities need to have a more significant role in shaping the service response, rather than choosing from a range of predetermined programs.
155. The Inquiry finds that the projects which are time limited, with insufficient funds, inflexible service specifications, are not desirable. Some projects are overly dependant on the supervisor or manager and may lapse when that person moves. The Inquiry finds that Aboriginal communities need ongoing planned and consistent service provision and the nature of certain 'pilot projects' being implemented are unlikely to have that outcome.

156. The Inquiry finds that evaluations and reviews of programs and service delivery should include a focus on the outcomes as well as the process of implementation.
157. The Inquiry finds that there is a need for agencies to examine the implications of programs for Aboriginal people and ensure each program's suitability to that cultural group.
158. The Inquiry finds that resource distribution to provide services to communities are not fair and equitable. Communities of equal size do not have the same social infrastructure and supports. The Inquiry further finds that departments are not funded in such a way that they can provide adequate services, staff and infrastructure in all rural, regional and remote communities.
159. The Inquiry finds that the departments face particular challenges in responding to abuse or neglect of Aboriginal children. The recognition of past inappropriate actions by government departments has made workers very sensitive and in some cases fearful of doing further damage rather than improving conditions for children. In recognition of this particular difficulty and taking into account a number of submissions which assert that Aboriginal children are dealt with differently, recommendations will be made in relation to the need for clarity of response when Aboriginal children are at risk or have been abused or neglected.
160. The Inquiry finds that the complexity and breadth of problems provide challenges in relation to governance and leadership in Aboriginal communities. The Inquiry notes the plans of Department of Indigenous Affairs to respond to this problem and finds that there is a need for a comprehensive response across government agencies given the fundamental problems caused by difficulties in governance and leadership in communities.
161. The Inquiry recommends that a formula for resource distribution by government agencies including both direct service delivery and funding activities needs to be developed. The resource distribution formula needs to include indices of social disadvantage.
162. The Inquiry recommends that once the funding has been nominally allocated according to the agreed resource formula, communities, government and non-government agencies should then develop service provision plans in accordance with the community plans of each community and in consultation with those communities. The community plans should build on the regional plans developed by the Aboriginal and Torres Strait Islander Commission. The resource allocation formula and actual allocation needs to be made public, so that communities can plan within the real constraints of available funds and allocate priorities within those constraints.
163. The Inquiry recommends that there needs to be a 'top down bottom up' (involving strategic direction coupled with local planning) approach to the planning, management and delivery of services. The attached model outlines this process.
164. The Inquiry recommends that prevention and early intervention and other support activities must be integrated and delivered according to each community plan. This must include the development and enhancement of social infrastructure within that community. The model provided by Gerritsen and colleagues, the Aboriginal Suicide Prevention Steering Committee, and the Institute of Child Health Research is a useful model, which has been adopted by the Inquiry.
165. The Inquiry recommends that there needs to be a Statement of Service Provision for each community by all agencies. This must include both the planned service provision for the following year and the actual service provision that was provided in the past year. This Statement of Service Provision must respond to community plans, be based on the resources allocated according to the allocation formula, the agreed core service delivery functions and the integrated prevention and early intervention services.

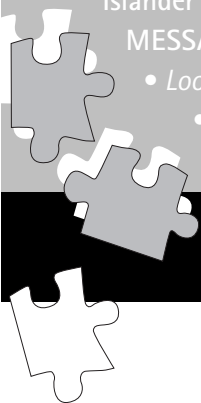


166. The Inquiry recommends that outcome and output measures relating to family violence and child abuse must be set. The performance reviews of the Director Generals of each of the key agencies must include an assessment against benchmarked measures. The performance of key staff in agencies must include a review of the impact that the officer has had on family violence and child abuse in communities, using agreed outcome performance measures, not just meetings attended or committees established.
167. The Inquiry recommends that Aboriginal communities must be offered the opportunity to regularly comment on the quality of service provision delivered in their community by government agencies. This should relate to the statement of service provision and address the appropriateness of the service delivery. Most businesses have a feedback mechanism separate to the complaints mechanism. Government agencies servicing communities should have such a mechanism to evaluate the service delivery to communities.
168. The Inquiry recommends that pilot projects should not be used when there is no intention to test the model of service provision. The intention of pilot projects is to test out aspects of the program before a roll-out into the wider community. Pilot projects must have a specific model that is being tested and which fits into the community plan for the development of social infrastructure within that community.
169. The Inquiry recommends that there be further examination of the role of the Department of Indigenous Affairs as a result of recommendations made in this report about capacity building and support for councils.
170. The Inquiry recommends that the 'one stop shop' concept be developed in communities and deal with the range of factors and problems that are linked to, and result from, family violence and child abuse. This would include drug abuse, the misuse of alcohol and other substances, gambling, early parenting, suicide, and other health and welfare activities. This one stop shop could also take responsibility for oversight of services to young people within the justice system as well as those children and young people who have protective needs.
171. The Inquiry recommends that different models for the delivery of basic social services should be developed depending on remoteness and size. The basic models could then be implemented according to community wishes and taking into account existing infrastructure.
172. The Inquiry recommends that the one stop shop to be supported by specialist teams who could use video and other tele-links to support workers at the one stop shop. Specialist teams could then visit the community and work with the one-stop shop workers to provide the more specialist therapeutic and other programs that are not appropriate to be delivered by the more generalist workers at the one stop shop. This could include telemedicine, where the specialist medical practitioners are available to offer advice to on-site medical staff. This 'tele-service' could also be used to support the workers to whom children report abuse so that children are not only disclosing to someone they know but having the advantage of specialist expertise provided by competent professionals who would not otherwise be able to access those communities.
173. The Inquiry recommends that departments, where the expertise and control are based in Perth, need to expand their technology so as to utilise mediums such as teleconferencing, video conferencing and other available electronic services.
174. The Inquiry recommends that the implementation body oversee the exploration by departments. These programs need to involve Aboriginal community members in the design phase, and target all members of the community, with particularly focus on children and young people.

175. The Inquiry recommends that the proposed Local Action Groups focus on ways to integrate services which address long-term underlying factors and social disadvantage which lead to child abuse and neglect.
176. The Inquiry finds that there is a need for both—more services and greater access to existing services, particularly therapeutic services for children and families who experience family violence and child abuse.
177. The Inquiry recommends that government agencies explore, with Aboriginal people, the concept of 'Healing Centres'.
178. The Inquiry recommends that services to perpetrators of violence acknowledge the sense of powerlessness and cultural loss, racism and prior physical and sexual abuse that have been part of many Aboriginal men's experience.
179. The Inquiry recommends that the delivery of therapeutic and counselling service encompass both children and families.
180. The Inquiry recommends the Department of Health consider supporting the design and development of an enhanced professional role and career development path for Aboriginal Health Workers and Aboriginal Mental Health Workers that incorporates a primary therapeutic role. This should be reflected in work responsibility and remuneration.
181. The Inquiry finds there is a need to review service provision to children where abuse is not disclosed but the child has clearly identified needs.
182. The Inquiry recommends that agencies examine the range of incentives available with a view to attracting and retaining experienced staff who have an interest in the delivery of regional and remote services to those localities.
183. The Inquiry finds that Aboriginal people do not respond as often to typical methods of initiating contact as non-Aboriginal people. The Inquiry recommends that a policy be developed to address different mechanisms of contacting Aboriginal people. The Inquiry finds that services provided by Child Witness Service could better reach Aboriginal people with the employment of an Aboriginal worker. The Inquiry supports the creation of an Aboriginal specific position to work predominantly in the metropolitan area.
184. The Inquiry finds that there is a need to better educate and train workers on the need to report family violence and child abuse to appropriate authorities.
185. The Inquiry finds that there is a need for workers to understand how to respond to disclosures of family violence and child abuse.
186. The Inquiry finds that there is a lack of information sharing between agencies in relation to family violence and child abuse, giving rise to considerable impediments in service delivery. The Inquiry recommends that further consideration be given to legislative and administrative changes to ensure information sharing between agencies.
187. The Inquiry recommends that all medical personnel likely to come into contact directly or indirectly with children under 13 years who have a sexually transmitted disease be obliged to report the presence of the disease to the Department for Community Development.
188. The Inquiry recommends that medical personnel likely to come into contact with children over 13 years who have a sexually transmitted disease are given appropriate information and training so that they are aware of the possibility of sexual abuse and understand the importance of reporting that abuse.

189. The Inquiry recommends that serious consideration be given to the requirement for medical personnel to report suspected abuse in children under 13 years as part of the consideration of the report on mandatory reporting for the Child Protection Council.
190. The Inquiry recommends that (as a minimum) the protocols for reporting all other forms of abuse be strengthened and further consideration of the matter of mandatory reporting occur upon the release of the report on mandatory reporting for the Child Protection Council.
191. The Inquiry recognises and appreciates the particular challenges to effective service provision in remote areas. The Inquiry recommends the provision of enhanced financial and other incentives to retain experienced workers in direct service delivery, particularly in remote areas.
192. The Inquiry finds that some staff do not fully understand the signs and symptoms of violence and abuse, and may therefore not identify the need for services for victims. The Inquiry recommends that courses providing training to agencies in the areas of family violence and child abuse need to be readily available.
193. The Inquiry finds that an understanding of the diversity of Aboriginal peoples is essential for government workers. The Inquiry further finds that previous interventions by governments, particularly examples such as the forced removal of Aboriginal children, has led to widespread distrust of government agencies by Aboriginal people. Government workers therefore need to demonstrate exceptional skills and sensitivity to respond to this longstanding distrust.
194. The Inquiry finds there is a need for cross-government traineeships and career path progression for Aboriginal people.
195. The Inquiry finds that an increase in Aboriginal staff is required within direct service and senior positions in departments.
196. The Inquiry recommends the Implementation Body receive further advice from the Western Australian Police Service as to whether the budget to implement DNA testing legislation is adequate.
197. The Inquiry recommends the Implementation Body receive advice from the Department of Health about the adequacy of collection and handling, and the protection, storage and transport of DNA material, particularly from remote communities.

*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse claims mar image of campaigner'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**



# SECTION

## **Appendices**

*Appendices 1 - 15*

**List of shortened forms**

## **Bibliography**



*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian 22-23 December 2001* • **Appendixes** *image of campaigner'* *The West Australian 1 November 2001* • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**

## APPENDIXES 1-15

# APPENDIXES

# 1

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**APPENDIX 1**

*Australian legislative definitions of child abuse*

## **CHILD PROTECTION LEGISLATION<sup>1</sup>**

### **Commonwealth**

Family Law Act 1975

### **New South Wales**

Children and Young Persons (Care and Protection) Act 1998

### **Victoria**

Children and Young Persons Act 1989

### **Queensland**

Child Protection Act 1999

Health Act 1937

### **Western Australia**

Child Welfare Act 1947

Community Services Act 1972

### **South Australia**

Family and Community Services Act 1972

Children's Protection Act 1993

### **Tasmania**

Children, Young Persons and Their Families Act 1997

Alcohol and Drug Dependency Act 1968

### **Australian Capital Territory**

Children and Young People Act 1999

Northern Territory

Community Welfare Act 1983

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<sup>1</sup> Source: Australian Institute of Health and Welfare (2002) *Child Protection Australia 2001-2002*, AIHW cat no. CWS 16, AIHW (Child Welfare Series no. 29) Canberra, Appendix 3, pp57-64.

## **LEGISLATIVE DEFINITION OF 'IN NEED OF CARE AND PROTECTION'**

For a child to be placed under an order, a court needs to determine whether the child is in need of care and/or protection. Each State and Territory has legislation defining 'in need of care and protection'.

### **New South Wales**

Prior to 18 December 2000 in New South Wales, a child was defined under section 10, subsection (1) in the *Children (Care and Protection) Act 1987* as being in need of care if:

- (a) adequate provision was not being made, or was not likely to be made, for the child's care; or
- (b) the child was being, or was likely to be, abused; or
- (c) there was a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.

Section 10, subsection (2) of the Act also stated that a child who was residing in a non-government children's home was in need of care if (without limiting the generality of subsection (1)):

- (a) the child had been residing in the home for a period of 12 months or more; and
- (b) there had been no substantial contact during that period between the child and:
  - (i) any of the child's parents; or
  - (ii) any person in whose care the child was immediately before the child began residing in the home.

Section 10, subsection (3) of the Act stated that a child was in need of care if (without limiting the generality of subsection (1)):

- (a) the child was under the age of 6 months; and
- (b) the child was in the care of a person who is fostering the child in contravention of Section 42 (which deals with unauthorised fostering); and
- (c) it appeared that the person may continue to foster the child in contravention of that section.

From 18 December 2000 in New South Wales, a child or young person must be found under section 71, *Children and Young Persons (Care and Protection) Act 1998* to be in need of care and protection by reason of any of the following:

- (a) lack of, or serious difficulties with, parental care;
- (b) physical or sexual abuse or ill-treatment;
- (c) the child or young persons' basic physical, psychological or educational needs may not be met;
- (d) possible serious developmental impairment or serious psychological harm arising from the child or young person's domestic environment;
- (e) sexually abusive behaviour by a child under 14 years of age; or
- (f) pre-existing order of another jurisdiction.

## Victoria

In Victoria, section 63 of the *Children and Young Persons Act 1989* indicates that a child is in need of protection if any of the following grounds exist:

- (a) the child has been abandoned and after reasonable inquiries the parent(s) cannot be found, and no other suitable person can be found who is willing and able to care for the child;
- (b) the child's parent(s) are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type;
- (d) the child has suffered, or is likely to suffer, emotional or psychological harm of such kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type;
- (e) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parent(s) have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange, or allow the provision of, basic care or effective medical, surgical or other remedial care.

## Queensland

In Queensland, sections 9 and 10 of the *Child Protection Act 1999* (introduced in March 2000) define a child 'in need of protection' as a child who:

- (a) has suffered harm, is suffering harm or has an unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from harm.

'Parent' is defined broadly to include persons 'having or exercising parental responsibility for the child' and includes a person who, under Aboriginal or Torres Strait Islander tradition or custom, is regarded as a parent of the child.

'Harm' is defined as 'any detrimental effect of significant nature on the child'.

## Western Australia

In Western Australia, a 'child in need of care and protection' is defined in the *Child Welfare Act 1947* to include a child who:

- (a) has no sufficient means of subsistence apparent to the court and whose near relatives are, in the opinion of the court, in indigent circumstances or are otherwise unable or unwilling to support the child, or are dead, or are unknown, or cannot be found, or are out of the jurisdiction, or are in the custody of the law; or
- (b) has been placed in a subsidised facility and whose near relatives have not contributed regularly towards the maintenance of the child; or



- (c) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitually under the influence of alcohol or drugs; or
- (d) is under the guardianship or in the custody of a person whom the court considers is unfit to have that guardianship or custody; or
- (e) is not being maintained properly or at all by a near relative, or is deserted; or
- (f) is found in a place where any drug or prohibited plant is used and is in the opinion of the court in need of care and protection by reason thereof; or
- (g) being under the age of 14 years is employed or engaged in any circus, travelling show, acrobatic entertainment, or exhibition by which his life, health, welfare or safety is likely to be lost, prejudiced or endangered; or
- (h) is unlawfully engaged in street trading; or
- (i) is ill-treated, or suffers injuries apparently resulting from ill-treatment; or
- (j) lives under conditions which indicate that the child is lapsing or likely to lapse into a career of vice or crime; or
- (k) is living under such conditions, or is found in such circumstances, or behaves in such a manner, as to indicate that the mental, physical or moral welfare of the child is likely to be in jeopardy.

## **South Australia**

In South Australia, under the *Children's Protection Act 1993*, an application may be made to the Youth Court when the Minister is of the opinion that:

- (a) the child is at risk and an order should be made to secure the child's care and protection; or
- (b) disruption of existing arrangements for the child would be likely to cause the child psychological injury and it would be in the best interest of the child for the arrangement to be the subject of a care and protection order.

For the purposes of the Act, a child is at risk if:

- (a) the child has been, or is being, abused or neglected; or
- (b) a person with whom the child resides (whether a guardian of the child or not):
  - (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
  - (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (c) the guardians of the child:
  - (i) are unable to maintain the child, or are unable to exercise adequate supervision and control over the child; or

- (ii) are unwilling to maintain the child, or are unwilling to exercise adequate supervision and control over the child; or
- (iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
- (d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
- (e) the child is under 15 years of age and of no fixed address.

*The Children's Protection Act 1993* also covers the practice of female genital mutilation. For the purposes of the Act the following definitions of female genital mutilation are used:

Under section 26A(1) female genital mutilation means:

- (a) clitoridectomy; or
- (b) excision of any other part of the female genital organs; or
- (c) a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genital organs, but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose.

Under section 26B(1) on the protection of children at risk of genital mutilation, if the court is satisfied that there are reasonable grounds to suspect that the child may be at risk of female genital mutilation, the court may make orders for the protection of the child: for example, preventing a person from taking the child from the State, or requiring that the child's passport be held by the court for a period specified in the order or until further order, or providing for periodic examination of the child to ensure that the child is not subject to female genital mutilation.

Part 5 of the *Children's Protection Act* also states that family care meetings should be convened in respect of the child if the Minister believes that a child is at risk and that arrangements should be made to secure the child's care and protection. The Minister cannot make an application for an order granting custody of the child or placing the child under guardianship before a family care meeting has been held unless satisfied that:

- (a) it has not been possible to hold a meeting despite reasonable endeavours to do so; or
- (b) an order should be made without delay; or
- (c) the guardians of the child consent to the making of the application; or
- (d) there is another good reason to do so.

The department will consider taking court action for a care and protection order only when no other intervention can safely protect a child who is at risk by definition of the Act. There are powers which the Youth Court may exercise when it finds that a child is in need of care and protection.

New care and protection orders tend to be for no longer than 12 months, although a second or subsequent order can be granted to complete a reunification process. The child may then be placed under the guardianship of the Minister or such other person or persons the court thinks appropriate, until 18 years of age.

## Tasmania

In Tasmania, *The Children, Young Persons and Their Families Act 1997* defines abuse or neglect as:

- (a) sexual abuse; or
- (b) physical or emotional injury or other abuse, or neglect, to the extent that:
  - (i) the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's well-being; or
  - (ii) the injured, abused or neglected person's physical or psychological development is in jeopardy.

The Act provides the following definition of a child at risk:

- (a) the child has been, is being, or is likely to be, abused or neglected; or
- (b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child):
  - (i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or
  - (ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (c) the guardians of the child are:
  - (i) unable to maintain the child; or
  - (ii) unable to exercise adequate supervision and control over the child; or
  - (iii) unwilling to maintain the child; or
  - (iv) unwilling to exercise adequate supervision and control over the child; or
  - (v) dead, have abandoned the child or cannot be found after reasonable inquiry; or
  - (vi) are unwilling or unable to prevent the child from suffering abuse or neglect; or
- (d) the child is under 16 years of age and does not, without lawful excuse, attend school regularly.

Child and Family Services staff make a decision about whether a child is at risk or not through a process of gathering, confirming and analysing information, using their expertise and, where necessary, that of other professional people.

## Australian Capital Territory

In the Australian Capital Territory a new Act, *The Children and Young People Act 1999*, was introduced in May 2000. This Act states that a child is in need of care and protection if:

- (a) he or she has been, is being or is likely to be, abused or neglected; and
- (b) no-one with parental responsibility for the child or young person is willing and able to protect him or her from suffering the abuse or neglect.

## Appendix I Australian legislative definitions of child abuse

Abuse in relation to a child or young person means:

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person;
  - (i) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause significant harm to his or her well-being or development; or
  - (ii) has been, is being or is likely to be exposed to conduct that is a domestic violence offence within the meaning of the *Domestic Violence Act 1986* and that has caused, is causing or is likely to cause significant harm to his or her well-being or development.

Neglect of a child or young person means a failure to provide the child or young person with a necessity of life that has caused, is causing or is likely to cause the child or young person significant harm to his or her well-being or development. Necessities include food, shelter, clothing and medical care.

Without limiting the above, a child or young person is also in need of care and protection in any of the following circumstances:

- (a) if a person with whom the child or young person lives or is likely to live:
  - (i) has threatened to kill or injure the child or young person and there is a real possibility of the threat being carried out; or
  - (ii) has killed, abused or neglected a child or young person and there is a real possibility of the person killing, abusing or neglecting the relevant child or young person; and
  - (iii) no-one with parental responsibility is willing and able to protect the child or young person;
- (b) no-one with the parental responsibility for the child or young person (other than the chief executive) is willing and able to provide him or her with adequate care and protection;
- (c) if there is serious, persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the chief executive) to such an extent that the care and protection of the child or young person is, or is likely to be, seriously disrupted;
- (d) the people with parental responsibility for the child or young person (other than the chief executive) are:
  - (i) dead, have abandoned him or her or cannot be found after reasonable enquiry; or
  - (ii) unwilling or unable to keep him or her from engaging in self-damaging behaviour; or
  - (iii) sexually or financially exploiting the child or young person or unwilling or unable to keep him or her from being sexually or financially exploited; or
- (e) the child or young person is the subject of a child protection order in a State that is not being complied with.

Action taken by ACT Family Services in relation to a report (notification) is at the discretion of the Chief Executive as per section 161 of the Act.

The Act reflects an increased emphasis on family support and prevention services to assist children, young people and their families.

## **Northern Territory**

In the Northern Territory, section 4(2) of the *Community Welfare Act 1983* states that a child is in need of care where:

- (a) the parents, guardian/person having the custody have abandoned the child and cannot, after reasonable enquiry, be found; or
- (b) the parents, guardian/person having the custody are willing or unable to maintain the child; or
- (c) the child has suffered maltreatment; or
- (d) the child is not subject to effective control and is engaging in conduct which constitutes a serious danger to his or her health or safety; or
- (e) being excused from criminal responsibility under section 38 of the Criminal Code (being under 10 years of age), the child has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community, measured by commonly accepted community standards, as to warrant action under this Act for the maintenance of those standards.

For the purpose of the *Community Welfare Act 1983*, a child shall be taken to have suffered maltreatment where he or she has/is suffered or are at substantial risk of suffering and of the following:

- (a) a physical injury causing temporary or permanent disfigurement or serious pain or impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of the child, or where there is substantial risk of the child suffering such an injury or impairment;
- (b) serious emotional or intellectual impairment evident by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which the child belongs, whether a result of physical surroundings, nutritional or other deprivation, or the emotional or social environment in which the child is living, or where there is substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;
- (c) serious physical impairment evidenced by severe bodily malfunctioning, whether a result of the child's physical surroundings, nutritional or other deprivation, or the emotional or social environment in which the child is living, or where there is a substantial risk that such surroundings, deprivation or environment will cause such impairment;

**Appendix I** *Australian legislative definitions of child abuse*

- (d) sexual abuse or exploitation, and the child's parents, guardians or persons having custody of the child are unable or unwilling to protect him or her from such abuse or exploitation; or
- (e) female genital mutilation, where a female child shall be taken to have suffered female genital mutilation where she:
  - (i) has been subjected, or there is substantial risk that she will be subjected, to female genital mutilation, as defined in section 186A of the Criminal Code; or
  - (ii) has been taken, or there is substantial risk that she will be taken, from the Territory with the intention of having female genital mutilation performed on her.

## APPENDIX 2

### Mandatory reporting requirements in Australia

## MANDATORY REPORTING REQUIREMENTS IN AUSTRALIA<sup>1</sup>

### New South Wales

Since 1977 medical practitioners have been required by law to report physical and sexual abuse. This was expanded under the *Children (Care and Protection) Act 1987* both as to who is to report and what needed to be reported. As from 18 December 2000 the category of mandatory reporters was changed to anyone who:

- (a) in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement wholly or partly to children under the age of 16 years; or
- (b) holds a management position in an organisation the duties of which include direct responsibility for or direct supervision of a person referred to in (a), and that person has reasonable grounds (that arise as a consequence of their employment) to suspect that a child is at risk of harm.

Since 1998 agencies have also been required to report allegations about or convictions for child abuse against a person doing work for the agency, together with information on the action being taken by the agency, to the Ombudsman.

These statutory obligations are supplemented and supported by Interagency Guidelines detailing each agency's role, responsibilities and actions required in all aspects of child protection intervention and the policies, procedures and directions of individual agencies on how to respond to child care and protection matters.

### Victoria

In 1993 the Victorian Government proposed legislative changes to the *Children and Young Persons Act 1989* which would mandate specific professional groups to notify suspected cases of child physical and sexual abuse. Doctors, nurses and police were mandated on 4 November 1993 to report child physical and sexual abuse. Primary and secondary school teachers and principals were mandated on 18 July 1994.

### Queensland

Under the *Health Act 1937*, medical practitioners are required by law to notify all cases of suspected maltreatment of a child. Education Queensland policy requires school principals to report suspected child abuse and neglect to the appropriate authorities and requires teachers to report through principals; however, this is not legislated. *The Child Protection Act 1999* requires that officers of the Department of Families and employees of licensed care services report when they suspect harm to children placed in residential care.

<sup>1</sup> Source: Australian Institute of Health and Welfare (2002) *Child Protection Australia 2001–2002*, AIHW cat no. CWS 16, AIHW (Child Welfare Series no. 29) Canberra, Appendix 4, pp65–66.

## **Western Australia**

In Western Australia, referrals about possible harm to children are facilitated by a series of reciprocal protocols that have been negotiated with key government and non-government agencies, rather than by mandatory reporting. Community awareness programs and education of professional groups also contribute to identification of possible maltreatment, and action to prevent further harm from occurring.

## **South Australia**

Under the *Children's Protection Act 1993*, the following persons are required to notify the Department of Human Services (Family and Youth Services) when they suspect on reasonable grounds that a child is being abused or neglected: medical practitioners; nurses; dentists; pharmacists; psychologists; police; probation officers; social workers; teachers; family day care providers; and employees of, or volunteers in, government departments, agencies or local government or non-government agencies that provide health, welfare, education, childcare or residential services wholly or partly for children.

## **Tasmania**

In Tasmania, *The Children, Young Persons and Their Families Act 1997* emphasises that everyone in the community has a responsibility for making sure children are safe and protected. The following list of 'prescribed persons' are mandatory reporters under the Act: registered medical practitioners; nurses; dentists; police officers; psychologists; departmental employees within the *Police Regulation Act 1898*; probation officers; school principals and teachers; persons who manage child care services or provide child care for a fee or reward; and in general people employed, or who are volunteers in, government agencies or organisations funded by the Crown that provides health, welfare, education, or care wholly or partly for children.

## **Australian Capital Territory**

Mandatory reporting was introduced on 1 June 1997. The groups mandated are doctors, dentists, nurses, police officers, teachers, school counsellors, public servants working in the child welfare field and licensed childcare providers.

## **Northern Territory**

It is mandatory for any person who believes a child is being, or has been, abused or neglected to notify a Family and Children's Services office or police station.



## APPENDIX 3

### Definitions of child abuse

The following definitions of child abuse have been referred to within the report.

In section 4(1) of the Child Welfare Act 1947 the term 'child' is defined as meaning:

*Any boy or girl under the age of 18 years; and, in the absence of positive evidence as to age, means any boy or girl apparently under the age of 18 years but also includes any boy or girl dealt with under the Children's Court of Western Australia Act 1988 by virtue of section 19(2) of that Act.*

This is substantially the same as the definition contained in the United Nations Convention on the Rights of the Child (UNCROC).

A definition of 'child abuse' considered by the Inquiry is that 'child abuse' means:

*Anything which individuals, institutions or processes do, or fail to do, which directly or indirectly harms children or damages their prospects of a safe and happy development into childhood.*

This definition is promulgated by the National Association for Prevention of Child Abuse and Neglect (NAPCAN).

The TICHR noted that child abuse

*For the purpose of this document, child sexual abuse occurs where an adult, adolescent or child, 5 or more years older, misuses power to involve a developmentally immature child or adolescent, under the legal age of consent (16 years), in some form of sexual behaviour. Sexual activity may be taken to mean exploitative non-contact abuse (like voyeurism, exhibitionism, showing of or use in pornographic materials), contact abuse (e.g. fondling of the child's body or genitals with sexual intent, engaging the child in fondling of the abuser) to penetration (digital, penile, other objects). The child may or may not be related to the offender. The abuse may involve enticements, bribes, threats or violence.*

SNAICC has defined child abuse and neglect for Aboriginal people in their proposed plan of action for the prevention of child abuse and neglect in Aboriginal communities as:

*'...any form of action (or inaction) that results in the well being of the child being threatened or leading to actual harm.'*

Through *Young Black Eyes* included the following definitions of child abuse:

*Child abuse is the deliberate act of harming a child physically, emotionally or sexually. Child neglect is a form of abuse and reflects a situation when parents or carers fail to provide a child with the basic needs essential for the development of physical, emotional and general health and well being. Children may be harmed by a parent, sibling or other relative; a caregiver, acquaintance or a stranger.*

*Sexual abuse or child sexual assault occurs when an adult or older person uses his or her power over a child to involve the child in sexual activity. It is different to other forms of child*

### **Appendix 3** *Definitions of child abuse*

*abuse in the way that it is usually premeditated. The abuser may trick, bribe, threaten or force a child to take part in sexual activity. Examples of child sexual abuse include:*

- *'flashing'; appearing naked in front of; or inappropriately exposing 'private parts' of the body to a child or young person*
- *using suggestive behaviour or comments*
- *fondling genitals*
- *masturbation*
- *oral sex*
- *penetration of the vagina or anus by a finger, penis or any other object*
- *exposing a child or young person to pornography or using them for pornography*
- *obscene calls, remarks or emails to a child or young person*
- *voyeurism (getting sexual pleasure from looking at sexual acts or organs of children)*
- *kissing or holding in a sexual manner'*

*The Oxford English Dictionary defined child abuse: as*

*maltreatment of a child, especially by beating, sexual interference or neglect.*

Kempe and colleagues (cited in '*Child Protection Messages from Research*', DoH UK) made the following definition:

*Physical abuse implies physically harmful action directed against a child; it is usually defined by any inflicted injury such as bruises, burns, head injuries, fractures, abdominal injuries, or poisoning.*

Schechter, M and Roberge, L, cited in '*Child Protection Messages from Research*', DoH UK defined sexual abuse as

*... the involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend and to which they are unable to give informed consent or that violate the social taboos of family roles.*

DePanfilis and Salus (1992) made the following definitions:

*There are many legal and operational variations in the definition of child abuse in Australia, which makes it difficult to provide consistent national data on incidence. Indeed, variations may occur depending on the context in which they are used. For instance, government departments may use different definitions from those used by community service professionals. However, all of the definitions refer to the "physical or psychological damage caused to the child by the abusive behaviour of others, or the failure of others to protect a child from such damage". Most commonly, the categories of abuse cover physical, emotional and sexual abuse, as well as neglect.*

*Child abuse is, however, more generally characterised by the deliberate infliction of physical, emotional or sexual harm on the child. Child neglect can also incorporate a situation in which there is a failure to provide conditions which are essential for the health, physical and emotional development of the child. The following more detailed descriptions can help identify children in need of intervention.*

**Physical Abuse** is characterised by physical injury (for example, bruises and fractures) resulting from practices such as punching, beating, kicking, biting, burning, or otherwise harming a child. Although the injury is not an accident, the parent or caretaker may not have intended to hurt the child. The injury may have resulted from overdiscipline or physical punishment that is inappropriate to the child's age or condition. Or, it may occur when an adult accidentally causes injury by shaking a baby vigorously through anger.

Physical injury may emanate from either a single episode, or from repeated episodes. It can range in severity from minor bruising to death. A single bruise, for example, may be inflicted inadvertently; however, old and new bruises in combination, bruises on several areas of the face, or bruising in an infant suggest abuse.

The NSW Child Protection Council refers to emotional abuse as:

**Emotional Abuse** is a behavioural pattern whereby a parent or caregiver attacks a child's self-esteem and social competence over a period of time. Some examples of actions which may result in emotional abuse are: children constantly being told they are no good or worthless; children being continually rejected and shown no affection; children subjected to repeated verbal abuse and threats; children punished by being locked up alone or not being allowed to have friends or social activities.

Emotional abuse can harm children just as much as other forms of abuse, with which it can occur concurrently. It may, however, be difficult to identify because it does not leave any physical injuries. It often goes unrecognised until a child shows signs of emotional problems. These signs can include: changes in behaviour; lying and stealing; destructive or violent behaviour; rocking the body or sucking things; being very withdrawn or depressed; being aggressive and constantly seeking attention.

The Child Sexual Abuse Task Force defined sexual abuse as:

**Sexual Abuse** occurs when an adult or older person uses his or her power over a child to involve the child in sexual activity. The abuser may trick, bribe, threaten, and if necessary force a child to take part in sexual activity. Child sexual assault can include suggestive behaviour or comments, exposure, fondling genitals, masturbation, oral sex, and penetration of the vagina or anus by a finger, penis or any other object. It includes exhibitionism and suggestive behaviour or comments. Child sexual abuse has, in fact, been defined as 'the involvement of a dependent and developmentally immature child or adolescent in the sexual activities of an older person/adult, where the younger person is used for the gratification of sexual desires or needs of the older person or where social taboos or family roles are violated.

The South Australian Child Protection Council defined child neglect as:

**Child Neglect** is characterised by failure to provide for the child's basic needs. Unlike other forms of abuse, it is an act of omission by a caregiver which jeopardises or impairs the child's physical, intellectual, or emotional development. A child who is neglected may be at risk of injury or harm owing to inadequate supervision. They may also be constantly tired, hungry, listless, or have medical conditions related to poor hygiene or experience a failure to thrive.

### **Appendix 3** *Definitions of child abuse*

Adam Tomison, in his paper '*Overcoming Structural Barriers to the Prevention of Child Abuse and Neglect – A Discussion Paper*' included the following definitions:

**Sexual abuse:** *any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards.*

**Physical abuse:** *any non-accidental physical injury inflicted upon a child by a person having the care of a child.*

**Emotional abuse:** *any act by a person having the care of a child which results in the child suffering any kind of significant emotional deprivation or trauma.*

**Neglect:** *any serious omissions or commissions by a person having the care of a child which, within the bounds of cultural tradition, constitute a failure to provide conditions that are essential for the healthy physical and emotional development of a child.*

*The terms child abuse and neglect and child maltreatment are used interchangeably throughout this paper. Unless otherwise stated, the term child abuse prevention encompasses the prevention of all forms of child abuse and neglect.*

In '*The Identification of Child Abuse and Neglect*' Greg Black defined child abuse and neglect as:

*... the maltreatment of a person under the age of 18 years. It is the result of action or inaction on the part of an older person which results in harm or injury to a child. It may also delay physical or intellectual development.*

The Kids Help Line defined child abuse as the:

*Exploitation of child by family member for sexual gratification and stimulation. Characterised by secrecy, and distortion of relationship. Includes a range of behaviours from touching, penetration, etc.*

*The Child Welfare Act 1947* does not provide a definition of 'child abuse', neither does any other Western Australian legislation.

## APPENDIX 4

### Definitions of family and domestic violence

The following definitions of family and domestic violence have been referred to within the report.

In the report entitled '*Tjunparni: Family Violence in Indigenous Australia*' by the Aboriginal and Torres Strait Islander Commission (1992), the term 'family violence' has been defined as:

*... beating of a wife or other family members, homicide, suicide and other self-inflicted injury, rape, child abuse and child sexual abuse ... When we talk of family violence we need to remember that we are not talking about serious physical injury alone but also verbal harassment, psychological and emotional abuse, and economic deprivation, which although as devastating are even more difficult to quantify than physical abuse.*

The Department of Community Development referred to 'domestic violence' rather than 'family violence' and defined it as follows:

*Generally the term refers to abuse of one person by another who has, or has had a(n) intimate relationship with them. This includes spouses, defacto, ex-boyfriends and other family members.*

The Kids Help Line defined domestic violence as

*... violence between caregivers or parents.*

The Women's Issues and Social Empowerment – Domestic Violence Information Manual defined domestic abuse as

*Domestic Abuse, on the other hand, occurs in relationships where conflict is the continuous result of power inequality between the partners and one partner is afraid of, and harmed by the other. This is illustrated in the Power and Control Wheel which presents the primary tactics and behaviours individual abusers use to establish and maintain control in their relationships. The Wheel symbolises the relationship of violence to other forms of abuse and coercion. Each spoke represents a tactic used to exert control or gain power, which is the hub of the wheel. The rim which surrounds and supports the spokes is physical and sexual violence. Violence holds the system together and gives it strength. Physical abuse and sexual violence are a part of a system of abusive behaviour.*

Researchers developing the Kimberley Regional Domestic Violence Plan were told by Aboriginal women in the West Kimberley region that:

*... family violence is family fighting. It happens when someone uses violence or threats to have power and control over someone close to them. This can be a partner or involve other family members. It includes family feuding.*

Partnerships Against Domestic Violence defined domestic violence as

*Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women in a relationship or after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of*

#### **Appendix 4** *Definitions of family and domestic violence*

*forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. Many forms of domestic violence are against the law. For many Indigenous people the term family violence is preferred as it encompasses all forms of violence in intimate, family and other relationships of mutual obligation and support.*

They also added that:

*Domestic violence is violence which occurs within a marital/defacto relationship. Domestic violence is considered to be behaviour which results in physical, sexual and/or psychological damage; forced social isolation; economic deprivation; or behaviour which causes the victim to live in fear.*

Further, they noted that:

*Aborigines and Torres Strait Islanders do not believe that the term 'domestic' violence adequately describes what is happening within their families and communities and have generally indicated they prefer to use the term 'family' violence to bring into focus "the trauma of the inter-connecting transgenerational experiences of individuals within families, to show the continuity between how we have been acted upon ourselves and others". The term family violence describes a matrix of harmful, violent and aggressive behaviours, including both self harm and harm of others. A significant feature is the extent to which it crosses the boundaries between the 'public' and the 'private' spheres. The concept is considered to be more reflective of an indigenous world view of community and family healing. However, the use of this term should not obscure the fact that indigenous women and children bear the brunt of family violence.*

Memmott and colleagues defined domestic violence as:

*The term 'domestic violence' was felt to be unsuitable for any analysis of violence in Indigenous households and was replaced with the term 'family violence' for this report. 'Family violence' was broadly defined to encapsulate not only the extended nature of Indigenous families, but also the context of a range of violence forms, occurring frequently between kinspeople in Indigenous communities. The notion of 'family violence' may be summarised as follows:*

- *family violence may involve all types of relatives. The victim and the perpetrator often have a kinship relation*
- *the perpetrator of violence may be an individual or a group*
- *the victim of violence may also be an individual or a group*
- *the term 'family' means 'extended family' which also covers a kinship network of discrete, intermarried, descent groups*
- *the 'community' may be remote, rural or urban based; its residents may live in one location or be more dispersed, but nevertheless interact behave as a social network*
- *the acts of violence may constitute physical, psychological, emotional, social, economic and/or sexual abuse*

- *some of the acts of violence are ongoing over a long period of time, one of the most prevalent examples being spousal (or domestic) violence.*

The Australian Domestic & Family Violence Clearinghouse Issues Paper noted that

*The term "family violence" is used to refer to violence in Indigenous communities because this term is seen by many Indigenous people as more in keeping with a holistic approach to understanding violence. Violence is seen to affect all members of families and communities (e.g. WA Domestic Violence Prevention Unit 1999b, NSW Health 1995). It is acknowledged, however, that this view is not held by all Aboriginal and Torres Strait Islander peoples (Bagshaw et al, 1993: 43). The term "family violence" is also used to refer to violence and abuse perpetrated within familiar relationships, other than partner violence and abuse of children by parents (child abuse). Thus it includes, for example, violence by adolescents towards parents, or abuse of older family members by non-partner family members.*

The Domestic Violence Prevention Unit makes the following definitions:

*The term "family violence" is preferred to "domestic violence" as it reflects more appropriately the matrix of relationships within which violence may occur across the extended family. The terms "perpetrator" and "victim" are not ones generally used by the Aboriginal community as they are said to suggest shame and blame. Thus neutral terms such as "user of violence" and "those experiencing violence" are thought to be more fitting.*

Robin Sullivan, addressing the Partnerships in Educational Psychology Conference delivered the following definitions:

*Let me start by exploring the key term "domestic violence". It is traditionally used to describe violence and abuse occurring between persons who are, or who have been, in an intimate relationship.*

*It is increasingly being replaced by the term "family violence". This encompasses the diversity of abuses that may occur within the family, including intergenerational abuse, and recognises all victims – direct and indirect – of violence within the family, including children and young people.*

*The effects of family violence can be widespread, involving those who "live in" or visit regularly. Grandparents, siblings and others can be victims or perpetrators or sometimes both.*

*The term "family violence" is also preferred by many Aboriginal peoples and Torres Strait Islander peoples because it better reflects the diversity and complexity of kinship ties within Indigenous communities.*

In 'Through Young Black Eyes' the following definitions were made:

*Domestic violence generally refers to violent or abusive behaviour between two people in a relationship, including spouses, de facto and same sex couples. It describes the strategies used by an offender (usually male) to exercise power and control over their partner through threats, violence, abuse and other intimidating ways.*

#### **Appendix 4** *Definitions of family and domestic violence*

*It has only been recently that we have recognised that the impact of domestic violence can also extend beyond a 'couples' relationship to other members of a family, household or community – especially children.*

*Indigenous communities recognise this extension of domestic violence and how it can apply across all intimate relationships in a family and community. For this reason the broader term 'family violence' is being used. It is also preferred because it takes into account the diversity and complexity of kinship ties in Aboriginal and Torres Strait Islander communities.*

*Family violence includes inter-generational violence and abuse and recognises all victims, whether they are affected directly or indirectly. Perpetrators and victims of family violence can include parents, uncles, aunts, (step) children, (step) siblings, cousins, grandparents, in-laws and distant relatives. An individual can be a perpetrator and a victim at the same time in a family situation.*



**APPENDIX 5**  
*Advertisement*



## **ADVERTISEMENT**

The following advertisement was published by the Inquiry in national, state and regional newspapers.

### **Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities**

In accordance with Section 11(1) of the *Public Sector Management Act 1994*, the A/Premier, Hon Eric Ripper MLA has appointed Mrs Sue Gordon AM (Chairperson), Mrs Kay Hallahan and Mr Darrell Henry to hold a special inquiry to:

1. Examine issues raised by the Coroner into the death of Susan Taylor in relation to the way that government agencies dealt with the issues of violence and child sexual abuse in the Swan Valley Nyoongar Community.
2. Examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally.
3. Report to Government with recommendations that are practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.

**Specifically, the Inquiry is to:**

- Examine the activities of the State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities;
- Identify the barriers and capacity of Government agencies to address the issues of family violence and in particular child sexual abuse in Aboriginal communities;
- Comment and make recommendations on mandatory reporting of sexually transmitted diseases occurring among children and juveniles;
- Comment on any limitations of DNA testing in the Aboriginal community; and
- Propose support measures for children reporting abuse.

The Inquiry is to consider current research into the prevalence, causes and solutions to Aboriginal family violence.

The Inquiry is also to liaise with the Interdepartmental Committee on Sexual Assault to avoid duplication and ensure complementary outcomes.

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

The Inquiry is to report to the Premier by 31 July 2002.

The Chairperson invites individuals, non-government organisations and Government agencies that may have an interest to lodge submissions in writing to:

Mrs Sue Gordon AM  
Chairperson  
"Gordon Inquiry"  
PO Box 7333  
Cloisters Square PERTH WA 6850

Contact Details: Telephone (08) 9215 4700  
Facsimile (08) 9215 4701  
Freecall 1800 199 135



## **Appendix 6** *Newspapers*

### **APPENDIX 6** *Newspapers*



## **NEWSPAPERS**

The Inquiry placed an advertisement (see Appendix 5) in the following national, state and regional newspapers.

- The Australian
- The Kalgoorlie Miner
- The Kimberley Echo
- The Sunday Times
- The West Australian

## **Appendix 7** *Radio stations*

### **APPENDIX 7** *Radio stations*



## **RADIO STATIONS**

The Chairperson for the Inquiry was interviewed on the following radio programs.

- Goolari Radio, Broome
- Puranyangu Rangka Kerrem Aboriginal Radio Aboriginal Corporation, Halls Creek
- Wangki Radio, Fitzroy Crossing
- Waringarri Media, Kununurra
- Wirrimanu Broadcasting for Remote Aboriginal Communities Scheme (BRACS)

**APPENDIX 8**  
*Submissions*



## **SUBMISSIONS**

A range of government and non-government agencies and individuals provided written submissions to the Inquiry.

Submissions from government agencies can be classified as one of the following:

- **'Initial Submission'** – all government agencies made Initial Submissions
- **'Supplementary Submissions'** – some government agencies made a Supplementary Submission; some government agencies made more than one Supplementary Submission. References to Supplementary Submissions include the date they were received by the Inquiry to ensure clear differentiation between them.
- **'Final Submission'** – all government agencies made Final Submissions, some of which were provided by means of a closing submission through those government agencies' Counsel to the Inquiry.

Submissions from non-government agencies and individuals have been referenced as a **'Submission'**.

### **Western Australia Government**

Department for Community Development (11 Submissions)

Department of Education

Department of Housing and Works

Department of Justice

Western Australia Police Service

Department of Health

Coroner's Court

Office of the Premier

Department of Public Prosecution

Department of Indigenous Affairs

Department of Local Government and Regional Development

### **Communities**

Swan Valley Nyungah Community

Warburton Community

Burringurrah Remote Aboriginal Community

### **Other**

ATSIC

PathCentre

King Edward Memorial and Princess Margaret Hospital

ASCA



## **Appendix 8** *Submissions*

SafeCare  
The Child Protection Unit (PMH)  
Goldfields Land and Sea Council  
Child Health Research  
Kullarri Regional Council  
Save the Children  
Western Australian Indigenous Child Care Agencies Council  
The Social Responsibilities Commission Anglican Province of Western Australia  
Law Reform Commission Western Australia  
Regional Yamatji Murni Wangga Aboriginal Corporation  
McKesson Asia-Pacific Ltd  
MercyCare  
Geraldton Family Advocacy Service  
Goldfields Regional Domestic Violence Prevention Committee  
Australian Association of Social Workers  
Department for Community Development Women's Policy Sexual Assault Inter-Departmental Committee  
Napcan  
Community and Public Sector Union/ Civil Service Association of WA  
Kimberley Division of General Practice  
South Australian Police  
Ngaanyatjarra Health Service  
King Edward Memorial Hospital Centre for Women's Health  
Joan Torr's Army against Crime  
Western Desert Regional Council  
Coalition of Aboriginal Agencies  
Roebourne Safe House  
Sisters of Mercy  
Western Australian Child Protection Council  
State Child Development Centre  
Disability Services Commission  
Domestic Violence Prevention Unit  
Telethon Institute for Child Health Research  
Derbarl Yerrigan Health Service  
Protective Behaviours Western Australia  
Anonymous Submissions\*  
Questionnaires\*  
Confidential Submissions\*

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\* These number 36 in total.

## APPENDIX 9

### *Aboriginal communities and organisations*



## ABORIGINAL COMMUNITIES AND ORGANISATIONS<sup>1</sup>

The Inquiry invited the following Aboriginal communities and organisations to participate in meetings and lodge submissions.

Aboriginal Boomerang Hostel	Blueberry Hill Aboriginal Community
Aboriginal Independent Community Schools Support Unit	Bobieding Aboriginal Corp
Aboriginal Rights League	Boolrna Aboriginal Corp
Albany Aboriginal Corp Inc	Borninyun Aboriginal Corp
Alligator Hole Aboriginal Corp	Broome Regional Aboriginal Medical Service
AMOS (Inc)	Bruce Rock Aboriginal Progress Association
Ardyloon Women's Group	Budgahs Aboriginal Corp
Badjalling Wanderers Aboriginal Corp	Budgarjook Aboriginal Corp
Badjalling Wanderers Association	Budjilbidi Aboriginal Community
Baiyungu-Mandi Aboriginal Corp	Bulanjarr Aboriginal Corp
Balginjirr Aboriginal Corp	Bulgunna Aboriginal Corp
Ballaruk Aboriginal Corp	Bunbury Aboriginal Progress Association Inc
Barangya Aboriginal Corp	Bundi Club Inc
Bardi Aboriginal Association Inc	Bundundea Aboriginal Corp
Bardina Pty Ltd	Bundy Bunna Aboriginal Corp
Barrel Well Community Nanda Aboriginal Corp	Bungardi Aboriginal Community
Bay of Isles Aboriginal Corp	Buningbarr Aboriginal Corp
Bayulu Community Inc	Bunuba Aboriginal Corp
Beagle Bay Community Inc	Burabalayji Thalanyji Aboriginal Corp
Bedunburru Aboriginal Corp	Burnburnganjal Aboriginal Corp
Bega Garnbirringu Health Service Aboriginal Corp	Burrjuk Aboriginal Corporation
Bell Springs Aboriginal Corp	Burringurrah Aboriginal Corp
Bells Point Aboriginal Corp	Butchilbidi Aboriginal Corp
Biblemen Mia Aboriginal Corp	Bygnunn Aboriginal Corp
Bidijul Aboriginal Corp	Carnamah Aboriginal Corp
Bidyadanga Aboriginal Community (La Grange) Inc	Carnarvon Medical Service Aboriginal Corp
Bilgungurr Aboriginal Corp	Carnot Springs Aboriginal Corp
Biljing Biljing Bingarr (Red Creek) Aboriginal Corp	Catholic Aboriginal Ministry
Billanooka Aboriginal Community	Central Midlands Progress Association Inc
Bindi Bindi Community	Cheeditha Aboriginal Corp
Binjin Ningguwung Aboriginal Corp	Cheratta Aboriginal Community
Biridu Aboriginal Corp	Clontarf Aboriginal College
Bloodwood Tree Association Inc	Coalition of Aboriginal Corps
	Coolgardie Aboriginal Association

<sup>1</sup> Source: Department of Indigenous Affairs.

## **Appendix 9** *Aboriginal communities and organisations*

Coongan Aboriginal Corp  
Curtin Students Aboriginal and TSI Corp  
Dalwallinu Aboriginal Corp  
DarIngunaya Aboriginal Corp  
DarIngunaya Aboriginal Corp Community  
Darlul Darlu Aboriginal Corp - Chairperson  
Darngku Aboriginal Community  
Darwalah Aboriginal Corp (Bindoola)  
Diandi Sporting Association  
Dillon Springs Aboriginal Corp  
Dilye Aboriginal Corp  
Djaradjung Aboriginal Corp  
Djarindjin Aboriginal Corp  
Djarworrada Aboriginal Corp  
Djoodood Aboriginal Corp  
Djooraminder  
Djugerari Aboriginal Corp  
Djunbid Aboriginal Corp  
Djuring Aboriginal Corp  
Dodnun Aboriginal Corp  
Dumbartung Aboriginal  
East Kimberley Aboriginal Medical Service  
Eastern Goldfields Aboriginal Advancement Council Inc  
Eastern Goldfields Aboriginal Resource Agency (Egacra)  
Eight Mile Aboriginal Corp (Joy Springs)  
Emama Nguda Aboriginal Corp  
Embalgun  
Esperance Aboriginal Corp  
Fletcher Family Aboriginal Corp  
Four Mile Aboriginal Corp  
Frazier Downs  
French Family Corp  
Galburang Aboriginal Corp  
Galeru Gorge (Looma Gorge) Aboriginal Corp  
Galmaringarri Aboriginal Group  
Ganinyi Aboriginal Corp  
Gardiman Aboriginal Corp  
Garl Garl Walbu Aboriginal Corp  
Garnduwa  
Geboowama Aboriginal Corp  
Geraldton Aboriginal Sporting Corp  
Geraldton Regional Aboriginal Medical Service Inc  
Gilaluwa Community  
Gilaroong Aboriginal Corp  
Gillmen Aboriginal Corp  
Gilungurra Aboriginal Corp  
Gnowangerup Aboriginal Corp  
Gnowangerup Noongar Progress Association  
Gnulla Employment Centre  
Goldfields Land Council  
Goodabinya Aboriginal Corp  
Goolamionon Aboriginal Corp  
Goolarrgon Aboriginal Corp  
Goomalling Aboriginal Community  
Goonamah Aboriginal Corp  
Goonj Arlan Aboriginal Corp  
Guda Guda Aboriginal Corp  
Guddo Marddah Aboriginal Community  
Gudumul Aboriginal Corp  
Gulalluwa Aboriginal Corp  
Gulgagulganeng Aboriginal Corp  
Gumbarmun Aboriginal Corp  
Gunibuy Aboriginal Corp  
Gurbullgun Aboriginal Corp  
Gurima Aboriginal Corp  
Gurra Bunya Cultural Group  
Gurramul Aboriginal Corp  
Gurrbalgun Aboriginal Corp  
Gurrbumi Ningguwung Aboriginal Corp  
Halls Creek Aboriginal Corp  
Idibugar Aboriginal Corp  
Ieramugadu Group Inc  
Illengirri Malangan Aboriginal Corp  
Imintji Aboriginal Corp  
Innawonga Aboriginal Corp  
Iragul Aboriginal Council Dundas Shire (Inc)  
Irrunytju Community Inc  
Jabir Jabir Aboriginal Corp  
Jalygurr Guwan Aboriginal Corp  
Jalyirr Aboriginal Community  
Jambinbirri Nanungu Barna Aboriginal Corp  
Jardamu Aboriginal Woman's Group  
Jarlmadangah Burr Aboriginal Corp  
Jarndu Yawuru Women's Aboriginal Corp  
Jigalong Community Incorporated  
Jimbalakudunj Aboriginal Corp

Jindina Group  
Joorook Ngarni Aboriginal Corp  
Junjuwa Community Inc  
Kaata-Wangkinyiny Regional Council  
Kadjina Community Inc  
Kalumburu Aboriginal Corp  
Kalyadayan Aboriginal Community  
Kandiwal Aboriginal Corp  
Karalundi Aboriginal Education Centre  
Karlkurla Aboriginal Corp  
Karmulinunga Aboriginal Corp  
Karnparrmi Aboriginal Association (Melon Hole)  
Karrayili Adult Education Centre Aboriginal Corp  
Karrku Homelands Aboriginal Corp  
Katanning Aboriginal Advancement Association Inc  
Katanning Aboriginal Progress Association  
Kawarra Aboriginal Corp  
Kellerberrin Aboriginal Progress Association  
Kimberley Aboriginal Law & Culture Centre  
Kimberley Aboriginal Medical Service Council  
Kimberley Desert Women's Project  
Kimberley Land Council Inc  
Kimberley Language Resource Centre  
King Anna Aboriginal Community  
Kiwirrkurra Council Aboriginal Corp  
Kiwuwwonga Gajerronga Mingguwung Yuwurrung  
Community  
Kojonup Aboriginal Progress Association  
Kooljaman Aboriginal Corp  
Koorabye Aboriginal Community  
Kooraminning Committee of Narrogin  
Koorda Club Aboriginal Corp Inc  
Kora Aboriginal Education Centre  
Kunawarriji Aboriginal Community  
Kundat Djaru Aboriginal Corp  
Kupartiya Aboriginal Corp  
Kupungarri Community Aboriginal Corp  
Kurlku Aboriginal Corp  
Kurnangki Aboriginal Corp  
Kutunatu Aboriginal Community  
Kuwinwardu Aboriginal Resource Agency  
La Djardarr Bay Aboriginal Corp  
Lake Jasper Project  
Lamboogunian Aboriginal Corp  
Larinyuwar Aboriginal Corp (Cone Bay)  
Ledawooloo Aboriginal Corp  
Leonora Aboriginal Movement Body  
Linden Aboriginal Corp  
Linga Aboriginal Corp  
Lombadina Aboriginal Corp  
Looma Community Inc  
Loumard Collective Aboriginal Corp  
Lumboo Creek Aboriginal Community  
Lundja Aboriginal Corp (Red Hill)  
Madjaddin Aboriginal Corp  
Mallee Aboriginal Corp  
Mamabulanjin Aboriginal Corp  
Mandangala Aboriginal Community  
Mangkaja Arts Resource Agency  
Manjarl Community Aboriginal Corp  
Mantamaru Community Inc (Jamieson)  
Manungka Manungka Women's Association  
Marddu Council Aboriginal Corp  
Mardiwah Loop Aboriginal Corp  
Marnjal Aboriginal Corp  
Marnjal Kija Woman's Group  
Marr Mooditj Foundation Inc.  
Marra Garra Aboriginal Corp  
Marra Worra Worra Aboriginal Corp  
Marralan Darrigar Aboriginal Corp  
Marrgudinj Group Aboriginal Corp  
Marunbabidingari Aboriginal Corp  
Mawarnkarra Health Services  
Mcgowan Island Aboriginal Community  
Medina Aboriginal Cultural Group  
Merredin Aboriginal Project Inc  
Mijijimaya Community  
Milba Aboriginal Corp  
Millargo Aboriginal Corp  
Mimbi Aboriginal Corp  
Mindi Mindi Aboriginal Corp  
Mindi Rardi Aboriginal Corp  
Mindibungu Aboriginal Corp  
Minoo-Malگو

## Appendix 9 *Aboriginal communities and organisations*

Miriuwung & Gajerrong Families Heritage & Land Council - Chairperson  
Monbon Aboriginal Corp  
Monroe Springs  
Mooniemia Aboriginal Corp  
Moorditch Gurlongga Association  
Morard Aboriginal Corp  
Morawa Aboriginal Corp  
Mowanjum Aboriginal Corp  
Mt Barker Aboriginal Progress Association  
Mudnun Aboriginal Corp  
Mugarinya Community Association Inc  
Mulan Aboriginal Corp  
Mulibidee Aboriginal Corp  
Muludja Aboriginal Corp  
Mungullah Community Aboriginal Corp  
Munjari Aboriginal Community  
Murambarinya Community Aboriginal Corp  
Murchison Region Aboriginal Corp  
Murnbultjari Aboriginal Corp (Woodstock)  
Murphy Creek Aboriginal Corp  
Murray Districts Aboriginal Progress Association  
Murruwayurra Aboriginal Corporation  
Mynee Springs Aboriginal Corp  
Nambi Road Village Aboriginal Community  
Ngaanyatjarra Council Inc  
Ngaanyatjarra Health Service  
Ngadju Bugarlu Murning Wamu Wamu Aboriginal Corp  
Ngalakura Pastoral Co Pty Ltd  
Ngalawilli Community  
Ngalia Heritage Research Council Aboriginal Corp  
Ngalingkadji Aboriginal Corp  
Ngamakoon Aboriginal Corp  
Ngangganawili Medical Service  
Ngarantjadu Aboriginal Corp  
Ngarda-Ngarli-Yarndu Regional Council  
Ngaringga Ngurra Aboriginal Corp  
Ngarinyn Aboriginal Corp  
Ngarla Coastal Njamal Aboriginal Corp  
Ngarlan Woman's Group (Beagle Bay)  
Ngnowar-Aerwah Aboriginal Corp  
Ngoonjuwah Council Aboriginal Corp  
Ngulwirriwirri Aboriginal Corp  
Ngunga Women's Group  
Ngunjiwirri Aboriginal Corp  
Ngunulum Aboriginal Corp  
Ngurawaana Group Aboriginal Corp  
Ngurtawarta Aboriginal Corp  
Ngyala Willi Community  
Nicholson Block Aboriginal Corp  
Nilagoon Aboriginal Corp  
Nillir Irbanjin Aboriginal Corp  
Nillygan Aboriginal Corp  
Ninga Mia Village Aboriginal Corp  
Nirrumbuk Aboriginal Corporation  
Noongar Alcohol & Substance Abuse Services Inc  
Noongar Land Council  
Noongar Language & Culture Centre  
North Midlands Aboriginal Corp  
Northam Aboriginal Community Progress Association  
Nudugun Aboriginal Corp  
Nujilawarrim Community (Molly Springs)  
Nulla Nulla Aboriginal Corp  
Nulleywah Aboriginal Corp  
Nymiwah Aboriginal Corp  
Nyoongah Community Inc & Nyoongah Community College  
Nyunga Group Women's Aboriginal Corp  
Oombulgurri Aboriginal Corp  
Pandanus Park Community Inc  
Papanunya Aboriginal Corp  
Papulankutja Community Inc (Blackstone)  
Parnngurr Community Aboriginal Corp  
Parukupan Aboriginal Community  
Patjarr Aboriginal Corp  
Paupiyala Tjarutja Aboriginal Corp  
Perth Aboriginal Medical Service  
Pia Wadjarri Aboriginal Corp  
Pikurtu Aboriginal Corp  
Pilbara Aboriginal Land Council  
Pilbara Indigenous Women's Aboriginal Corporation  
Pippingarra Pastoral Co P/L  
Pipunya Community Inc  
Port Hedland Regional Aboriginal Corp  
Pumajina Aboriginal Corp



Punmu Aboriginal Corp  
Purnululu Aboriginal Corp (Bungle Bungle)  
Quairading Aboriginal Progress Association  
RB River Aboriginal Corp  
Red Creek Aboriginal Corp  
Ribinyung Dawang Aboriginal Corp  
Rollah Aboriginal Community  
Seabrook Aboriginal Progress Association Inc  
Skeen Family Group Linga Aboriginal Corp  
Southern Aboriginal Corp (Albany)  
Strelley Housing Society Inc (The)  
The Koorda Club  
The Menzies Cultural Society Inc  
Thoo Thoo Warninha Aboriginal Corp  
Tirralintji Aboriginal Corp  
Tjalka Warra Community Inc  
Tjirrkarli Aboriginal Corp  
Tjukurla Community Inc Aboriginal Corp  
Tjundala Aboriginal Corp  
Tkalka Boorda Incorporated  
Upurl Upurlila Ngurratja Inc  
WA Aboriginal Media Association  
Waina Aboriginal Corp  
Walgun Aboriginal Community  
Wamali Aboriginal Corp  
Wandanooka Aboriginal Corp  
Wangka Maya Pilbara Aboriginal Language Centre  
Wangkatja Cultural Assoc. Aboriginal Corp  
Wangkatjunga Community Inc  
Wangki Ngurra Tjurta Aboriginal Corp Language Centre  
Wannan Community Aboriginal Corp  
Wannar Club Inc  
Warakurna Community Inc  
Warba Mirdawaji Aboriginal Corp  
Warburton Community Inc  
Waringarri Aboriginal Corp  
Warmun Community (Turkey Creek) Inc  
Warrayu Aboriginal Corp  
Warrimbah Aboriginal Community  
Weriatto Aboriginal Community  
Western Desert Regional Council  
Wijilawarrim Aboriginal Corp (Molly Springs)  
Wiluna Community Health Centre  
Wingellina Community  
Winjah Aboriginal Community  
Winun Ngari Aboriginal Corp  
Wongatha Regional Council  
Wongatha Wonganarra Inc  
Wongutha Development Inc  
Woodstock Aboriginal Community  
Woolah Aboriginal Corp  
Woolerregerberleng Aboriginal Corp  
Worra Warra Team  
Wuggubun Aboriginal Corp  
Wulgarding Aboriginal Corp  
Wunan Regional Council  
Wungu Aboriginal Corp  
Wyndham Amenities Club Aboriginal Corp  
Yaandina Family Centre (Inc)  
Yadgalah Aboriginal Corp  
Yagga Yagga Aboriginal Corp  
Yakanara Aboriginal Corp  
Yalet Aboriginal Group  
Yamatji Barna Baba Maaja  
Yamatji Regional Council  
Yanay Yanma Aboriginal Corp  
Yantji Aboriginal Corp  
Yargie Aboriginal Corp  
Yarramoupp Aboriginal Corp  
Yarri Yarri Aboriginal Corp  
Yarrunga Aboriginal Corp  
Yatharla Group Aboriginal Corp  
Yawuru Aboriginal Corp  
Yiyili Community Aboriginal Corp  
Yorganup Child Care Aboriginal Corp  
Yulga Jinna Aboriginal Corp  
Yulumbu Aboriginal Corp  
Yungngora Association Inc  
Yura Yungi Medical Service Aboriginal Corp

**APPENDIX 10**

*Aboriginal organisations, communities and towns visited*



## **ABORIGINAL ORGANISATIONS, COMMUNITIES AND TOWNS VISITED**

Representatives from the Inquiry conducted consultations in the following Aboriginal organisations, communities and towns.

Aboriginal Advancement Council (Northbridge)	Kununurra
Albany	Laverton
Alice Springs	Leonora
Beagle Bay	Lombadina
Bidyadanga	Mandurah
Broome	Meekatharra
Bunbury	Newman
Burringurrah	One Arm Point
Carnarvon	Onslow (Bindi Bindi)
Combined Metro Women's NGO groups	Oombulgurri
Cotton Creek (Parnngurr)	Papulankatju (Blackstone)
Denham	Port Hedland
Derby	Roebourne
Djarindjin	Swan Valley Nyoongar <sup>1</sup> Community
Esperance	Umuwa
Fitzroy Crossing	Warakurna (Giles)
Geraldton	Warburton
Halls Creek	Warmun (Turkey Creek)
Jigalong	Wiluna
Kalgoorlie	Wirimanu (Balgo Hills)
Kalumburu	Wyndham
Katanning	Yandeyarra (Mugarinya)

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<sup>1</sup> 'Nyoongar' has also been referred to as 'Nyungah'. The Inquiry has used as per the Terms of Reference. Where 'Nyungah' has been used, this is part of a proper title.

## APPENDIX 12

### Witness list

## WITNESS LIST

The following witnesses were called on to give evidence for the Inquiry.

1. Lex McCulloch – *Department for Community Development*
2. Dorothy Gail Laing – *Department for Community Development*
3. Ann Estelle Leishman – *Department for Community Development*
4. Lee Peters – *Department for Community Development*
5. Teresa Maria Tagliaferri – *Department for Community Development*
6. Peter Robert Ward – *Department for Community Development*
7. James Albert Clarysse – *(Acting) Senior Sergeant Western Australian Police Service*
8. Gordon John Cole – *Department for Community Development*
9. Donna Dawn Birch – *Department for Community Development*
10. Stephen John Robbins – *Superintendent Western Australian Police Service*
11. John Charles Hart – *Inspector Western Australian Police Service*
12. Robert Arthur Hanlon – *Community Justice Services Centre Department of Justice*
13. Michael Arthur Davies – *Killara Youth Support Service Department of Justice*
14. Steven Gerard Miller – *Juvenile Justice Division Department of Justice*
15. Veronica Mercedes Herrera – *Community Justice Services Centre Department of Justice*
16. Kevin Andrew O'Keefe – *Department of Education*
17. Steffan Silcox – *Department of Education*
18. Christine Cecile Harling – *Department of Health – Primary Health*
19. William Lewis (Lew) Penny – *Department for Community Development*
20. Phillip Dempsey Narkle – *Department of Justice*
21. Daniel James Ford – *Department for Community Development*
22. Jonathon Charles Adams – *(Acting) Detective Senior Sergeant – Western Australian Police Service*
23. Witness 'A' #
24. Witness 'B' #
25. Julie Anne Newsham – *Department for Community Development*
26. Rae Markham – *Department for Community Development*
27. Paula Chatfield – *SARC (Sexual Assault Referral Centre)*
28. Michael Philip Jackson – *Department of Health*
29. Kerry Anne Fijac – *Department of Housing & Works*
30. Trevor Neil Tann – *Department of Indigenous Affairs*
31. Richard Curry – *Department of Indigenous Affairs*
32. Witness 'C' #
33. Carole Anne Patricia Kagi – *Department for Community Development*
34. Robert McKinzie Carter – *Department of Justice*
35. Kathryn (Kay) Jane Benham – *Victim Support & Child Witness Service Department of Justice*
36. Jody Broun – *Department of Housing and Works Aboriginal Housing*
37. John Michael Hesketh – *Department of Education*
38. Mark Brian Crake – *Department for Community Development*
39. Delia Parker – *Department of Education*
40. Dr. Ross Field – *Department of Premier & Cabinet*
41. Witness 'D' #
42. Rona Haining – *Department of Justice – Juvenile Justice Officer*
43. Jennifer Jo Woods – *Aboriginal Police Liaison Officer – WA Police Service*
44. Rebecca West – *WA Police Service*
45. Ian Smith – *Department of Health*

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# **Child Abuse and Family Violence in Aboriginal Communities - Exploring Child Sexual Abuse in Western Australia**

**For the Western Australian Government Inquiry into Responses by Government Agencies to complaints of Family Violence and Child Abuse in Aboriginal Communities**

**Prepared by Janet Stanley, Katie Kovacs, Adam Tomison and Kyllie Cripps (Indigenous Advisor)**

**May 2002**



**National Child Protection Clearinghouse**

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## **About the authors:**

**Dr Janet Stanley** is a Senior Research Officer with the National Child Protection Clearinghouse. She has completed a doctorate on the impact of violence within the field of child protection. Janet has recently published a book which was co-authored by Associate Professor Chris Goddard, as well as being the author of many articles and reports on child protection.

**Ms Katie Kovacs** is a Project Officer with the National Child Protection Clearinghouse. She has a background in criminology, completing a BA with Honours and having work experience with the Department of Justice Victims Referral and Assistance Service.

**Dr Adam Tomison** is a Senior Research Fellow at the Australian Institute of Family Studies where he acts as the Research Advisor for the National Child Protection Clearinghouse and is the author of an ongoing series of research publications on child maltreatment and child abuse prevention.

**Ms Kyllie Cripps** was contracted as Indigenous advisor for this project. She is a Tasmanian Aboriginal who has a Bachelor of Arts in Aboriginal Affairs Administration and a Bachelor of Arts with First Class Honours in Aboriginal Studies. In 1999 she won a Postgraduate Research Scholarship for Indigenous Australians to undertake doctoral studies. In 2000 she also won an ATSIC Fulbright Scholarship to complete part of her research in the United States. Her thesis is entitled "Indigenous Communities Surviving Family Violence in Australia and the United States".

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## Executive summary

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Within the Australian Indigenous community, family violence is commonly used as a broad term, encompassing all forms of violence between members of a kinship group or the immediate community. Concomitantly, abuse of Indigenous children, and particularly sexual abuse, is generally viewed as a community issue, rather than within the narrower nuclear family context used in the non-Indigenous community. The two bodies of knowledge (child abuse within the Indigenous and non-Indigenous communities) also differ in terms of their 'ways of knowing' - knowledge on Indigenous issues frequently coming from personal experience.

As in the broader Australian community, the extent of family violence in the Indigenous community, is unclear, although it is known that violence levels are much higher in the Indigenous than the non-Indigenous population. In WA, Aboriginal children are over seven times more likely to be the subject of a substantiated child abuse incident than non-Aboriginal children. Indeed, the levels of violence appear to be so high that there is a risk that this behaviour will become 'normalised' in some communities, thus perpetuating the experience of trauma in future generations.

The causes of family violence in Indigenous communities are commonly viewed in terms of a response to past traumas, including the impact of the large-scale removal of Indigenous children from their families and the long history of oppression and dispossession, as well as being due to present significant disadvantage. The present problems relate to economic, social and health disadvantage, complicated for some, by the experience of racism, substance abuse and behavioural problems. It would appear that repeated layers of pain have contributed to manifestations of despair and self-destruction, behaviour that did not appear to be present prior to the disintegration of many traditional cultural laws.

WA is the only Australian state which does not have mandatory reporting of at least some forms of child abuse by at least some professionals. While there is no requirement in any state to report occurrences of sexually transmitted diseases, the mandatory reporting of child abuse laws in other states do provide a base-line cover for sexually abused children, one which is not available in WA.

Best practice responses and solutions to Indigenous violence are difficult to find due to both what would seem to be a dearth of programs and the lack of documented evaluations about the effectiveness of programs. The many reports on the problems within Indigenous communities conclude that the general failure to find solutions is exacerbated by a significant lack of resources, an on-going paternalistic approach towards Indigenous people and a reluctance to address the problem. The latter being due to issues such as Indigenous mistrust of the government and government uncertainty about what should be done. A number of broad principles for programs are

repeatedly identified in the literature. They include the need for major policy change which gives power and decision-making back to the Indigenous community, together with financial resources adequate to make a change and professional support to the community.

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## Introduction

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This brief takes the form of a review of the literature and commentary on family violence and child abuse associated with Indigenous peoples in Western Australia, with particular reference to child sexual abuse. The intention is to inform the Western Australian Government Inquiry into Responses by Government Agencies to complaints of Family Violence and Child Abuse in Aboriginal Communities.

In order to understand this issue, the authors have reviewed existing Australian material, and where relevant (and available) the literature in relation to other Indigenous communities, particularly those in Canada and the USA.

### **Family violence - encompassing the totality of violence**

For the purpose of this brief the term 'family violence' will refer to violence which '...occurs between people who are known to each other by way of familial or other domestic relationships, past or present. It includes abuse of parents, siblings and other relatives, but predominantly involves violence against sexual partners and the abuse of children' (Domestic Violence & Incest Resource Centre [DVIRC] 1998: 12).

'The term "family violence" has become widely adopted as part of the shift towards addressing intra-familial violence in all its forms, including child abuse and neglect, rather than taking a focus on a particular form of intra-familial violence. Family violence is widely seen as the term that 'best encompasses the various forms of violence that may take place between family members. It is the most inclusive term, and is capable of encompassing changing ideas about what "family" means in late 20<sup>th</sup> century Australia' (DVIRC 1998:36).

Family violence is the term adopted in Australian Federal Law (DVIRC 1998) and is also the term preferred generally by Aboriginal and Torres Strait Islander communities (Cummings & Katona 1995; Bagshaw, Chung, Couch, Lilburn & Wadham 1999). The latter perceive the term to most accurately describe 'how violence reverberates through the entire family or community' (DVIRC 1998:13); it allows for the range of family members who may perpetrate violence and a wide conception of violence; and 'it is not dependent, to the same extent as the term "domestic violence" on a clear delineation between private and public spheres, which are more blurred for indigenous than for non-indigenous people' (DVIRC 1998:13).

In addition, there is a preference in indigenous communities for issues of violence to be seen as a community issue that takes into account intergenerational issues and not to be seen as a 'woman's issue' (DVIRC 1998). Second, popular or mainstream conceptualisations of violence are often rejected by indigenous communities as a result of the perception that western definitions are not sensitive to the culture and traditions of indigenous Australians (IINA Torres Strait Islander Corporation Research and Resource Centre 1996; SNAIIC 1996; Bagshaw et al. 1999).

Third, indigenous community groups often indicate a preference for programs that take an holistic approach to addressing issues of violence, loss of cultural identity, substance abuse, and specifically address the needs and rights of indigenous women and children (National Crime Prevention 1999a).

Finally, there is a preference for identifying and discussing ways of defining indigenous violence that do not alienate perpetrators and/or victims/survivors (Bagshaw et al. 1999). 'Family violence', like all terms that describe aspects of intrafamilial violence, does however suffer from issues of definition (for example, how is 'family' defined?; what sorts of violence are encompassed by the term 'family violence'?)' (Extract from Tomison 2000:2-3).

The use of the generic term, 'family violence' also accommodates the growing body of evidence that different types of violence may occur simultaneously in the same family and that the presence of one form of violence may be a strong predictor of another (for example, Goddard & Hiller 1993, Stanley & Goddard 2002, Tomison 1995b). The literature also indicates the importance of assessing all forms of family violence when investigating child abuse (Tomison 2000).

Throughout this brief, unless otherwise specified, the term 'child abuse' will include sexual abuse (defined below), physical abuse<sup>1</sup>, emotional abuse<sup>2</sup> and neglect<sup>3</sup>.

### **Child sexual abuse**

A widely used definition of child sexual abuse is that used by Kempe and Kempe (1978). They define child sexual abuse as: '(T)he involvement of dependent, developmentally immature children and adolescents in sexual activities which they do not fully comprehend, are unable to give informed consent to and that violate social taboos of family roles' (1978: 60).

Tomison (1995a: 2) explains that this 'may involve activities ranging from exposing the child to sexually explicit materials or behaviours, taking visual images of the child for

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<sup>1</sup> Physical abuse is defined as 'any non-accidental physical injury inflicted on a child by a person having the care of a child' (Tomison & Poole 2000: 10).

<sup>2</sup> Emotional abuse is determined as 'any act by a person having the care of a child which results in the child suffering any kind of significant emotional deprivation or trauma' (Tomison & Poole 2000: 10).

<sup>3</sup> Child neglect is 'any serious omissions or commissions by a person having the care of a child which, within the bounds of cultural tradition, constitute a failure to provide conditions that are essential for the healthy physical and emotional development of a child' (Tomison & Poole 2000: 10).

pornographic purposes, touching, fondling and/or masturbation of the child, having the child touch, fondle or masturbate the abuser, oral sex performed by the child, or on the child by the abuser, and anal or vaginal penetration of the child’.

While studies have indicated that the majority of all sexual abusers are men (Leventhal 1990), a consistent profile of child sex abusers has not emerged (Oates 1990). Perpetrators of child sex assault ‘constitute a markedly heterogeneous group’ (Wurtele & Miller-Perrin 1993: 16). Factors which increase the likelihood of sexual abuse include the opportunity to offend (for example maternal absence, lack of privacy), the power discrepancy between the offender and the victim, and often the use of alcohol or drugs to overcome inhibitions (Finkelhor 1984, reported by Tomison 1995a).

### **The status of Indigenous people in Western Australia**

In 1996, Western Australia (WA) had an Indigenous population of 56,205 people, representing 14.6% of the total Indigenous population in Australia and 3.2% of the total population in WA (Edwards & Madden 2001). Based on the lowest estimates of projected population growth, the WA Indigenous population was estimated to be 61,505 in 2001 (Edwards & Madden 2001). Edwards and Madden report that 285 discrete Indigenous communities have been identified in WA, 200 of these having less than 50 people (Edwards & Madden 2001). Most of these discrete communities (92%) are categorised as living in remote and very remote areas (based on the Accessibility/Remoteness Index of Australia).

In the 1996 Census, Aboriginal and Torres Strait Islander people were found to be disadvantaged across a range of socio-economic measures (Australian Bureau of Statistics (ABS) 2001). They experienced ‘lower incomes than the non-Indigenous population, higher rates of unemployment, poorer educational outcomes and lower rates of home ownership’ (ABS 2001: 1). Available evidence suggests that Indigenous people continue to suffer from higher levels of ill health than the rest of the Australian population (ABS 2001).

For example, life expectancy at birth of an Indigenous male is 56 years, compared with 76 years in the total Australian male population. Life expectancy is 63 years for Indigenous females, compared with 82 years in the total female population (ABS 2001). Data from 1994 and 1995 indicated that Indigenous people were more likely than non-Indigenous people to smoke, consume alcohol at hazardous levels, be exposed to violence, and to be categorised as obese (ABS 2001). In WA, Aboriginal people comprised: 31% of people who received services from State Welfare, 32% of the prison population, 31% of the state’s population who used services for homeless people, 18% of those in public housing but only 2% of those receiving Rent Assistance in the private rental market (State Homelessness Taskforce 2002, reported by Bromilow 2002).

### **History of contact between the Indigenous population of WA and white settlement**

The history of contact between the Indigenous population of WA and white settlement is documented in the report, ‘Bringing them Home’ (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997)

(See chapter 7, which reveals the subjugation of the Indigenous population from the first white settlement in WA, in 1829).

There is a marked difference between the history of child protection of Indigenous children and non-Indigenous children (Jackson 2001). Early in the white settlement of the colony Indigenous people were regarded as 'savages' to be controlled and separated from the European community (Jackson 2001). While it is unclear when the separation of children from parents began, the practice had become clear by the second half of the nineteenth century when legislation was passed which allowed removal of Aboriginal children from their families and their re-location at institutions and missions.

From 1915 to the 1930s Indigenous people were forcibly re-settled into 'native settlements' (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997: 105). However, from the age of 14 years, children of mixed descent were being sent away from the settlements to work, particularly on pastoral stations. First documentation of the sexual abuse of female Indigenous young people appears to have occurred at this point, as it was recorded that 'a large proportion of the young women returned pregnant' (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997: 108). In the 1950s, Indigenous children were removed for 'education' reasons and many Western Australian children were also removed for 'neglect' under the Child Welfare Act 1947. From the 1960s the policy changed to one of 'integration', which then moved to 'self-management' (Jackson 2001). Despite this, in 1972, almost one in every ten Aboriginal person in WA was in an institution, the majority of these being children. The Aboriginal Child Placement Principle which states that Indigenous children in out-of-home care should be placed with an Indigenous family, became policy in 1985.

### **The difference between sexual abuse of Indigenous children and non-Indigenous children**

The issue of child sexual abuse in Indigenous communities is largely viewed from a different perspective to that taken in relation to child sexual abuse in Australian society generally. Child sexual abuse in Australian society generally tends to be viewed in individualistic terms; two predominant theories of causation have arisen. Based on family therapy, the 'family dysfunction' model views child sexual abuse as occurring as a result of dysfunctional family relationships, where the emphasis is on the role of sexual abuse as a means of maintaining equilibrium within the family system. Thus each family member would be seen as having an interest in the continuation of the abuse (O'Hagan 1989).

However, feminist theorists view child sexual abuse from a sociological rather than a familial perspective (Tower 1989), considering the sexual assault of children as an outcome of societal values. According to this view, women and children have inferior social status under the current patriarchal social structure and are subject to male dominance. Using such a 'social power' framework, sexual abuse is seen merely as one part of the range of violence perpetrated by men against women and children (O'Hagan 1989).

In contrast, child sexual abuse in the Indigenous community is largely represented in the literature as arising from a pathological community context. Child sexual abuse is seen as arising from multiple causes, many of which relate to cultural disintegration, unresolved community trauma and racial abuse. Thus, as noted earlier, the issue of child sexual abuse is commonly viewed as one facet of a broader issue of violence in Indigenous communities. While it would seem that a large percentage of child sexual assault is perpetrated by Indigenous men, it is unclear what percentage of assaults are perpetrated by non-Indigenous men who have joined the Indigenous community or who are outside the community.



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## **The prevalence of family violence and child abuse in Aboriginal communities**

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### **Family Violence**

Accurate statistics about the incidence of family violence in Aboriginal communities are scarce (Bolger 1991). Although the statistics that are available are imperfect, 'they are sufficient to demonstrate that the occurrence of violence in Indigenous communities and among Indigenous people 'is disproportionately high in comparison to the rates of the same types of violence in the Australian population as a whole' (Memmott, Stacy, Chambers & Keys 2001: 6). O'Donoghue (2001) illustrates the extent of the problem of family violence, noting that many Indigenous children are growing up in communities where violence has become 'a normal and ordinary part of life' (O'Donoghue 2001: 15).

Ferrante and colleagues (1996) suggest that Aboriginal women living in rural and remote areas are one and a half times more likely to be a victim of domestic violence than those living in metropolitan areas and 45 times more likely to be a victim of domestic violence than non-Aboriginal women.

While there are few figures available from Western Australia, available data from the Northern Territory indicate that there are around 6000 incidents of assault on Indigenous women in the Northern Territory per year. That is, approximately one-third of the Northern Territory's Indigenous female population is assaulted each year. Weapons are reported to be used in around 50-60% of Indigenous attacks between spouses (Memmott et al. 2001).

There would appear to be a clear need for more extensive and consistent assessment of the nature and extent of violence in Aboriginal communities. However, Hatty (1988, cited in Bolger 1991: 23) suggests that 'we should give up our preoccupation with the incidence of domestic violence' as there will always be a dark or hidden figure of crime of this type. Rather than attempting to develop a precise estimate of the extent of violence in Indigenous communities, she argues that time and resources would be better spent focusing on the nature, structure, history and dynamics of such violence (Memmott et al. 2001).

### **Child Abuse**

There is little information available on the prevalence of child abuse in Australia generally, or for Aboriginal and Torres Strait Islander children specifically. The most reliable statistics available are the national child protection statistics that have been collated by the Australian Institute of Health and Welfare (AIHW) since 1990. These



statistics suggest that the number of child protection notifications in Australia is increasing every year, with 115,471 notifications being made in 2000/01, 27,367 of these being cases substantiated or confirmed as child abuse (AIHW 2000/01). The statistics also reveal that Aboriginal and Torres Strait Islander children are significantly over-represented in the protection and care system of all states and territories (AIHW 2000/01). This trend has been evident each year since the first collation in 1990.

However, it must be noted that the AIHW statistics only deal with cases of child abuse which were *reported* to authorities and are an underestimate of the incidence of child abuse across the nation. There is a 'flaw in the current statistics regarding child abuse or child sexual abuse, due to the [perceived] lack of response when cases are reported. Many Aboriginal women believe that "it is no use reporting because they don't believe you anyway"' (Robertson 2000: 100).

It has been suggested that incidents of sexual and physical abuse of Aboriginal children are often not being reported to authorities '...due to lack of assistance from police or fear of reprisals, or shame' (Robertson 2000: 101). There are several other factors which lead to the under-reporting of child abuse in Aboriginal communities and this includes the fact that many communities are located in rural or remote areas of Australia where surveillance and contact with child health or welfare professionals are at a minimum. There has also been some concern that government agencies have been reluctant to intervene in Aboriginal communities for fear of reprisals from the community and media and therefore 'relied upon cultural politics to justify inability to intervene' (Robertson 2000: 91).

Further, the Queensland Women's Taskforce found anecdotal evidence to suggest 'that sexual abuse of young males is increasing, and remains largely unreported, because of the hidden nature of male to male sexual attacks and the shame that is often expressed by victims' (Robertson 2000: xv).

Overall then, with regard to child sexual abuse, it has been found that 'whether by coercion or rape, the incidence of sexual abuse of minors [is] indicated to be far more frequent than is commonly acknowledged' (Robertson 2000: 182).

#### *Australian Trends*

Since 1996-97, the rates of Indigenous and Torres Strait Islander children where abuse has been substantiated has increased in all states except Tasmania and the ACT. In all states, cases involving Aboriginal children are more likely to be substantiated than cases involving other children. The total number of Aboriginal and Torres Strait Islander children subject to substantiations in Australia for the 2000/01 period was 3004. Aboriginal and Torres Strait Islander children comprise 2.7% of children in Australia, yet constitute 20% of those placed in out-of-home care (Cuneen & Libesman 2000). As of June 2001 there were 4,073 Aboriginal children in out of home care. It has also been suggested that the rate of sexual abuse of young Aboriginal girls who are in the Juvenile Justice system is around 80% (Atkinson 1990).

## *Western Australia*

In Western Australia, in the period 2000-2001, Aboriginal children were 7.6 times more likely to be the subject of substantiated child abuse cases than children from other cultural backgrounds. The total number of Aboriginal children on care and protection orders in WA at this time is 355 (with Aboriginal children in WA being 7 times more likely than other children to be on care and protection orders). Aboriginal children were more likely to have been the subject of a substantiation for neglect than other children (AIHW 2000/01).

At the time of the AIHW report there were 456 Aboriginal children in out of home care with 79% being placed with an Indigenous family or relative and 21% (97 children) being placed with neither an Indigenous family or a relative (a key facet of the Aboriginal Placement Principle).



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## **Causal factors of family violence and child abuse in Aboriginal communities**

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### **Introduction**

This section outlines what the literature says about causal factors of family violence and child abuse in Aboriginal communities. While the broader literature on the causes of family violence outside Aboriginal families is not reviewed in detail here, it should be noted that there are strong parallels between the two bodies of literature. For example, Tomison (2000) reports on research which has found that adults (particularly males) who were physically abused while an adolescent and/or who witnessed domestic violence, were more likely to be involved in marital aggression themselves (Straus et al. 1980, Rodgers 1994). Aboriginal writers and commentators also make this link (for example Hazelhurst 1994).

It should be noted that a comparison between the two bodies of literature (mainstream and Indigenous) reveals a marked difference in the 'ways of knowing'. Mainstream knowledge is generally only reported after (and only if) it has been acquired by a highly structured and defined process of knowledge gathering - via the 'research method'. In contrast, much of the knowledge coming from the Indigenous community is based on personal and first-hand experience, rather than a structured form of data collection. This knowledge is commonly repeated and confirmed by many people, thus providing the information with some validity. Very little research in the violence area has been done by, or with, Indigenous communities, it is important that the knowledge generated by Indigenous peoples is incorporated into any future attempt to develop solutions to violence.

### **The causes of child abuse - an overview of 'mainstream' knowledge**

In the decades since Kempe, Silverman, Steele, Droegemueller and Silver (1962) published their description of the 'battered child syndrome', a large body of research has been produced on the causes of child maltreatment. Initially, most of the approaches focused on identification of single factors (Browne 1988). These factors, derived from retrospective studies included: adult psychopathology; sociological factors which took into account the external factors that may promote abuse (social isolation, overcrowding and poor housing, unemployment); and abuse-provoking child characteristics (Browne 1988, National Research Council 1993).

However, in the 1970s the limitations of focusing on single factors was recognised. In particular, it became clear that no single factor could account for child maltreatment.

Researchers then began to investigate the interactions of parent, child and environmental factors. The increased recognition of the role of *ecological* or situational factors gradually led to the development of 'interactive models, which emphasise the importance of the sociocultural context of child maltreatment' (National Research Council 1993: 107).

These social interactionist models emphasise the importance of viewing child abuse and neglect within the context of the child, family, their local community and society. Thus theories of the causes of child maltreatment have shifted from explanations based on individual pathology to explanations where abuse is a symptom of significant childrearing problems, often occurring in families with other significant family problems (e.g. unemployment, substance abuse) (Browne 1988, National Research Council 1993). Under this perspective, child abuse may result from complex constellations of factors whose influence may increase or decrease over different developmental and historical periods (Holden, Willis & Corcoran 1992, National Research Council 1993).

### **The causes of child abuse in Indigenous communities**

While there exists a number of different theories on the causes of family violence and child abuse in Indigenous communities, it is commonly believed that child abuse is caused by a multitude of factors. "The overwhelming evidence supports the position that the various forms of Indigenous violence have multiple originating causes" (Memmott et al. 2001: 11). This view is supported by the majority of commentators from the 1980s onwards. The researchers/commentators also identify a remarkably similar range of factors which they say causes family violence.

For example, the National Aboriginal Health Strategy Working Party (1989) reported that domestic violence<sup>4</sup>, which they noted was frequently associated with alcohol consumption, could not be attributed to any one cause. 'Domestic violence has its roots in institutionalisation, incarceration, loss of role, loss of parental and role models, low self esteem, and alienation' (1989: 8.17.2). Atkinson (1996b), an important Indigenous commentator, lists some of the contributing factors to family violence in Indigenous communities as being: poverty; unemployment; substandard or inadequate housing; limited access to societal resources and services; loss of identity and self esteem; abusive styles of conflict resolution; sexual jealousy; imbalance and inequity within male and female roles, responsibilities, status and contribution to family life; neglect of family responsibilities; lack of respect within families; emotionally damaged family members; neglect or abuse of children; suicide; and alcohol abuse.

Mow (1992) took a more social/political perspective and identified the causes of the problem of violence among Aboriginal and Torres Strait Islander people as oppression and dispossession, the enforcement of protection and assimilationist policies up until the 1970s that fragmented many Indigenous families, as well as poverty and alcohol. Mow also noted that cultural factors relating to 'shame' interferes with the recognition of the problem itself, and help seeking behaviour.

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<sup>4</sup> The term 'domestic violence' has now largely been replaced with the term 'family violence' in the Indigenous literature.

Blagg (1999a: 5-6) undertook a meta-analysis of the literature on violence in Indigenous communities. He listed the following multi-causal factors for high rates of violence:

- marginalisation and dispossession;
- loss of land and traditional culture;
- breakdown of community kinship systems and Aboriginal law;
- entrenched poverty;
- racism;
- alcohol and drug abuse;
- the effects of institutionalisation and removal policies; and
- the 'redundancy' of the traditional Aboriginal male role and status, compensated for by an aggressive assertion of male rights over women and children. One factor contributing to this is the forced westernisation of marriage relationships in Aboriginal communities around the concept of adolescence, where previously girls were married at the onset of puberty.

Memmott and colleagues suggested that the causes of violence are often, and probably best, considered in three contributing categories. These are:

- precipitating causes (one or more events triggering a violent episode);
- situational factors (such as combinations of alcohol abuse, unemployment, and welfare dependency); and,
- underlying factors (historical circumstances) (Memmott et al. 2001).

The literature provides some details in relation to a number of causal factors. This information is now reviewed, using Memmott and colleague's categories of 'underlying factors' and 'situational factors'. It should be noted that various causal factors may be given different emphasis by different authors and commentators, similar factors may be described in a number of varying ways, and the factors are not discrete but are inter-related, often with multi-directional causes and effects.

## **Underlying factors which cause family violence**

### **Intergenerational layers of trauma**

A number of prominent Indigenous spokespersons believe that present dysfunctional behaviour that occurs within Indigenous communities, including violence in general and the sexual assault of Indigenous children, is grounded in unresolved grief associated with multiple layers of trauma which has spanned many generations (for example, Atkinson 1994, Pearson 2000, Robertson 2000). Indeed, 'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report' (Robertson 2000) states that many Indigenous people are suffering from post-traumatic stress disorder. To survive over the years, many Aboriginal people have had to suppress and/or deny their feelings of distress and despair. This pain has become internalised within the family, expressing itself in destructive behaviours such as family violence, alcohol and drug

abuse and suicide (Atkinson 1994: 10). This enacting of trauma is a form of 'coping mechanism' (Robertson 2000: 31).

Pearson draws attention to the fact that this trauma is not just seen as an issue for individuals and families - it is seen in the context of communities, as 'the community is traumatised' (Pearson 2000: 33). While variously described, these traumas almost exclusively relate to the impact on Indigenous communities of their interface with the dominant white communities throughout the history of white settlement of Australia, including contemporary Australian society. Pearson (2000: 33) sums up the traumas as relating to 'the process of dispossession and the operation of racism throughout history'.

'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report' states that this trauma relates to Indigenous people suffering from 'genocide, enslavement, cultural violence and racism' (Robertson 2000: 25). The report talks about the fact that many Indigenous people have suffered 'profound violations in their childhood' (Robertson 2000: 31). 'Indigenous people have endured decades of oppression and neglect. The massacres and inhumane treatment of their families remain fresh in their minds. Many members of contemporary Indigenous Communities can still remember the policies that isolated them from the broader community, that exempted them from associating with family and kin, that forcibly removed them as children and subjected them to treatment that breached even the most basic human rights' (Robertson 2000: xiii).

Atkinson (1994) believes that the traumas relate to:

- a failure to adequately grieve for family deaths and injury from introduced diseases;
- starvation because of economic (land) dispossession;
- the experience of physical and sexual brutality; and,
- covert structural violence including forced removal of people to reserves, institutions, stations and homes as 'domestics'.

Cunneen and Libesman (2000) relate present disadvantage back to the historical experience of previous government policy of assimilation, as well as the dispossession and marginalisation experienced by Indigenous people. There are suggestions in the literature that the sexual assault of Indigenous children and young people has a long history, the early assaults being perpetrated by white colonists. For example, the recent Queensland Fitzgerald report (2001) states that the 1901 Amendment Act (of the 1897 Aboriginals Protection and Restriction of Opium Act) addressed continuing sexual abuse of girls and women, including the practice of taking women from place to place like chattels and tying them up to prevent escape. The amendment required that permits be obtained for all employment of females and decreed that sexual assault was now an offence 'if medical proof showed the girl to be pre-puberty' (2001: 11). This, by implication, permitted the sexual abuse of girls who had reached puberty.

There is general agreement in the literature that trauma experienced by Indigenous people is not only historic but new traumas are being created in the present. The contemporary social problems experienced by individuals and families (for example, alcohol, drug addiction and family violence), while related to stress in the past, are in turn creating present stresses for many Indigenous people.

There is some suggestion, particularly by Atkinson (1990-1996) and supported by Hazelhurst (1994), that Aboriginal family violence is a learned behaviour.

‘It was learned by Aboriginal people from the initial aggression of white occupation, and has since been transferred through the fabric of Aboriginal society over several generations of exposure to male dominated colonial and paternalistic administrations’ (Hazelhurst 1994: 21-22).

Hazelhurst (1994) also reports of Aboriginal women being increasingly concerned about the ‘plight of children who are exposed to lifestyles of alcoholism, binge drinking, and violence’ (1994: 25). She explains that ‘children who learn self abusive and family abusive behaviours from their parents’ generation will apply it quite early in their own lives’ (1994: 25). Evidence consistent with this pattern is readily available in many Indigenous communities throughout Australia.

### **The Stolen Generations**

Particular mention needs to be made of the large-scale removal of Indigenous children from their families as a major contributor to the experience of trauma. The release of the ‘Bringing them Home’ report in 1997 (Human Rights and Equal Opportunity Commission) and more recently the work of Read (1999) have focused attention on the multiple layers of trauma experienced by the ‘stolen generations’ (as well as the mothers and other family members) and how this then impacts on the parenting skills of those stolen children as adults.

Read (1999) notes that whilst there exist some positive stories of the stolen children becoming leaders and role models for their Indigenous communities, the majority of the stories reveal stolen children growing into traumatised adults. These are adults who have died prematurely, who have beaten their spouses or children, who may have abandoned their own children and who have been unable to maintain constructive lives. Expert testimony to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families argues that the ‘early loss of a mother or prolonged separation from her before the age of 11 is conducive to subsequent depression, choice of an inappropriate partner, and difficulties in parenting the next generation. Antisocial activity, violence, depression and suicide have also been suggested as likely results of the severe disruption to affectional bonds’ (Human Rights and Equal Opportunity Commission 1997: 181). The removal of children is thus presented as a direct contributing factor for the increased levels of violence within Indigenous families.

Research undertaken by Vinson, Baldry and Hargreaves (1996) is of interest here. They have shown that communities facing similar issues and with similar levels of social problems (communities were matched on a number of different variables, such as size, social disadvantage) may produce varying prevalences of child abuse. The variation

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<sup>5</sup> For a detailed analysis of the intergenerational transmission of violence, see Tomison (1996c, 2000).



appears to be due to differences in the quality of the occupants' social relationships or 'connectedness'. Vinson and colleagues found that those communities identified as having less social connectedness (fewer and weaker social relationships with others) were those having higher levels of child abuse (reported by Tomison & Wise 1999). Thus, the break-up of families and loss of extended family and support networks (kinship groups) as has occurred to many Aboriginal families, would appear to directly contribute to child abuse in the present communities.

## **Social disadvantage - the present**

### **Poverty and unemployment, economic, health and social disadvantage**

Tomison and Wise (1999) draw attention to the fact that considerable research has shown the association between stressful, negative community conditions, and maladaptive coping behaviour and social dysfunction. What have been labelled as 'toxic environments', comprise communities 'plagued by various social ills' such as high unemployment, high crime rates, poor transport facilities and poor access to professional services (Tomison & Wise 1999: 5).

Memmott and colleagues (2001) describe this pattern in communities as 'dysfunctional community syndrome'. It would appear from the descriptions available of many Indigenous communities that they suffer from a 'toxic' environment which together with geographical and social isolation, is associated with the break-up of families (Garbarino & Abramowitz 1992).

Using data obtained as part of the 1996 Census, Edwards and Madden (2001) have recently published a report on the health and welfare of Indigenous people<sup>6</sup>. The authors reveal that Indigenous people are disadvantaged across a range of socioeconomic factors (see also the 'Introduction' section of this Brief). These included 'lower incomes than the non-Indigenous population, higher rates of unemployment, poorer educational outcomes and lower rates of home ownership' (Edwards & Madden 2001: 2). Indigenous people were more likely to be in improvised dwellings (sheds, humpies, tents and park benches), be in overcrowded living conditions and live in houses in high need of repair, than non-Indigenous people (Edwards & Madden 2001: 2). The report states that inadequate and poorly maintained infrastructure, particularly water and sewerage systems, are major issues and 'potentially major causes of ill health' for Indigenous communities, particularly those in remote and rural areas of Australia (Edwards & Madden 2001: 24, 29).

Robertson (2000) reports that there is an association between violence in Indigenous communities and high unemployment, poor health, low educational attainment and poverty. However, a more detailed understanding of this association is needed. It would appear that there may often be intervening variables. For example, the presence of domestic violence may cause children to roam the streets which makes them more

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<sup>6</sup> A Western Australian Aboriginal Child Health Survey has been undertaken by the Institute for Child Health Research in WA. However, these findings will not be available until early 2003 (Howell, personal communication).

vulnerable to sexual abuse, especially in areas with high alcohol consumption. Further, female heads of households often care for large numbers of children (which may in itself be due to family violence) and are forced to live in derelict houses that cannot be adequately locked to prevent external intruders entering the house and assaulting residents (children or adults).

The high levels of poverty, unemployment, homelessness and ill health found in Indigenous communities can make some Aboriginal and Torres Strait Islander families more susceptible to becoming involved with both child protection and juvenile justice services (Cunneen & Libesman 2000), due to the greater levels of surveillance which will be present. However, surveillance is less likely to occur in the more remote areas of Australia, where the service system is less developed and there is a lack of contact with government authorities.

It should be noted that while this section concentrates on the problems of Indigenous communities, Indigenous communities can also have strengths, many of which may not be immediately obvious to non-Aboriginals. Culturally-based strengths may be present and available to be built upon, through increased autonomy, respect and resources.

### **The mental health of Indigenous Australians**

Developing an understanding of the mental health of Indigenous people has been hampered by a range of issues. These include the failure to adequately measure Indigenous mental health and the confusion between behaviour suggestive of mental illness and cultural practices (Edwards & Madden 2001).

Edwards and Madden (2001) point out that The National Inquiry into the Human Rights of People with Mental Illness (Human Rights and Equal Opportunities Commission [HREOC] 1993) reported that the recognised definitions of mental health do not fully apply to Indigenous people because of the way they incorporate physical, mental and spiritual wellbeing. Thus, environmental and social factors (perhaps more than in white Australian culture) can have a 'lasting and significant impact' on Aboriginal psychological wellbeing and are linked to the development of anti-social and self-destructive behaviour (HREOC 1993: 695).

Within Indigenous communities disturbed behaviour is often not identified as mental illness but instead often leads people to the criminal justice system (HREOC 1993, reported by Edwards & Madden 2001). Again, this highlights the importance of viewing the mental health of Indigenous people within the context of the impact of 'colonisation, loss of traditional lands, loss of culture, separation of children from their families, racism, social inequity, trauma, loss and grief' (Swan & Raphael 1995, reported by Edwards and Madden 2001:143).

### **Substance abuse**

The literature commonly draws an association between alcohol consumption and drug abuse, and violence in Indigenous communities. In a survey of alcohol consumption in Australia, fewer adult Indigenous people reported using alcohol in the previous week,

than did non-Indigenous Australians (Edwards & Madden 2001, reporting ABS data for 1995). Unfortunately this survey excluded people living in remote areas, so may not be entirely accurate. Of those who reported drinking, twice as many Indigenous Australian males were drinking at what was judged to be a high-risk level, than non-Indigenous males.

'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report' found that the 'women spoke strongly about alcohol as a major cause of violence. It was seen as influencing all aspects of their lives and creating chaos even for those who didn't drink' (Robertson 2000: xxiii). The report quotes Noel Pearson: '(O)urs is one of the most dysfunctional societies on the planet today; surely the fact that the per capita consumption of alcohol in Cape York is the highest in the world says something about our dysfunction' (Robertson 2000: 71). Atkinson (1991) believes that family violence is compounded and sometimes precipitated by alcohol misuse. Bolger (1991) reports that 'excessive consumption of alcohol is often seen as the cause of many social problems in Aboriginal communities today', although she notes that there are conflicting views about the part played by alcohol in the incidence of violence. Fitzgerald (2001) draws attention to the problem of foetal alcohol syndrome in Indigenous communities.

The Cape York Justice Study (Fitzgerald 2001: 13) notes that 'the available evidence indicates clear links between alcohol consumption, violence and injury, although the relationship is complex and not necessarily one of simple causality. Injury patterns are clearly related to the cycle of Community Development Employment Project (CDEP) and Social Security payments, with high rates on paydays and the day following, and marked declines when canteens<sup>7</sup> are closed.'

The complexities of the association between violence and alcohol consumption are noted by other writers. Hunter (1990b) and Atkinson (1991) say it is not acceptable to only blame alcohol as the reason for the violence in Indigenous communities. Bolger (1991) believes that a considerable amount of violence is not connected with alcohol, particularly in the case of Indigenous women. He also outlines some of the links between family violence and alcohol abuse. For example, Bolger notes that it is not known how many men who drink do not assault their wives and it is believed by some that men drink so that they will have an excuse for beating their wives. This perspective is supported by Robertson (2000) who says that in some situations alcohol may facilitate or incite violence by providing a socially acceptable excuse for the negative behaviour. Alcohol is sometimes seen as a disinhibitor, allowing people to do things they would not normally do when sober (Bolger 1991). Alcohol may boost the morale of a man with low self-esteem and give him a sense of power. Finally, Bolger (1991: 45) states that 'some people argue that there are cultural expectations as to the behaviour of a person under the influence of alcohol and that in some cases aggression is the expected mode of behaviour'.

The use of alcohol and drugs as a way of coping with past traumas of colonisation and dispossession is a point made by virtually all commentators. However, substance abuse is, in turn, creating its own trauma in communities, such that there is now a link

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<sup>7</sup> Canteens serve a similar function as hotels in Indigenous communities - a place to buy and drink alcohol.

between substance abuse, growing violence, and the current 'dysfunction and despair' in Indigenous communities (Robertson 2000: 30).

The literature refers to a number of compounding factors which relate to the use of alcohol in Indigenous communities and the association between substance abuse and family violence. Some of these are referred to below.

#### *The historical establishment and facilitation of the use of alcohol by Aborigines*

Robertson (2000) provides a historical perspective on how 'during the latter half of the nineteenth century and well into the twentieth century, large numbers of Indigenous peoples, some of them in chains, were taken against their will to government-owned or controlled reserves' which were often operated in conjunction with the Christian churches (Robertson 2000: 26, 27). These people 'lost contact with their ancestral lands, their family, their customs and traditions, often being punished for practising their traditional culture' (Robertson 2000: 28). They were often provided with inferior food, being not allowed to hunt for traditional food.

Alcohol was introduced as a reward - 'it facilitated the breakdown of Indigenous culture and deterioration into violence and abuse' (Robertson 2000: 28). In addition, alcohol was used in the past as a currency in lieu of wages by some employers (Robertson 2000). This alcohol was often of low quality and very potent.

Further, Kahn and colleagues (1990) draw attention to the use of alcohol as a means of exploiting Aborigines: as a bribe for sex and entertainment (Hunt 1986); and through intoxication and subsequently impaired personal faculties, used as a means of manipulating Aborigines into less than ideal outcomes (Kahn 1986).

Recent publicity has been given to the practice of publicans holding bank saving cards owned by Aborigines, a practice that is said to be widespread in the West Australian Goldfields (Martin 2002). This practice not only prevents the card being used for other needs but leads to the high accessibility of alcohol. It is reported as being associated with an increase in alcohol-related incidents including domestic violence and assaults on young girls (Le Grand 2002).

#### *Government policy in relation to alcohol consumption by Indigenous communities*

There has been a contradictory and confusing attitude by government to Indigenous alcohol consumption (Robertson 2000). As noted above, in the past the government allowed payment of wages in alcohol. In the 1950s alcohol consumption was banned except where an Indigenous person obtained an Exemption Certificate and had proven the ability to assimilate with the non-Indigenous community (Hunter 1990a).

Permission was granted to drink alcohol on reserves in the 1960s. In the 1970s canteens were erected to serve alcohol on reserves. Alcohol became openly available after the 1967 referendum, which granted Indigenous citizenship (Robertson 2000). In some communities, the local council has become dependent on the revenue raised from the sale of alcohol. For example, the Sunday program (Channel 9, Victoria, 28<sup>th</sup> April 2002) reported that on Palm Island, with an unemployment rate of 95%, the ambulance service and most of the community services are funded by the sale of alcohol. There has also

been a failure by governments to adequately police the 'sly grog trade' and a failure of authorities to prosecute breaches of the regulations (by Indigenous and non-Indigenous people), exacerbating the alcohol problem, and thus, violence in the community (Robertson 2000).

#### *Learned behaviour*

Hunter (1990a) makes the connection between the greater access to alcohol in the 1970s and an increase in Indigenous violence, particularly increases in female homicide, suicide, parasuicide and self-mutilation in the 1980s. He notes that the children and young people who currently engage in self-destructive behaviour are the children of that generation who were young adults at the time of rapid change in the 1970s. They are the first generation to have grown up in environments with normative heavy drinking. As Robertson notes, 'having been socialised into a culture of alcohol, substance abuse, violence and anarchy, the crimes committed by some offenders reflect those witnessed or experienced as a child' (Robertson 2000: 31).

#### *Alcohol use and traditional culture*

Pearson (2000) identifies alcohol as corrupting some of the most basic laws and customs in Aboriginal communities, in particular the traditional obligations of sharing resources. For example the traditional obligation to share food obtained from a hunting trip has been turned into an obligation to share alcohol. Fellow drinkers will challenge Aboriginal identity in order to establish obligation to contribute money to buy grog: 'Come on, don't be flash! We not white fellas! You-me black people' (2000: 17).

Pearson (2000: 17) explains that there exists a drinking circle in which 'social and cultural relationships between the drinkers are expressed, reinforced and reiterated whilst people are engaged in drinking'. Everyone is obliged to share the money and the alcohol. Outside of the drinking circle are the women, children and non-drinkers who are required to provide the most basic resources (food) for all within the community, including the drinkers. However, when women and children are the least powerful, and where the drinker is the head of the household, all the money that comes in to the house goes into the buying of alcohol. It then becomes the responsibility of the old people (mainly women) to keep the community fed. Other obligations and relationships are ignored or abused by those addicted to alcohol. Pearson (2000: 18-19) then queries why the obligations to children are given lower priority than the 'so called obligations' to cousins and uncles for drinking.

#### *Substance abuse by children who have been abused*

In some communities Indigenous children are using alcohol at a very early age (Robertson 2000). 'Abused children may use altered states of consciousness to escape from untenable situations. In later life, young adults may seek altered states of consciousness through the use of alcohol and drugs' (Robertson 2000: 35). 'In altered states, the ordinary relations between body and mind, reality and imagination, knowledge and memory no longer hold' (Robertson 2000: 35).

More recently, it appears that the inhaling of solvents (paints, petroleum) has become widespread in some Aboriginal communities. However, there is little information

available on drug use within the Aboriginal community. A recent study by the National Drug Research Institute and the Nyoongar Alcohol and Substance Abuse Service in WA, has found that drug injecting in Aboriginal communities has doubled since 1994, although no actual rates are given in the reporting of this by Watts (2002). This problem was largely found to be associated with young, urban-based Aborigines who also often used cannabis and alcohol.

### **Disturbed behaviour and loss of skills**

Robertson states that anger 'is a natural feeling that results from boundary violation, frustration, fear and loss' (2000: 32). Often this anger is not expressed against the person or group causing the original trauma but against someone close to the offender who becomes the substituted object of the violence' (Robertson 2000: 33).

'Cycles of violence can occur when people who have been hurt are unable to express the pain of that hurt safely to themselves and others . . . . Children who have been victims may run the risk of being re-victimised, or they may begin to victimise others' (Robertson 2000: 34).

Robertson also describes how young people who have matured early may look for love and move into precocious sexual activity at an early age. 'They may then become young parents, sometimes falling into unstable relationship that flounder, and the children of the next generation may become the next victims and potential victimisers' (Robertson 2000: 35). Robertson (2000: 35) believes that this pattern is the basis of the cycle of violence being witnessed in Indigenous Communities.' The report, 'Bringing them Home' found that the past forced separation of Indigenous children from their families and communities has resulted in a loss of parenting skills and abilities (Human Rights and Equal Opportunity Commission 1997), thus increasing the likelihood of the involvement of child protection services in Aboriginal families (Cunneen & Libesman 2000).

### **Spiritual oppression and destruction of traditional values and culture**

The loss and destruction of culture has contributed to the current crisis in which many Indigenous people find themselves (Robertson 2000). Robertson notes that 'Indigenous people generally have been profoundly affected by the erosion of their cultural and spiritual identity and the disintegration of family and Community that has traditionally sustained relationships and obligations and maintained social order and control' (Robertson 2000: xii). The breakdown of culture and values is a common thread behind many other causal factors of family violence in Indigenous communities. Atkinson (1991: 4) believes that 'the level of Aboriginal male violence towards Aboriginal women reflects a breakdown in Aboriginal social order'.

#### *Passive welfare*

In the past three years, a number of people, most notably Noel Pearson, have focused attention on the issue of 'passive welfare' as a cause of many of the problems affecting Indigenous communities. Pearson (2000) believes that passive welfare has undermined

Aboriginal law, traditional values and relationships. He describes passive welfare as being the 'assistance to needy citizens who may never repay via their taxes what they have received, and of whom nothing further will be required or expected' (2000: 11). He says 'passive welfare is an irrational, "gammon" economic relationship, where transactions between the provider and the recipient are not based on reciprocity (a respected cultural value). The principle in this relationship is "money for nothing" or "help for nothing". Essentially it is charity' (2000: 21).

Pearson argues that 'our dispossession is the ultimate cause of our passive welfare dependency. Upon our dispossession the traditional economy of our ancestors was ruptured and we were engulfed by the new economic order, in which our official and actual place until 1967 was in the underclass: quasi-slaves, workers in fact but not in status' (2000: 13). He believes that welfare is a mentality that is 'internalised and perpetuated by recipients who see themselves as victimised or incapable and in need of assistance without reciprocation' (Pearson 2000: 21).

Welfare dependency is also viewed as a problem in 'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report' which states that because of a breakdown of traditional social support and the lack of infrastructure and real employment, people, particularly in rural and remote communities have become almost totally reliant on welfare (Robertson 2000). Compounding the problem, health, family and welfare agencies are not able to meet the increasing demands for these services (Robertson 2000).

## **Racism**

The link between racism and family violence is mentioned in the literature, but the association is not usually clarified. It is likely that the experience of racism and discrimination attacks self-esteem and personal well-being, thus contributing to a breakdown in social order and a community's sense of worth and therefore a contributing factor leading to family violence. Pearson (2000) argues: '(M)ake no mistake, racism is a terrible burden. It attacks the spirit. It attacks self esteem and the soul in ways that those who are not subjected to it would have not an inkling of understanding about. Racism is a major handicap - it results in Aboriginal people not recognising opportunities when they arise, in not being able to seize opportunities when they arise, in not being able to hold on to opportunities when they have them . . . Australians concerned about the position of Aboriginal people in this country should not underestimate the decisive role that racism plays in the wellbeing of Aboriginal individuals and society' (2000: 34).

## **Community silence and denial**

Silence and denial within the Indigenous community would appear to impact on why many children get abused by the one perpetrator and why the abuse is allowed to continue. Melva Kennedy, an Aboriginal woman working on educating the Indigenous community on issues of child sexual assault and the effects of domestic violence on children, states that '(A)s long as the veil of silence and denial remains over this area, the opportunities for children to suffer without help remain as well as services available

to the rest of Australian society will not be adapted and made accessible for Aboriginal communities' (Kennedy 1991: 16).

Mow (1992) identifies community silence as a barrier to overcoming the problem itself. Mow quotes Tonkinson (1985: 299) who says that 'discussing family matters with an outsider, even one wishing to help, might be almost impossible because of shame. Also, approaching someone of the opposite sex on matters that are thought to be the business of one's own sex can be too shameful to contemplate . . . . Shame is compounded in Aboriginal-white relations by expectations of rejection, by unfamiliarity with procedures and personnel, and by loyalty to one's own vis-a-vis the dominant society. Put in a nutshell, given Aboriginal experience of white institutions and authority agents, it is scarcely surprising that, ultimately, some women appear to find a violent spouse less threatening than the agencies from which they might seek relief' (1985: 299).

### **Media influences**

There has been little research on the impact on children of viewing sexual material – both normal and pornographic, and the research is still indeterminate about the impact on children of viewing of violent material (Stanley 2001). Even less is known on the impact of viewing this material by young people living in isolated and depressed circumstances in remote Australia (Atkinson 1990). However, first hand experience reported by a couple of commentators suggests that the viewing of offensive material in the Indigenous community is a factor contributing to sexual violence. This issue is likely to be more problematical with the increase in use of the internet in outback Australia.

Hazelhurst (1994) states that 'over a 15-20 year period community workers have observed changing patterns of physical behaviour and sexual offending among Aboriginal men and boys which, they are convinced, have been induced by exposure to violent images in the media. This 'new scourge' in remote communities has been attributed by local people to the introduction of a diet of macho and violent television programs and, more recently, of violent and pornographic videos available through local distributors and inter-state mail order outlets' (1994: 26-27). Atkinson (1990) reports that Aboriginal women say violence and sexual abuse has increased since pornography entered communities. Sometimes offensive videos, brought in by white men as forms of entertainment, are the only understanding young men have of mainstream culture (Atkinson 1990). Hazelhurst (1994) further reports that women complain that they have been asked to participate in viewings of offensive material and to imitate sexual acts which are offensive and distressing to them. 'Assaults on young children, infants, and animals by young males, sometimes roving in gangs, escalate after shipments of pornographic videos' (Hazelhurst 1994: 27).

Hazelhurst (1994: 28) makes the comment (which also has some resonance with the trading of sly grog in many remote Aboriginal communities) that 'to unscrupulous interests, Aboriginal society is "a sitting duck".' She goes on to say that '(in) one northern Queensland community I visited it was the non-Aboriginal owner of the community garage who ordered in this material from Canberra, and rehired these to Aboriginal men at a considerable profit. It was the Aboriginal women who were asked to perform the acts that were seen on these videos, or the young children who were assaulted by highly excited teenagers after a viewing. Without proper authority to set



up their own controls these communities are a vulnerable and ready made market for the worst of what western society has to offer' (1994: 28). Cripps notes (personal communication) this latter comment is particularly pertinent to the capacity of Indigenous people to implement such controls to stop pornography within their communities if they do not have sovereignty and the power to determine, implement and control local public policy. Even if it were possible for the Indigenous community to ban their members from owning or renting such material, they are likely to have greater difficulty in enforcing this within the non-Indigenous population in their area who are responsible for 'pushing' some of the material.

Cripps (personal communication) also comments that the portrayal of Indigenous family violence in the media also serves to silence the community as it stereotypes violence in Indigenous communities as being 'normal' and/or part of the 'culture'. Many Indigenous people will choose not to report on the grounds that they're protecting their 'own' from the wider society. This is supported by a comment made by Daphne Naden reported in ABC News Online during the debates on family violence in June and July 2001. 'To suggest, as some people have, that Aboriginal people, particularly Aboriginal men, do not care about the protection of women and children is deeply hurtful and blatantly false.' (ABC News Online 2001).

### **Indigenous communities - the overseas experience**

Available literature suggests that the experience of white colonisation on Indigenous communities in Canada and the United States has many characteristics similar to the experience of Australian Aborigines. North American communities also suffered a policy of removal of the Indigenous population's children from their homes in order to assimilate the children into the non-Indigenous population (Hill 2000, Lynch 2001). Similarly, the consequences of this policy are now viewed in terms of being 'tragic', 'devastating' and 'destructive of American Indian life today' (Lynch 2001: 504).

Loss of identity and identity confusion have also been a problem for many other Indigenous peoples (Lynch 2001). For example, a child may identify with white culture, but that same culture may subject the child to racial discrimination due to the child's Aboriginal background. Further, Hill (2000) states that there continues to be high rates of removal of Indigenous children in North America on child protection grounds (four times higher than the wider community).

Finally, despite anecdotal evidence of some Aboriginal (First Nation) communities in Canada overcoming significant social dysfunction and enhancing the health and wellbeing of children and families, this has not yet become the dominant pattern (Hill (2000)).

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## Aboriginal beliefs about gender and sexuality

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A comprehensive review of Aboriginal beliefs about gender and sexuality is beyond the scope of this brief. Rather, this brief provides information to address specifically one of the main arguments that has been used to support inaction regarding Indigenous family violence. That is, the belief that family violence is 'normal' in Indigenous communities and part of the traditional behaviour of Aborigines.

Indigenous Australians are not a homogeneous people (Australian Law Reform Commission 1987). It is estimated that there were about 600 Aboriginal languages when white colonists arrived (Blainey 1980). The literature suggests that indiscriminate violence towards family members within these various societies or cultures was not present. While some forms of violence were used, this violence was practiced within Aboriginal law, largely as a punishment for breaking laws.

While laws varied between Aboriginal societies, there were some commonalities (Australian Law Reform Commission 1987). Indigenous laws were closely tied to spiritual beliefs (Australian Law Reform Commission 1987), and they related to the maintenance and healing of relationships between people within families and among groups across the social system (Atkinson 1996a). Through the law Aboriginal people had a clear guide as to appropriate and inappropriate behaviour (Atkinson 1990).

Law was known and maintained by a selected group of both women and men, each having different areas of responsibility. Many Indigenous women stress that they held an equal position with men in pre-colonial traditional society (Kimm 1999). For example, the women in some tribes were responsible for ceremonies and ritual solely for women and had important influence over 'kinship ties, marriage arrangements, land-relationships, and other rights and duties' (Australian Law Reform Commission 1987). According to Atkinson (1996a) Aboriginal women were the custodians of certain aspects of the law and Aboriginal men were responsible for the enforcement of law.

The Australian Law Reform Commission (1987: 221-222) identifies examples of transgressions to Aboriginal law as including:

- unauthorised homicide (that is, not decreed as a punishment for another offence);
- sacrilege (that is, the unauthorised possession of sacred knowledge and objects and the unauthorised observation of sacred rituals);
- unauthorised sorcery;
- incest;
- cohabitation with certain kin;
- abduction or enticement of women;
- adultery with certain kin;
- adultery with potential spouses;
- unauthorised physical assault;

- usurpation of ritual privileges or duties;
- theft and intentional destruction of another's property;
- insult (including swearing, exposure of the genitals);
- physical neglect of certain relatives;
- refusal to make gifts to certain relatives; and,
- refusal to educate certain relatives.

The identification of these transgressions is important as they suggest that particular acts of family violence and child neglect were unacceptable under traditional law.

Private bargaining, public debate, threat of punishment, oral abuse, ridicule, sorcery and a range of punishments, often physical, were used where women and men transgressed the law (Atkinson 1990; Australian Law Reform Commission 1987; Bolger 1991). There were recognised punishments for specific transgressions and 'they were carried out by particular people under community control' (1991: 49). All members would have understood what was considered a breach of that law and what the consequences of that breach would entail (Australian Law Reform Commission 1987). Daily participation in ceremonies and rituals reinforced knowledge of rights and responsibilities in relation to others' well-being (Atkinson 1996a).

There appears to be an association between a failure to up-hold traditional law and the growth in family violence in Indigenous communities. Talking about the Murri people, Lucashenko & Best (1995: 20) comment that 'one of the saddest and most destructive legacies of the colonial era' is the idea that traditional societies were lawless or that indiscriminate violence against Aboriginal women was sanctioned by traditional law.

It would appear that sexual assault, particularly child sexual assault, was practically unknown in traditional Indigenous communities (Atkinson 1990, reported by Greer 1992, Tatz 2001). 'Aboriginal people had a clear guide about good and bad behaviour, with discipline being strictly maintained by tribal elders' (Greer 1992: 189). Penalties ranged from physical beating, through ritual spearing and exile from the community, to death' (Tatz 2001: 135-136). 'Less than 100 hundred years ago ...rape was punished by death, or occasionally life may be spared but the offender severely maimed' (Atkinson 1990: 11). According to Tatz (2001: 135-136), traditional Aboriginal systems of incest prohibition remain the world's foremost model yet, in practice, 'most of the structure and discipline have fallen away, to the point where the abuse is committed with impunity'.

Bolger (1991: 50) reports that 'there are now three kinds of violence in Aboriginal society - alcoholic violence, traditional violence, and bullshit traditional violence. Women are victims of all three. By bullshit traditional violence is meant the sort of assault on women that takes place today for illegitimate reasons, often by drunken men, which they then attempt to justify as a traditional right' (1991: 50). While it may be hard to differentiate between these forms of violence, "bullshit" traditional violence was tendered as a defence in a case heard in the Northern Territory Supreme Court last year and reported in *The Koori Mail* 16/05/2001 (Anonymous 2001b). In this case the judge rejected a man's explanation that he was executing Aboriginal customary law when he bludgeoned a women with a chair. It was claimed the defendant had attacked the woman because she had supposedly broken tribal law by telling his wife he had had an affair. Confusion about this issue leads to non-interference by both police and

community leaders, with the result that the tacit message to the offender and the community is that violence is condoned (Hazelhurst 1994).

Sutton (2001: 154) raises an important issue. He notes that an understanding of the impact of the breakdown of traditional law will not necessarily lead to a solution. Finding a workable solution may be difficult, as the 'authority vacuums that have led to chaotic developments in many settlements seem strongly resistant to the reinstatement of older forms of power, which may be remembered fondly by the elderly but are feared and resisted by the young.' Sutton (2001) believes that there is little evidence that formal tribal law can be re-instated once it has been so thoroughly destroyed. However, this may not necessarily be the case in all Indigenous communities. Sutton also queries whether violence as a punishment within traditional law should be supported and promoted in the present.

Some have suggested that rather than a blanket return to traditional ways, there is a need for spiritual healing and an opportunity to redefine cultural identity. Robertson suggests, for example, that there should be a development of 'special places', including women's and men's centres (Robertson 2001: 277).



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## **Research findings regarding mandatory reporting of child abuse and sexually transmitted infections**

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### **Mandatory Reporting of Child Abuse Requirements in Australia (From the Australian Institute of Health and Welfare 2000/01)**

#### **New South Wales**

Since 1977, NSW medical practitioners have been required by law to report suspected cases of physical and sexual abuse and the Children (Care and Protection) Act 1987 mandated teachers, counsellors, social workers and early childhood workers to report cases of suspected sexual assault. In New South Wales, teachers are mandated to report sexual abuse but are also required by the Department of School Education to notify for cases of suspected physical and emotional abuse and neglect. The police and Department of Health workers are also required to report cases of child maltreatment.

In 2000, the NSW Parliament proclaimed the Children and Young Persons (Care and Protection) Act. Under this Act the range of professionals working with children who are legally required to report children or young people who are at 'risk of harm' (which represents a broadening of the scope of mandatory reporting) has been expanded. They include people who deliver health care, welfare, education, children's services, residential or law enforcement services to children, including managers and supervisors.

#### **Victoria**

In 1993 the Victorian Government introduced mandatory reporting via legislative changes to the Children and Young Persons Act 1989. As a result Victorian doctors, nurses and police are mandated to report *child physical and sexual abuse*. Primary and secondary school teachers and principals were mandated to report physical and sexual child abuse, in 1994. While other professionals were identified for inclusion as mandated reporters in a planned third extension of mandatory reporting, this has been postponed indefinitely.

As a result of the introduction of mandatory reporting in Victoria, by the end of 1994-1995 reports of child abuse had increased by 58%, and in 1995-96 there was a 91% increase in reports of child abuse (Goddard, Saunders, Stanley & Tucci 2002).

## **Queensland**

The Health Act 1937 mandates Queensland medical practitioners to report *all cases of suspected child maltreatment*. School principals are also mandated to report all forms of child abuse and neglect via an Education Queensland policy and teachers are required to report suspected abuse to principals, however this is not legislated. All officers of Family, Youth and Community Care Queensland and employees of licensed care services are required by the Child Protection Act 1999 to report when they suspect harm to children placed in residential care.

## **South Australia**

In South Australia the Children's Protection Act 1993 mandates the following persons to notify the Department of Human Services (Family and Youth Services), if they suspect on reasonable grounds that a child is being *abused or neglected*: medical practitioners, nurses, dentists, pharmacists, psychologists, police, probation officers, social workers, teachers, family day care providers, and employees of, or volunteers in, government departments, agencies or local government or non-government agencies that provide health, welfare, education, childcare or residential services wholly or partly for children.

## **Tasmania**

In Tasmania there are a number of professionals who are mandated to report *all suspected cases of child abuse* to the Child Protection Board. These professionals are: medical practitioners, registered nurses, probation officers, child welfare officers, school principals, kindergarten teachers, welfare officers appointed under the Alcohol and Drug Dependency Act 1968, guidance officers and psychologists.

## **Australian Capital Territory**

Mandatory reporting was introduced in the ACT in 1997. Those mandated to report child abuse include doctors, dentists, nurses, police officers, teachers, school counsellors, public servants working in the child welfare field and licensed childcare providers. Mandated professionals are required to report if they reasonably suspect that a child or young person has suffered, or is suffering, *sexual abuse or non-accidental physical injury (physical abuse)*.

## **Northern Territory**

In the Northern Territory it is mandatory for any person who suspects that a child is or has been *abused or neglected* (any form of maltreatment) to report their belief to a Family and Children's Services office or police station.

## **Western Australia**

Western Australia is the only state in Australia that has not introduced mandatory reporting of child abuse. Instead, as Goddard notes 'as a consequence perhaps of the voluntary reporting system, more attention appears to be paid to procedures for specific disciplines' (Goddard 1996: 100). That is, referrals to child protection services about possible harm to children are facilitated by a series of reciprocal protocols which are negotiated between government and non-government agencies.

Although the rate of substantiated child abuse has been increasing since 1995/96, from 1.7 cases per 1,000 children, to 2.5 cases per 1,000 children in 2000/01, Western Australia still had the second-lowest rate of substantiated child abuse (AIHW 2002). However, because of differences between the way the various Australian jurisdictions count notifications (reports) of child abuse, it is no longer possible to directly compare the States or to create national statistics (AIHW 2002).

### *Child protection statistics*

Western Australia is the state with the most radical approach to managing child protection reports. In 1995, Western Australia set up a new differentiated model of intake, where a report was classified as either a generic 'child concern report' (requiring a more generic, 'problem solving' approach) or as a 'child maltreatment allegation' (Tomison 1996b). Regardless of the 'stream' into which the report is initially designated, the intention of the model is that all reported children would undergo a full risk and needs assessment and would then receive professional supports, where necessary.

However, only the 'child maltreatment allegations' are counted as child protection reports. Thus, one of the changes resulting from policy change was initially, a substantial drop in the number of reports recorded across the State. (See Tomison 1996b for a more detailed discussion of this issue). More recently, Parton and Mathews (2001) reported that the total number of reports received by the Department post-implementation of this new policy ('child concerns' and 'child maltreatment concerns'), approximated the total number of reports pre-implementation. This was taken as an indication that reporting practice had not been negatively affected by the new approach, although this explanation may not take into account the subsequent increase in substantiated cases since 1995. (That is, the closure of the 'gap' may be due to increases in actual abuse, rather than demonstrating that the new policy had no impact).

## **Mandatory Reporting - the costs and benefits**

There have been many arguments both in favour of, and against, the introduction of mandatory reporting laws for child abuse. Those who support mandatory reporting suggest that children 'have the right to be protected', that it 'makes a public commitment to child protection' and increases the general public's awareness of child abuse (Goddard 1994: 6). Those in favour also suggest that mandatory reporting assists in establishing the true nature and incidence of child abuse (Goddard 1994).



It has been suggested that professionals generally have a reluctance to 'break well-entrenched and long established habits of professional confidence' and have an 'unwillingness to become involved in legal proceedings, which may expose them to professional discipline and criticism by their peers', factors which may contribute to a disinclination to report (Quinton 1991: 5).

Legislation can overcome this reluctance to become personally involved by imposing a public duty to do so. Indeed, mandatory reporting laws have been said to provide safeguards for professionals involved in cases of child abuse and serve to protect relationships with parents because professionals can explain that they are compelled to report. However, in reality very few people are ever prosecuted for not reporting child abuse, even if mandated (Goddard, Saunders, Stanley & Tucci 2002).

In contrast, arguments against mandatory reporting suggest that such laws may:

- drive families underground and discourage them from seeking help for fear of being reported to 'the Welfare';
- remove discretion from workers who are in a sensitive position; and,
- be used by governments as a cheap substitute for services for prevention (Goddard 1994).

What has been apparent since the 1990s, however, is that mandatory reporting substantially increases the number of reported cases of child abuse (Quinton 1991; Tomison 1996b). This increase in reports has often resulted in system overload for child protection services, with a resultant failure to adequately assess and support those families most in need. This leads to a need for greater resources and often produces a raising of the child protection 'threshold for intervention'. That is, stricter gate-keeping is employed to ensure that only those most in need are accepted for investigation and case management. For example, a recent Victorian study (Goddard et al. 2002: 13) found that in response to mandatory reporting requirements, 'statutory child protection services appear to have responded by steadily restricting the criteria which trigger a protection'.

In addition, in order for mandatory reporting to be effective it would seem important for mandated professionals to be aware of their responsibilities. However, a Victorian study found that 19% of a sample of community professionals did not correctly identify their obligations to report cases of child abuse, and 29% of community professionals in the sample were misinformed or uncertain about their obligations to report cases of child abuse under Victorian law (Goddard et al. 2002). Further, few professionals found the decision about whether or not to report a child to be straightforward, 63% finding this decision to be difficult or complex. Being a mandated professional did not make the reporting decision any easier. For many, the decision was based on a range of factors which included expectations about the outcome for the child, factors relating to the child's family, such as cultural factors and fear of parental response, and factors associated with the professional's work (Goddard et al. 2002).

## **Mandatory Reporting of Sexually Transmitted Diseases and Child Sexual Abuse**

The West Australian Coroner presiding over the inquiry into the death of Susan Taylor stated that:

‘in my view in every case where a young person has been infected with a sexually transmitted disease there should be mandatory reporting by medical practitioners and other health workers to the Department of Community Development and the Police Service and statistics should be maintained as to the outcome of any investigations’.

This comment was made following disturbing evidence presented at the Coroner’s Inquiry by Dr Sandra Thompson, Medical Co-ordinator of the Sexual Health Centre of the Western Australia Department of Health.

Her evidence, and a background paper that was submitted to the Inquiry by the Sexual Health Centre (SHC unpublished), offers detailed insight into the WA guidelines for the reporting of Sexually Transmitted Infections (STI) in young people. It states that ‘at present health care professionals are not mandated to report signs or suspicions of child abuse to child protection authorities’ (SHC unpublished). It also states that the Department of Health has a set of Guidelines for the Management of STI’s including a section on appropriate actions when a child is diagnosed with an STI. It states that

‘based upon reasonable suspicion, Health Care Professionals (HCP) should report cases to the Department of Community Development for investigation and action as necessary’, however, there is no legal obligation for a health care professional to do so (SHC unpublished).

Unlike some other countries, such as the United States, which has had legislation for the mandatory reporting of sexually transmitted infections in minors across every state for more than 30 years (Baker 1978), Australia has no legal requirement to report STIs. However, the mandatory requirement of medical practitioners to report child abuse and neglect in every state except WA, does provide a ‘fallback’ position for the protection of children with STI’s in these states. This fallback position, of course, relies on the assumption that medical practitioners will make the connection between sexual assault and STI’s in minors. Thus, by not having mandatory reporting of child abuse and neglect, there is a greater risk in WA that those children who have been sexually assaulted and have contracted a STI, may remain unprotected.

The ‘Sexual Health Centre Background Paper’ does offer some arguments in favour of mandatory reporting of STIs. These include the fact that it would send a clear message that the state does not condone child sexual abuse, and more cases of abuse would be uncovered and interventions made to protect children. However, more detailed discussion in the Paper is directed towards the reasons against introducing mandatory reporting of STIs. These reasons include the fact that ‘there are other physical and/or medical presentations which may also signal sexual abuse, including pregnancy in a

minor . . . as both live births and terminations of pregnancy in children under the age of 16 are indicators of carnal knowledge and potential sexual abuse' (SHC unpublished).

The Background paper also warns, that 'we would not want legislation that discourages individuals from being tested for an STI. This would seem to be a risk with linking STI diagnosis with mandatory reporting' (SHC unpublished). It also suggests that the introduction of mandatory reporting would undermine current practices where, if a child who presents to a health care professional is considered mature enough to accept or decline treatment, they may do so without fear of the matter being taken further. At present a Health Care Professional must seek the child's consent before disclosing abuse or suspected abuse to a third party, which may be the police, or the Department of Community Development. The Paper also raises the issue that 'if reporting were to be mandated up to a certain age, an appropriate age for the use of discretion by the medical practitioner would need to be determined. At what age should the presence of an STI prompt a suspicion of sexual abuse?' (SHC unpublished).

Finally, some concern is expressed regarding the introduction of mandatory reporting in WA, based on the experiences of other states, where 'mandatory reporting (not just upon diagnosis of an STI) leads to an increased concentration on forensic aspects of case work which alienates the reporting professionals and the child's family, reducing trust and engagement with services' (see above).

Overall, it is clear that a number of issues would need to be resolved prior to the introduction of mandatory reporting, however in the opinion of the authors of this brief, these do not provide a compelling case for not reporting. It is important to remember that in such situations where a child is being abused, a criminal offence is being committed, from which a child has the right to be protected. All adults, whether they are mandated to report or not, have a moral obligation to ensure that the most vulnerable members of our society who have been subject to violence, are given the assistance and protection they deserve. The introduction of mandatory reporting of STI legislation would send this message to the community and provide better information on the scope and nature of the children's sexual contact and sexual assault in West Australian communities.

## **The mandatory reporting of Sexually Transmitted Diseases and its effect on Aboriginal Communities**

The 'Sexual Health Centre Background' paper states that the rates of STI are high across all Aboriginal age groups, including minors. At the Coroners Inquiry into the death of Susan Taylor it was suggested by Dr Thompson that the gonorrhoea rate in 10-14 year olds is a rate approximately 186:1 for Aboriginal to Non-Aboriginal notifications (Hope 2001). She also stated that the rates of Chlamydia in the same age group is 124:1 (Hope 2001). Submissions to the Fitzgerald Inquiry (2001) stated that 'girls as young as seven or eight are now being diagnosed with sexually transmitted diseases' (2001: 20).

It is therefore suggested that the impact of introducing mandatory reporting of STI's 'will impact proportionately more heavily on Aboriginal Communities. The higher rate

of STI in Aboriginal minors is an indication that sexual activity - consensual and non-consensual - is more frequent in young Aboriginal people in some communities' (Sexual Health Centre unpublished). Given the high rates of STI's in Aboriginal Communities, the introduction of mandatory reporting of STI's has the potential to benefit Aboriginal children in particular.

However the Centre also warns that 'if reporting of STI in children were to be made mandatory, professionals currently aware of abuse and likely to begin reporting would be those in culturally and/or geographically remote areas where a nurse or Aboriginal Health Worker is the primary health provider' (SHC unpublished). It suggests that this would be problematic as 'those professionals in remote areas may find that although they report suspected abuse, the services are not in place to investigate and protect the child. In addition, health care professionals in remote communities themselves may be ostracised and/or endangered' (SHC unpublished).

While the failure to have an effective professional support system in place is cause for concern, and may lead to negative outcomes for the children, families and professionals involved, detailed consideration is required before a decision is taken to oppose the introduction of mandatory STI reporting. The failure to introduce mandatory reporting may send the community the message that government is not concerned with the high rate of sexual abuse and STI's. Further, consideration needs to be given to the harms that may be caused by the failure to report, in conjunction with a failure to take action, or to work to provide sex education or to prevent sexual assault. Mandatory reporting would highlight the nature and size of the problem (especially in Aboriginal communities) and may be a vehicle to increase funding for support and investigative services in these areas, rather than merely sending services into crisis.



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## **Best practice in Government agency responses to sexual abuse of Aboriginal children and solutions to Aboriginal family violence**

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### **Introduction**

This section explores potential solutions and best practice principles for governments attempting to address the issue of family violence in Indigenous communities, particularly child sexual abuse. There is no panacea for the problems of family violence, but there are clear themes evident in the available literature produced by Australian and overseas Indigenous commentators and practitioners.

If interventions are to be effective, a number of factors need to be recognised. Firstly, effective solutions will require a 'sea-change' in government policies and practices. Given the current failure to effectively address family violence in Aboriginal communities, there appears to be a need for a philosophical change across the whole of government: specifically, a stronger commitment to addressing Indigenous violence, a preparedness to devolve power and decision-making to the Indigenous community, and a willingness to adequately resource interventions over time. For this to work, there needs to be Indigenous community participation and ownership - Aboriginal people need to take responsibility for their communities and attempts to prevent family violence. Secondly, prevention and intervention initiatives need to be systematic and multi-faceted. As noted above, there are many factors that can contribute to the perpetration of violence. These interact in highly complex ways, and will not be amenable to simple, single-focus, short-term interventions.

This section explores some of these issues in greater detail. The setting or context for best practice in general, is reviewed. Unfortunately there has proven to be a number of major hurdles to effective practice within Indigenous communities. Some of these are identified and discussed. Broad best practice principles for intervention within the Indigenous community have been identified in the literature. These are outlined, followed by a range of more specific solutions and a review of some of the programs currently in place.

### **The context of best practice - learning from the wider professional sector**

#### **Adopting an ecological approach**

Tomison and Wise (1999: 2-3) provide a good overview of current understanding of the setting and directions of best practice for prevention and intervention in the field of child abuse. They draw attention to the importance of the environment within which effective intervention should take place, as well as the need for a multi-layered

approach. These factors are of particular relevance to best practice approaches in relation to family violence within Aboriginal communities.

Current theories of the causes (or etiology) of child abuse draw heavily on Urie Bronfenbrenner's ecological theory of human development (Bronfenbrenner & Mahoney 1975, Bronfenbrenner 1979). Underpinning the various theories is recognition of the complex, multidimensional nature of child abuse and neglect (Garbarino 1977, Belsky 1980, National Research Council 1993).

Belsky's (1980) model of the etiology of child maltreatment integrates a number of diverse single factor approaches, including psychological disturbance in parents, abuse-eliciting characteristics of children, dysfunctional patterns of family interaction, stress-inducing social forces, and abuse-promoting cultural values. He offers a conceptualisation of child maltreatment as a 'social-psychological phenomenon' where abuse is determined by the mutual influences of the individual child or parent, family, local community, and the wider culture or society.

The central theme of Belsky's multi-level modelling approach is the *interaction* of protective and risk factors. That is, the overall likelihood of child abuse results from the combination and interaction of complex constellations of factors, some enhancing and some minimising the potential for abuse, whose influence may increase or decrease over different developmental and historical periods (Holden, Willis & Corcoran 1992, National Research Council 1993).

#### *Implications for prevention and intervention*

Until recently, most child abuse prevention strategies have focused on addressing child, parent and family-related factors that are associated with a greater propensity for child abuse, with scant attention paid to the societal and community factors that cause harm to children, or that impact on the lives of children and families (Hay & Jones 1994, Korbin & Coulton 1996, Reppucci, Woolard & Fried 1999).

As referred to earlier, the US psychologist James Garbarino (1995) has argued that there is currently a toxicity of some social environments similar to the toxicity of some physical environments, and that aspects of the contemporary social environment, wider society, local communities and neighbourhoods, are particularly harmful for children. Garbarino identified a series of toxic factors including violence in all its forms, poverty, unemployment, poor housing and an under-resourced education system, that may be presumed to lead to an increased potential for abusive or neglectful behaviour in families, or higher incidences of other social ills. He asserted that the management of socially toxic environments should be analogous to the management of the physically toxic environment – requiring a similar, if not greater, level of perceived urgency by the public.

To be truly effective, consideration must therefore be given to the means to remedy the socially toxic factors that underpin child abuse and other family violence via the adoption of community or neighbourhood and society-wide approaches (Parton 1985, Seagull 1987, Limber & Hashima 1992, Harrington & Dubowitz 1993, Rayner 1994, Thompson 1995, Cox 1997). Greater recognition that 'programs focused solely on the individual seem destined to failure if they do not take into account community context,'

(Reppucci et al. 1999: 411) has led to the perception that child abuse cannot be overcome through 'administrative, legal, technical and professional measures which leave social values, structures and dynamics unchanged' (Gil 1979: 1). Concomitantly, there has been a move to develop multi-level prevention and intervention efforts that typically maintain an individual or family-level component, but which also address the socio-cultural context within which children and families live (Cox 1997, Reppucci et al. 1999).

This understanding is of particular relevance to the Indigenous community, where as discussed earlier, significance is given to the broader psycho-social context in understanding the cause of family violence in general and child abuse in particular. Thus, concomitantly, best practice intervention must address these broader issues if effective solutions are to be reached.

## **Risk and Resiliency**

Researchers investigating the risk factors that may heighten children's vulnerability to various social ills, such as child abuse and neglect, have consistently identified some children who are able to achieve positive outcomes in the face of adversity – children who are 'resilient' despite facing stressful, high risk situations (Kirby & Fraser 1997).

Resilience appears to be determined by the presence of risk factors in combination or interaction with the positive forces (protective factors) that contribute to adaptive outcomes (Garmezy 1985, 1993). The interaction of risk and protective factors occurs at each stage of child development and within each ecological level (that is, it is affected by a child or parent's internal characteristics, aspects of the family, and of the wider social environment) (Kirby & Fraser 1997). A number of studies, particularly those by Werner (Werner & Smith 1989, Werner 1989, 1993, Rutter 1987, Garmezy 1985, 1993), have led to further investigation of the interaction of risk factors and the buffering, or protective factors, that may protect a child from risks and enhance resilience (Bowes & Hayes 1999). However, research is still required to determine precisely the ways in which interactions between risk and protective factors may influence child outcomes (Kaufman & Zigler 1992).

Three types of resiliency have been identified and described. First, *overcoming the odds*, where positive outcomes are attained, despite high risk status; for example, an infant born pre-term is considered to be at high risk because of an association with poor health outcomes but may achieve good health outcomes. Second, *sustained competence under stress*, where, in environments where stress and conflict is high, children display an ability to cope well. Third, *recovery from trauma*, where children function well after experiencing severe trauma – for example, war, severe violence or a natural disaster (Kirby & Fraser 1997).

It is important to note that just as risk factors may be unique to particular populations, resiliency is also culturally determined. Behaviour considered adaptive and normative in one culture may not be perceived in the same way in other cultures. A second potential source of variation in childhood resilience is associated with the nature of children's developmental processes. That is, children respond differently to risk over time, with vulnerability or resilience shifting as a function of 'developmental or maturational changes' (Kirby & Fraser 1997: 15).



Garmezy (1985) identified three main types or constellations of protective factors which contribute to the level of resilience or positive outcomes that are achieved.

*Dispositional attributes of the child* – the personal characteristics or skills that may foster resilience, such as rapid responsivity to danger, precocious maturity, the use of relationships for survival, the conviction of being loved, and a sense of optimism (Mrazek & Mrazek 1987, McQuaide & Ehrenreich 1997).

*Positive family relationships* – resilience is associated with, among other factors, high levels of parental monitoring and high levels of support from at least one parent, a history of good parenting, effective interpersonal communication between family members, and low socio-environmental stress (Herrenkohl et al. 1994, Fantuzzo & Atkins 1995, McCubbin et al. 1998, Resnick et al. 1996, Pharris et al. 1997).

*External social supports from the community* – good social and cultural supports, a strong religious affiliation, few stressful life events, positive life expectations, and ongoing opportunities for positive connections from families, schools, and communities are protective factors associated with more positive developmental outcomes (Langeland & Dijkstra 1995, Benard 1993, Vinson et al. 1996 Pharris et al. 1997).

These findings reinforce the importance of the socio-cultural context of the child's situation and the ecological nature of child development, vulnerability and resilience.

*Implications for prevention and intervention*

In order to intervene in child abuse more effectively, strategies are required that focus on both reducing risk factors and strengthening protective factors that foster resiliency. As Cox (1997: 253) notes: '(T)ruly ecological approaches that are developmentally attuned demand concurrent programs that work on protective as well as risk factors and that reflect and impact on processes working within and across various domains of the child's world.' Thus, in relation to Indigenous children, it will be important to foster resilience by drawing on family and community cultural strengths to assist the child and his or her family to overcome risk factors.

## **Barriers to best practice within the Indigenous community**

A number of barriers to reducing the level of violence in Aboriginal communities have been identified, some of which are discussed below. While there is some commonality between the barriers to solutions to child abuse within the non-Indigenous community, most of the outlined barriers are particular to Indigenous communities, often arising from, and entwined with, the causal factors of family violence.

### **On-going paternalism in government policy**

It is generally recognised that past government policies were often misguided and paternalistic, being designed to 'protect' or 'assimilate' Indigenous people (Robertson

2000). The impact of these policies was that they 'damaged or destroyed social systems integral to the healthy functioning of their (Indigenous) society' (Robertson 2000: 109). A major barrier to the solution to family violence relates to the fact that Indigenous child welfare policy is still based on the premise that the government should decide what is best for Indigenous people (Sweeney 1995). While many programs implemented by government are well-intentioned, they are not working because they are developed and implemented from a Western paradigm (Robertson 2000). Insufficient input from Indigenous people has led to political and social vulnerability, powerlessness and bureaucratic processes governing their lives.

The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report states that 'Indigenous people can no longer live under a system that defies and inhibits autonomy and self-determination' (Robertson 2000: xi). The report gives a clear message: 'Indigenous Communities must be afforded the opportunity to be the architects of their own solutions ...so that they can be active participants in initiatives that affect their lives, and not silent recipients' (Robinson 2000: 195). The 'time is overdue for politicians and service providers to hear and acknowledge the voices of Indigenous people' (Robertson 2000: 111).

### **Inadequate services**

Review of the literature on services for the Indigenous community leads the authors to draw a number of conclusions. In brief, it was difficult to find out just what services to address family violence are available for Indigenous communities, due to the apparent scarcity of programs tailored specifically for the Indigenous community, and the short-term and uncoordinated nature of the programs.

The findings from a recent national audit of Australian child abuse prevention programs (Tomison & Poole 2000) confirms the low number of family violence prevention programs for Indigenous people. In the Audit it was found that only 16% of over 1800 identified Australian child abuse prevention programs were reported to be targeting Aboriginal and Torres Strait Islander people. However, more detailed analysis revealed that only one quarter of these programs (i.e. 4% of the 1800 programs) had been specifically developed or tailored for Indigenous people - the majority of programs were actually generalist programs servicing a range of clients. Tomison and Poole note that given that Indigenous people 'often prefer to attend services offering culturally relevant programs, staffed and managed by their own communities', the failure to adapt or develop services for Indigenous needs is a significant problem (Tomison & Poole 2000: 86).

Much of the literature that is available relates to Aboriginal issues and programs in Queensland. The Fitzgerald report (2001) documents the fact that there are few services in the Cape York communities that can address violence and substance abuse; provide programs for perpetrators; or provide trauma and grief counselling. Again he confirms that those services that are available are based on service models that are not accessible or relevant to Indigenous people in Cape York. Again addressing North Queensland issues, Ketchell and Sweetman (2001: 9) note that 'the money set aside to combat Aboriginal domestic violence across the entire community this year would not be enough to build two women's shelters'. Exacerbating the problem, Ketchell and

Sweetman report that two key services for victims of domestic violence in North Queensland Aboriginal communities closed in the three months prior to the article's publication (1/7/02). One of these programs which was administered by Apunipima Cape York Health Council and serviced the entire Cape York region, was closed when the \$553,000 three year funding ran out.

The latter issue leads to the second group of problems which can be summarised as the 'ad hoc' nature of many the programs. Commentators commonly express concerns about the short-term nature of funding. Funding duration is usually for a maximum of three years under state and federal government grants, with no commitment for a continuation of funding. Programs, having 'arisen out of desperation', may be provided on a voluntary basis or funded through non-recurrent grants or pilot initiatives (Fitzgerald 2001: 20). Thus, by the time programs are established, have developed effective links with the community and community organisations, often only 18 months may remain in which to actually offer services, prior to service closure (Cripps, personal communication). One example of this is the service, 'Healing Our Families: Apunipima Family Violence Advocacy Project', which closed due to a lack of funding (Cripps, personal communication).

Funding concerns also relate to the complexity of the funding arrangements associated with programs, many of which have developed through 'ad hoc allocations of Commonwealth and State funds' (Fitzgerald 2001: 31). Fitzgerald explains that 'current funding arrangements are complex, highly fragmented, and may in some cases cause competing and conflicting priorities' (2001: 31). There is little coordination between funding sources that include Commonwealth and State grants and subsidies, and sources of revenue generated by the communities. A 'silo mentality' is often present which restricts the cooperation between agencies and collaborative work (Fitzgerald 2001).

Robertson describes this problem as the 'confused and contradictory legislative responsibilities' that is further complicated by the three levels of government, and a 'serious lack of inter-governmental collaboration and cooperation which has led to duplication of services and wastage of money' (Robertson 2000: 109). For example, in Queensland there was an annual changing of priorities of funding in the 1980s which meant that there was no sustainable development in Indigenous communities (Robertson 2000).

Indeed, both Fitzgerald and Robertson argue that the lack of an accepted, sustainable service system directly contributes to an increase in the community's problems and exacerbates the likelihood, and levels, of violence.

### **The need for responses to the problems rather than repeated Inquiries**

Allied to the need for effective services (above) is a perception that there is a need to shift attention and resources away from re-assessments of the problems within Aboriginal communities, moving them towards a focus on actual service development 'on the ground'. An ATSIC (Aboriginal & Torres Strait Islander Council) Media Release in February 2002 said that 'there have been far too many Government reports on Aboriginal Affairs which have been written and simply allowed to gather dust in a

filing cabinet. Talk is cheap. It is time for action and we are calling on the State and Federal Governments to respond with enough financial resources to ensure we can adequately tackle domestic violence in our communities' (ATSIC 2000).

This view is held by other Indigenous commentators. Robertson (2002) points out that Indigenous family violence was recognised as a top priority last year during the media debate surrounding Geoff Clark (ATSIC Commissioner) and family violence. However, as yet nothing has happened on the ground to address that violence. Fitzgerald states that while 'communication between outsiders, including public officials, and the people in the communities is impeded by lack of interest, cultural barriers and justifiable resentment', it is also being hampered by the constant outside research and debate about Indigenous lives 'without any noticeable improvement in their circumstances' (2001: 52).

### **Mistrust of the present system**

A number of issues have been identified in the literature as barriers to the effectiveness of the programs to address family violence. Sometimes there is a mistrust and a lack of confidence in the services which are provided, leading to a failure to use the services.

Such feelings are exacerbated when services have been provided, but where they fail to take effective action. For example, the Robertson report notes that there was 'an alarming number of cases where there was a clear breach of legislative responsibilities on the part of both Queensland Police and the Department of Families, Youth and Community Care' (Robertson 2000: 185).

With particular reference to the sexual abuse of children in Indigenous communities, Greer (1992) draws attention to the following issues which present as obstacles to intervention in relation to sexual assault:

- Previous experience with authority leads some communities to keep child and adult sexual assault under wraps;
- Given past poor relationships with the police, reporting may be viewed as a betrayal;
- Even when a report is made there may be a feeling that nothing will be done anyway; and,
- Concern about the criminal justice system and the possible imprisonment of offenders.

Fitzgerald (2001) also writes that Indigenous women often do not use support services for fear of what will happen to the perpetrator in custody and are more likely to use refuges as respite and then return to the violent partner. This problem is compounded by a number of issues:

- a lack of information about the legal process and an unwillingness to seek legal advice (Fitzgerald 2001);
- in remote communities women may not have access to transport or telecommunications, thus making it very difficult to leave a violent relationship (Fitzgerald 2001); and,

- the fear of their partner dying in jail is a justifiable fear of women particularly in communities in Cape York, parts of Northern Territory and Western Australia, particularly where tribal law is still practiced and respected. Apart from the trauma caused by the death, such a death in custody would be viewed as being the woman's fault and she would be subject to payback from his family which may result in her death or a significant injury (Fitzgerald 2001, O'Donoghue 2001).

Blagg (2000b) identifies a problem for Aboriginal women in relation to the difficulty they have in translating their requirements into the language demanded by government agencies. Rather than government involvement, here the solution may be to support the community infrastructure, such as Aboriginal women's groups, by giving them the resources (and professional support) to address the community problems (Blagg 2000b, reporting the Aboriginal Women's Task Force and the Aboriginal Justice Council 1995).

Finally, the Aboriginal Women's Task Force and the Aboriginal Justice Council (1995) noted problems in relation to policing and justice systems and the ability to protect women on remote communities. They identified a lack of police services, racist attitudes of some police, the failure of the police to respond rapidly and appropriately and the inability of all aspects of the criminal justice system to deal with family violence in a culturally sensitive manner.

Thus, in circumstances where there is no response or a very limited or poor quality intervention by services, or where Indigenous people do not have the skills and/or means to handle often complex service systems, people are left to cope with violence unassisted. Such responses have increased the mistrust of governments and services providers by the Indigenous community, thereby making these services even less available.

### **Worker trauma**

Given the extent of family violence in Indigenous communities, it is likely that child protection workers and other service providers are experiencing trauma from their work (Stanley & Goddard 2002). Recently published research has shown that traumatised workers who also feel isolated in their work have a reduced ability to protect children who have been severely abused, from further abuse (Stanley & Goddard 2002).

Cripps (personal communication) reports that this is a particular problem in Indigenous communities as the workers are often in great danger as they live and work in the same community. Workers also have to contend with the fact that an offender may be a member of their own family or a community Elder and there may be conflicts of interest and confidentiality to resolve before any intervention or support can be undertaken.

Further, many workers are severely overworked and suffer from burnout, thus making them less able to cope with other forms of stress (Stanley & Goddard 2002). Memmott and colleagues (2001) identify both a personal safety risk in relation to violence intervention workers and the problem of stress and burnout. For some time a number of Aboriginal workers have also been requesting further professional training and support from government services. Unfortunately, this request has not always been responded to (Tomison, personal communication).

## **Conflict between the welfare of the Indigenous child and the welfare of the Indigenous community**

A major issue in child protection (and one that is commonly overlooked) is the philosophical conflict between family preservation and child protection. Preserving the family and protecting the child may be incompatible aims in some cases of child abuse (Goddard 1996). It would seem that this problem is magnified in the situation of Indigenous children, where there is an additional overlay of complexity associated with the clash of two cultures – Indigenous and non-Indigenous. That is, there can be a conflict between protecting Aboriginal children from abuse and allowing the Indigenous community cultural independence and self-determination. Thus, there may be conflict between ‘the best interests of the community’ and ‘the best interests of the child’ (Lynch 2001: 506).

This conflict is addressed by Lynch (2001), who describes the problem in relation to Australian Aboriginals and Canadian First Nation Peoples, and makes some suggestions as to how the issue should be viewed. Lynch argues that the 'best interests of the child' principle is recognised in the United Nations Convention on the Rights of the Child, interpreted in a landmark case, *King v Low*, in Canada.

Lynch notes that ‘the dominant consideration to which all other factors must remain subordinate must be the welfare of the child’ (2001: 507). Yet to understand the best interests of an Indigenous child necessitates an exploration of the ‘fundamental links between culture and identity and the concomitant importance of family and community to the meaningful existence and survival of First Nations and Aboriginal children’ (Lynch 2001: 508, 509).

The dominant court system individualises people, abstracting them from their family, cultural and racial contexts, in contrast to viewing children as part of a community identity - a perspective held in Indigenous culture. Thus conflict may arise as:

- in both First Nations and Aboriginal communities, responsibility for child welfare and nurturing often resides with an extended family or kinship network and the community as a whole;
- mainstream law entails the notion of stability of residence, whereas Aboriginal communities may have a practice of mobility of children between responsible adults;
- there is also a risk that in considering Aboriginal and First Nation culture, it will be ‘frozen’ and conceived in static terms relating to the origin of the cultures, traditions, norms and customs, rather than as a dynamic and fluid culture; and,
- there is a problem that the law will ‘construct’ the culture by the law shaping and defining it.

Thus, there is a risk that much ‘contemporary child welfare law and practice is aimed at ‘normafication’ - assimilation in a veiled guise as the values of the dominant group are imposed on First Nations and Aboriginal peoples’ (Lynch 2001: 523).

Lynch believes that the Indigenous child's need for safety and security should generally override concerns for the preservation of cultural links, affiliation and identity.

'Relationships that damage the integrity of a child cannot be justified by a child's identity interests: membership in a community, or involvement in identity-related practices or beliefs, does not eliminate a concern for the dignity of the child' (Lynch 2001: 523).

However, once a child has been removed, the child must be placed back with the family as soon as possible without lowering the minimum level of protection and care for the child.

According to Lynch, assessing the best interests of Indigenous children and their communities involves:

1. *Consideration of the best interests of a First Nations or Aboriginal child in his or her community and culture and the rights and interests of the community.*

He notes that recent legislative amendments in both Australia and Canada go some way towards satisfying this. However, Lynch argues that these changes (in Australia and some Canadian states) do not go far enough and should go beyond the 'consideration' of how 'Indigenality' may be relevant to a custody, placement or care determination. 'Indigenality' should be considered peremptory or presumptive and should include (as with the Canadian states of Alberta and Quebec) not only the rights and interests of a First Nations or Aboriginal child in his or her community, but also the rights and interests of a First Nations or Aboriginal community in its children. US legislation in relation to Indian child welfare, requires that 'meaningful recognition and application of the rights and interests of an Indian child in his or her community, and vice versa' (Lynch 2001: 537). Thus, usually the First Nations or Aboriginal community itself will be best positioned to determine whether a child has been neglected. Placement of a First Nations or Aboriginal child should take place only on the advice, recommendation and instruction of that child's Indigenous community.

2. *Sensitivity to customary traditions, laws and practices*

Education of decision-makers is needed. In addition, where Indigenous communities are involved, they need to be funded and equipped to properly attract, assess and train alternative First Nations or Aboriginal carers (Lynch 2001). Lynch quotes Kline (1992: 216) who says Indigenous communities must 'be empowered, financially, politically, and otherwise, to develop their own child welfare services outside the framework of existing ...schemes'.

3. *Application of the Indigenous Child Placement Principle and consideration of long-term interests in permanency planning.*

4. *Addressing underlying causes of child maltreatment in Indigenous communities, including the broader social, economic, political, historical and cultural issues.*

A major risk associated with the failure to recognise and resolve policy and principles in relation to the potential conflict between the wellbeing of the child and the right to

Indigenous self-determination is that the child will not receive adequate protection to ensure his or her safety. There is some evidence that this may be happening. The legacy of past mistakes by child protection services appear to be sometimes leading to a present fear of child protection staff/departments to take action to intervene when a child is at risk of harm. There appears to be a fear of the community's reactions and confusion about what action (or inaction) is in the best interests of Indigenous children.

This conclusion is supported by a recent statewide review of out-of-home care services for Aboriginal children and young people in Victoria (Practice Leadership Unit 2000) (and highlighted in a number of media articles). The review identified a practice of minimisation of statutory involvements by Department of Human Services Protective Services in cases where intervention was/is required to avoid significant harm to Aboriginal children. Muriel Cadd from SNAICC (Secretariat of National Aboriginal Islander Child Care) reports that little intervention is being taken at present in the Northern Territory in relation to the neglect of Indigenous children (personal communication, 2002). It is likely that this issue is playing a role in relation to intervention of child protection services in relation to the sexual abuse of Indigenous children.

Sutton (2001: 141) also expresses the view that in Australia at present there is evidence of the conflict between child welfare and Indigenous rights to self-determination. He states that 'more neglect is tolerated for some Australian children than for others, notably Aboriginal children in the more isolated settlements'. Sutton (2001: 141) states that in a community 'enjoying "self-determination" he observed a young woman in advanced pregnancy staggering along a road with a can of petrol to her face'.

## **Recommended solutions**

The literature proposes a number of solutions to the high levels of family violence and the disproportionate number of Indigenous children who are involved with child protection services. The solutions range from a complete re-writing of the model of child protection used with Indigenous communities, to specific suggestions about best practice intervention. The underlying theme throughout the literature is the need for greater involvement and ownership by Indigenous community members of child protection/anti-violence policy, program design and implementation. The only variation across the literature relates to the extent of the involvement.

### **Arguments for a radical policy change in relation to the provision of child protection services within the Indigenous community**

Many commentators argue for radical change in relation to the provision of child protection services within the Indigenous community, the extent and nature of this change varying between them.

Cunneen and Libesman (2000) point out that 'The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families' found that not one submission from an Indigenous organisation saw the current interventions from child welfare departments to be an effective response to their child



protection needs. The model of operation of child protection services, based on 'individualising' and 'pathologising' a particular family, is culturally suited to white Australian culture, not Indigenous culture (Cunneen & Libesman 2000: 105).

Litwin (1997) acknowledges that the NSW Department of Community Services has taken measures directed at advancing self-determination, empowerment and acknowledging Indigenous culture. These steps include recruiting Indigenous field officers and policy advisers, funding Indigenous organisations, and including the Child Placement Principle (see below) within the child protection legislation (Litwin 1997). However, attempts to adjust programs to Indigenous culture tend to be largely tokenistic (Cunneen & Libesman 2000). For example, although an Indigenous departmental officer may be employed, there are still interventions from other non-Indigenous professionals and organisations, and key decision-making still remains with non-Indigenous officials. The over-representation of Indigenous children in the care system can be taken as a demonstration that these policies are not leading to successful outcomes (Litwin 1997).

Litwin (1997) notes the paradox of child welfare bureaucracies providing a service to Indigenous people when, as she states, the Welfare Department contributed to the need for these services in the first place. She points out that Indigenous communities do not have a tradition of active involvement in child welfare policy, their response, based on past history, being one of suspicion and resistance. Thus the administration of the self-determination policy has required an ever-increasing level of government intervention. Indeed, even the attempt to make child welfare bureaucracies more attuned to Indigenous needs will be swamped by non-Indigenous culture and processes. Not only is it unrealistic to believe that the few Indigenous employees will be able to positively influence departmental policy and practice, but these workers are faced with the conflict that they are working within a child welfare system which '...has been implicated in the ongoing generation of profound social and cultural trauma for indigenous Australians' (Litwin 1997: 334).

Litwin (1997) states that there has never been an attempt by child welfare to understand the nature of the differences between the Indigenous and non-Indigenous concepts of childcare. The legacy of the past is still overshadowing present intentions in relation to Indigenous policy (Sweeney 1995). Litwin (1997) points out that there is not a precise definition of 'self-determination' and what this means in practice, such as how it is to be negotiated, the constraints which may limit autonomy and how competing interests can be resolved. She argues that the power imbalance between the Indigenous community and welfare bureaucracies is 'overwhelming'. Without these major issues being addressed, and a determination of where the Indigenous culture is expected to fit in with the bureaucratic child welfare culture, 'institutionalised racism' will continue (Litwin 1997: 337).

Cunneen and Libesman (2000), and Sweeney (1995), argue for a complete revision of child protection services in relation to Indigenous Australians, while others recommend fairly radical legislative changes. Sweeney (1995) draws on the report, 'Learning from the Past', which was commissioned by the NSW Department of Community Services and prepared by the Gungil Jindibhah Centre at Southern Cross University (the date is not given), which argues for a greater focus in State policies on the concepts of collaboration and empowerment. 'Learning from the Past', recommends that

counselling services and measures to reunify Indigenous families should be undertaken by independent Indigenous organisations, and that the role of the child protection departments should be limited to funding and referral (Sweeney 1995). However, Sweeney believes that the recommendations of the report do not go far enough. He believes that control and responsibility for Indigenous child welfare needs to be passed to the Indigenous community. He doubts whether the child protection system is capable of real change, without this process.

Sweeney (1995) also makes the recommendation that there should be an holistic approach by the government in relation to Indigenous children which coordinates all areas of child welfare, including the services of child protection, adoption, juvenile justice, custody and education. He argues for a broader approach which examines issues such as:

- the need to reduce the number of Indigenous children removed from their families;
- the need to ensure that cultural factors are considered in all decision-making stages;
- the need for children who have been removed from their family to have the maximum possible contact with the community; and,
- the need for communities to have involvement in all post-removal decisions.

The Inquiry ('Bringing them Home') recommends that new legislation be enacted, based on self-determination by Indigenous people, where far greater control over matters affecting young people is given to the Indigenous community (Cunneen & Libesman 2000). Cunneen and Libesman (2000) report that it was recommended by the Inquiry that the Federal government establish negotiations to allow Indigenous people to formulate and negotiate an agreement, leading to legislation, on measures best suited to their needs. The Inquiry also recommended that legislation set out minimum standards as a basis for future developments in relation to Indigenous children. However, such legislative and policy change is a state responsibility, and according to Cunneen and Libesman (2000), there has also been no indication that State/Territory governments will move towards law reform in order to transfer power to Indigenous communities. The authors of this brief also draw attention to the issue that it is likely that there will be considerable difficulties associated with locating (or developing) an Indigenous agency to undertake the task of protection.

### **Alternatives for Indigenous offenders to the present criminal justice system**

With regard to domestic violence, Blagg (2000b) states that Aboriginal and Torres Strait Islander communities have a clear preference for change strategies that do not require the violent offender to leave the family. He recommends that, wherever possible, intervention should aim to divert Aboriginal offenders from unnecessary contact with the justice system. Emphasis should be given to developing ways to achieve family and community healing. Talking largely about domestic violence, he says that 'interventions should:

- be delivered by Aboriginal people and organisations;
- offer culturally relevant support services;
- respect cultural and family obligations and ties; and,
- assist Aboriginal people in determining longer term solutions' (Blagg 2000b: 1).

Robertson (2000) draws attention to the importance of providing funding for community groups to develop, trial and assess programs which could be alternatives to sentencing options for lesser offences. It is noted that this has been done in Australia - referring to the work of Blagg in WA, a men's group in Mt Isa, work done for men on Palm Island, and in Brisbane (Robertson 2000). It would appear that the ability to offer an alternative to the criminal justice system, such as a system which returns to traditional Indigenous laws, would address issues around a failure to acknowledge violence due to issues of shame and the loss of confidence in present government agencies and processes.

Aboriginal Magistrate Pat O'Shane has reiterated comments made in Atkinson's 1990 book 'Finding the Dream' that prison is not that answer in domestic violence situations. O'Shane suggests that 'men who abuse and batter women should be made to go on courses to learn how to manage their lives and respect others' (Anonymous 2001 25<sup>th</sup> July: 2). She said 'courts should promote a healthy, happy community by making offenders go through programs to help them build self respect and repair their lives and relationships' (Anonymous 2001 25<sup>th</sup> July: 2). She continued by stating that prisons are a breeding ground for 'violence and misogyny' and they should be considered as a last resort and only for serious or repeat offenders in sentencing (Anonymous 2001 25<sup>th</sup> July: 2).

Fitzgerald (2001) acknowledges that there are a number of emerging models of practice addressing family violence, and that many of these reject the criminalisation of the violence as the sole strategy. He reports that Indigenous communities are currently exploring new approaches to family violence that are based on customary law practices and principles of restorative justice, much information regarding the latter coming from New Zealand. Nicholson (1995) believes that a Federal Act should be created, which is applicable to all States and Territories, which recognises Aboriginal customary law. He goes on to say that 'little or no progress will be made' unless the Federal government is prepared to act.

Indeed, it would appear that WA is making some concessions towards this model. It is reported that Justice Carmel McLure in the WA Supreme Court gave a lighter sentence to an Indigenous man as he had already been subjected to a tribal punishment, spearing in the legs and thighs (Kappelle 2002). A report in The Koori Mail states that the WA government is undertaking a review with the Law Reform Commission of how Aboriginal customary law can operate within the bounds of the mainstream legal system (Moncrieff 2001).

Also of interest is that in WA in 1994, a report on gender bias in the law and administration of the law, was produced (Iorns 1994). A number of key recommendations were made, including the establishment of a permanent committee to monitor how the operation of the courts impact on Aboriginal women, and the establishment of a dispute resolution process, which offers an alternative to litigation for matters of Indigenous family violence. Iorns (1994) notes that unfortunately this report repeats recommendations made in earlier reports which have not been acted upon.

One final alternative to the conventional application of justice may be the use of mediation (Ralph 1997). Mediation, as commonly defined and practiced in an

Aboriginal context, is more like the process of counselling and seen as a process which would strengthen an Aboriginal community (Suave 1996, reported by Ralph 1997). It should be noted, however, that mediation is often rejected by women's organisations in contexts of violence because of power differentials.

## **Service development and delivery**

The literature offers a number of 'best practice' suggestions for intervention into family violence in Indigenous communities. 'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report' states that it is now too late for prevention services (Robertson 2000). In contrast, the authors of this brief suggest that prevention services are a vital part of a total package of responses, rather than being seen as 'either/or' services.

There is a common call in the literature that effective intervention into family violence needs to address both the past traumas and present situational problems and health disadvantages of Indigenous communities. Almost without exception the literature notes the need for inclusion/participation of the local community. The authors draw attention to the guide, 'Working with Indigenous Australians: A Handbook for Psychologists' (Dudgeon, Garvey & Pickett, 2000) which provides some useful information and approaches to working with Aboriginal communities.

## **Service delivery principles and needs**

Commentators provide a range of broad principles as a basis for all service provision in the Indigenous community. Many of these principles relate to themes commonly repeated by the various authors.

Building on the tenets laid down by Sweeney (1995), Blagg (2000b) provides a summary of some of the intervention service models that may be effective in reducing violence. The author believes that the following broad principles need to be considered when planning services:

- participation;
- ownership/self-determination;
- infrastructure (training and education); and,
- support services to support child protection function.

Fitzgerald (2001) identifies four themes which he recommends should guide a reform agenda. These are strengthening of individual family and community capacity, creating safe environments, building sustainable environments, and re-orienting service delivery 'to ensure that services are technically competent, coordinated, integrated, flexible and accessible' (2001: 35).

Blagg (2000b) says that while there is a lot of criticism of existing intervention models into family violence, there is not, in Australia, a lot of fully developed alternative models. Blagg (2000b) notes that the literature supports models of intervention that:

- are tailored to meet the needs of specific localities;
- are based on community development principles of empowerment;
- are linked to initiatives on health, alcohol abuse and similar problems in a holistic manner;
- employ local people where feasible;
- respect traditional law and customs where appropriate;
- employ a multidisciplinary approach;
- focus on partnership between agencies and community groups;
- add value to existing community structures where possible;
- place greater stress on the need to work with men; and,
- place more emphasis on intervention that maintains family relationships and healing.

'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report' emphasises the need for the inter-linking of services to address the multiple forms of violence in the communities, the need to meet the need for healing and the need to be flexible in approach (Robertson 2000). Multi-service delivery centres must be established to provide a coordinated service for alcohol and drug addiction, family violence, sexual assault, grief counselling, advocacy for women, child counselling and support groups for men (Robertson 2000). Aboriginal communities have the notion of 'healing', which describes a dynamic and unfolding process of individual and collective problem-solving.

The report recommends some 'best practice' principles for programs which need to:

- 'build on skills of people at Community levels and promote open Community discussion;
- be based on the belief and practice that any form of violence is unacceptable;
- include protocols and guidelines for service delivery, and for the behaviour of staff;
- establish the safety of victims of violence as a first priority in protocols;
- include trained, skilled workers;
- provide sound, appropriate training for workers;
- network across agencies - coordinate between services and agencies, including police;
- empower people for personal and Community change;
- inform and help people who have been victimised so that they do not remain victims;
- build on a partnership between men and women who are involved in increasing the knowledge and skills of the Community;
- proactively direct crime prevention strategies;
- ensure the appropriate application of domestic violence/sexual assault legislation' (Robertson 2000: 120, 121).

A number of specific suggestions are made by the commentators, including those outlined below.

### *The need for services to address alcohol abuse*

The need for services to address alcohol abuse is often mentioned in the literature. Robertson (2000) notes that in isolated rural and remote areas services to treat alcoholism can only be described as 'inadequate and pitiful' (Robertson 2000: 30). Robertson suggests that the isolation of some Aboriginal communities would assist in the surveillance of the provision of alcohol, making it easier to undertake road checks of vehicles and people entering communities. There should be alcohol awareness programs. Indigenous people should be represented on Health District Service Boards (Robertson 2000).

Fitzgerald (2001) has recommended that the government allow individual communities three years to reduce the levels of alcohol consumption before giving consideration to banning the sale of alcohol in them altogether. Cripps believes that this approach is returning to the days of protection and assimilation in which white people determine who is, or is not, fit to drink in Indigenous communities (personal communication).

### *The need for program evaluation and research*

Another commonly raised recommendation is for the evaluation of programs. 'All services must have built-in evaluation, measurable positive outcomes and accountability' (Robertson 2000: 119). Part of this process is the determination of base line indicators (Fitzgerald 2001). Sutton (2001: 143) reported that of the 130 remedial violence programs in the Indigenous communities in the 1990s (identified by Memmott and colleagues 2001), only six programs had undergone a 'reasonable evaluation that was in a documented form'. This pattern is very much a reflection of the wider professional's community failure to come to grips with program evaluation, although a greater focus on evaluation is beginning to bear fruit (Tomison & Poole 2000).

Robertson says that a good example of an accountable service is SAAP (Supported Assistance Accommodation Program), a service which should be extended to the Aboriginal Communities. Best practice should be developed at a national level to define the principles of service delivery on matters of family violence in Aboriginal and Torres Strait Islander Communities across Australia (Robertson 2000).

It was reported in The Koori Mail that Reconciliation Australia supported public debate on the issue of Indigenous family violence but felt that it was more important for the debate to be centred on the identification of best practice models of Indigenous family violence programs that are already working in Indigenous communities. 'Communities struggling with the issue need guidance on what works and what doesn't. Solutions must be community-driven, and best practice examples of community programs and initiatives would greatly assist' (Anonymous 2002 March 20<sup>th</sup>).

There is also a need for research and theory development on the issues of violence in Indigenous communities in order to achieve greater understanding on the associations between race, gender and age, within a colonial context. 'Without these considerations, poorly researched and prepared programs often create more problems than they solve' (Robertson 2000: 46). While there are many reports which cover the territory of family violence in a broad way, the authors found little specific research on child abuse within Indigenous families, an oversight confirmed by Muriel Cadd (Stanley & Tomison 2001).

Cadd (Chairperson of SNAICC) believes that this gap is present partly because there is no person or organisation in Australia who takes special responsibility for the welfare of Indigenous children. The 'Proposed Plan of Action for the Prevention of Child Abuse and Neglect in Aboriginal Communities' (SNAICC Secretariat National Aboriginal & Islander Child Care 1996) places high priority on the need for more research on child sexual abuse in Aboriginal communities.

More specifically, Sanders & Markie-Dodds believe that the 'Triple P' program, one that is being increasingly used throughout Australia, needs to be evaluated with Indigenous groups, 'whose mental health needs have been largely ignored by psychology as a discipline' (1996: 81). Zubrick and colleagues believe that information on the mental health needs of Aboriginal and Torres Strait Islander populations is 'critically needed' (2000: 573).

#### *Provisions for education and training*

SNAICC (1996) notes that to effectively address the multi-faceted dysfunction/problems plaguing Aboriginal communities, there is a need to develop and support Aboriginal welfare/support services operating within the communities (e.g. Aboriginal Infant Welfare services). They advocate establishing a community-controlled Aboriginal children and family resource centre to gather information, develop training and education resources.

It is important that a strong training program for Indigenous people already working as volunteers or community-based professionals (e.g. in Aboriginal Child Care Agencies) is developed. For example, it is reported that Aboriginal and Torres Strait Island Councils are asked to undertake tasks beyond their capacities in the area of administrative skills (Robertson 2000). In addition, broader leadership skills need to be developed in the community. Robertson recommends that tasks should be spread around more community groups and training in the local government system be provided.

Education on violence prevention and the harms of alcohol and drugs is needed throughout the community and in schools. Education is needed on issues such as general education, health, child development and violence. Post-release perpetrator programs are needed (Robertson 2000).

Training in cultural awareness is needed for non-Indigenous professionals working with Aboriginal communities. Non-Indigenous professionals should be trained by skilled Indigenous facilitators. In addition, more Indigenous workers should be employed in mainstream services and given access to training to increase their skill levels. Debriefing should be available to all workers who may be traumatised by the intensity of their workload (Robertson 2000). Professor Andrew Armitage from Victoria University, Canada, reports the establishment of an Indigenous stream of social work with subjects in Indigenous studies and where reflection on the inter-face between the two cultures is facilitated (personal communication).

#### *The need for the community to take responsibility*

Pearson (2000) reports that the solution is not a matter of blame. 'People are caught in an economic and social system which precipitated this misery. But it is a matter of

responsibility. Our people as individuals must face their responsibility for the state of our society - for respect and upholding our true values and relationships. Our own laws and customs' (2000: 19).

This argument is supported by Ah Kit (2002:15), who notes that 'Aboriginal organisations must bite the bullet and develop innovative strategies to overcome the cancerous ideology of despair.' One measure to take responsibility is a 21-member National Indigenous Working Group on Violence which is presently being convened by the Aboriginal and Torres Strait Islander Commission (ATSIC 2002).

As well as the Indigenous community taking responsibility, there is a need to involve the broader community in regional summits between Aboriginal groups, the government, Community Councils, mining companies and private businesses, to develop strategies and objectives for the social and economic developmental needs of Aboriginal communities (Robertson 2000). The Government should aid small business enterprises in Aboriginal communities (Robertson 2000).

## **Current solutions and programs**

### **The Aboriginal and Torres Strait Islander Child Placement Principle**

Ah Kee and Tilbury (1999) outline the Aboriginal and Torres Strait Islander Child Placement Principle, which has been enacted in most Australian states. The principle sets out the right for Indigenous children to be brought up in their own family. It gives guidance for alternative placements and continuing family contact, and requirements for consultation with Indigenous agencies. In NSW and WA guidelines in child protection services require that Aboriginal children are placed with an Aboriginal family (Ainsworth & Maluccio 1998).

Ah Kee and Tilbury (1999) believe that, despite a concerted effort to try and make the principle work in Queensland over a 15 year period, there has been little real improvement in outcomes for Indigenous children in care. The authors outline the steps which have been taken, such as research, training, the use of Indigenous community workers to work alongside front-line staff and the development of the Child Protection Reform Strategy which has been developed in conjunction with Indigenous agencies. Ah Kee and Tilbury (1999) also outline some of the reasons for the limited progress. The reasons include a lack of constant reinforcement in relation to the Placement Principle, tensions between the child protection department and the Indigenous agencies, the lack of evaluations and particularly, a persistent lack of funding. In Queensland about 10% of alternative care funding goes into Indigenous agencies, whereas 25% of children in alternative care are Indigenous (Ah Kee & Tilbury 1999).

In Victoria, it is reported in a statewide review of out-of-home care services for Aboriginal children and young people that there is still concern about the extent of placement of Aboriginal children with non-Indigenous families (Practice Leadership Unit 2000). The reasons for this relate to the small number of Aboriginal foster carers available, the difficulties child protection workers have in locating family members able to care for Aboriginal children and young people, and to some extent, requests from



parents to have their child/ren placed with non-Indigenous families (Practice Leadership Unit 2000).

Problems such as these add to the difficulties and complexities of protecting Indigenous children. The Department of Human Services, Victoria, has reviewed solutions to some of these difficulties in collaboration with the Victorian Aboriginal Child Care Agency (Jackson 2001). Ideas revolved around modifications to the present system of child protection, such as the use of Indigenous child protection workers to work solely with Indigenous children and their families, the development of reciprocal training and consultation with Indigenous services and better liaison with Indigenous services (Jackson 2001). Funding has been provided to SNAICC (Secretariat of the National Aboriginal and Islander Child Care) to provide an Indigenous support worker for Indigenous children who have contact with child protection services (Cadd, personal communication).

### **Programs currently in operation**

It is very difficult to identify programs which address family violence, let alone understand the success of the program and the 'best practice' issues which can be learnt from the program. This problem has been identified by a number of writers (for example, Memmott et al. 2001, Tomison & Poole 2000). This is partly because of the limited number of programs; the 'ad hoc' nature and the limited life of the programs; as well as the impression gained by the authors that much effective work is being done at the grass-roots and community level but not necessarily being 'officially' recognised. In addition, many programs do not necessarily identify themselves as 'violence prevention programs' as they have the aim of addressing, for example, recreation or health needs, and alcohol prevention services (Memmott et al. 2001).

In 1998, Memmott and colleagues (2001) recorded 131 family violence prevention programs with Indigenous people in Australia, 25 operating in WA. They offered the following categories of services: support; strengthening identity; behavioural change (men and women's groups); night patrols; refuges; justice programs; dispute resolution; education; and composite programs. Information is provided on some of the types of programs, and programs which appear to be successful.

Another publication, the 'Through Young Black Eyes' handbook (SNAICC 2002) provides a very useful Australian-wide list of Indigenous services.

#### *Men's Groups*

A number of men's groups have been formed in the last five years, throughout Australia (Anonymous 2001a January 10<sup>th</sup>). The Yarrabah Men's group in Queensland has had at least 15 men referred to them by the courts under intensive correction orders or probation, none of whom have re-offended. The group aims to teach the men self respect, encouraging them to take responsibility for overcoming violence, as well as having socialisation and learning objectives, such as the art of fishing and hunting (Anonymous 2001a January 10<sup>th</sup>). This group has recently produced a promotional video to send a message of self respect, anti violence, and anti-substance abuse to the community.

Robertson (2000) reports on a Palm Island Men's Group which formed to work in conjunction with the Local Justice Group, the Katana Women's Shelter and Queensland Police. Following 17 suicides on the island the previous year, there was not one suicide after the group was established. Similar joint efforts by men and women have been made at Kowanyama, Yarrabah, Mt Isa and Cherbourg.

#### *Aboriginal Night Patrols*

The first night patrol originated in Tennant Creek, in 1989, and was established by the Julalikari Council. From there the concept has spread and been adopted and adapted to meet the needs of communities throughout NT, WA and in some parts of NSW and Queensland (Memmott 2001: 68). Operating in cooperation with police, the Patrols attempt to address family violence situations and may be an alternative to police intervention (Blagg 2000b).

The majority of Night Patrols use volunteers that include community Elders and leaders who travel around the township to resolve and settle disputes, particularly in areas where alcohol abuse is a major problem (Wright 1997). The night patrols also assist police when required and transport victims of alcohol and/or abuse to hospital (Wright 1997). The sobering-up shelters are used to enable aggressive drunken men to 'cool-off'. A night patrol in Numbud, WA, which has been in operation since 1995, has recently expanded their service to include picking up children from local communities and ensuring they get to school, in an attempt to prevent the extent of drinking and violence by young people (Blagg 1999b: 19).

In 1997-1998, ATSIC spent \$946,000 on the funding of 23 night patrols (MacDonald 1999). However, the situation with at least one of the Night Patrols can demonstrate some of the problems these units face. Warden schemes operating in the Kimberley region of WA were identified as failing to cope with the demands placed on them. Blagg believes this situation may have been resolved if the schemes had been properly resourced, staffed by properly trained people, had the backing of the community and council, supported by outside agencies, achieved a gender balance and reflected tribal groupings (Blagg 2000b).

#### *Education Programs*

Indigenous responses and program initiatives on family violence have, in many cases, been education driven. For example the Awabakal Aboriginal Medical Service, Hunter Health's Aboriginal Health Team and the Hunter Centre for Health Advancement worked in partnership to develop and launch a special education program known as Walkabout Learning. The program aims to build community awareness of the issues of family violence, alcohol and drugs and to support and build the capacity of Indigenous workers to address these issues when working with clients who may be at risk. Practical guide books have been developed, service directories, as well as a interactive touch screen computer kiosk, housed in the waiting room of the Awabakal Aboriginal Medical Service for clients and their families to access (Anonymous 2001 July 11<sup>th</sup>).

Other communities and community organisations are also developing similar educational material to raise awareness of family violence in the community. The

Domestic Violence Advocacy Service located in New South Wales produced a resource booklet for Aboriginal women about domestic violence and the law in New South Wales, entitled 'Our Dream ... Stopping The Violence' (Anonymous 2000 January 12<sup>th</sup>).

Palm Island has an annual domestic violence week and march organised by the Kootana Women's Organisation (Howes 1999). Men, women and children joined together to march for the first time, in 1998. The Kootana Women's Organisation reports that the designated week and the march develop an awareness in the community about family violence. It is reported that the Kootana Women's Organisation also raised funds for emergency accommodation, an idea developed by the local children (Howes 1999: 23).

The National Child Protection Clearinghouse Audit (Tomison & Poole 2000) reports that a number of schemes have been undertaken to provide cross-cultural awareness training for non-Indigenous workers (for example, Deemal-Hall & McDonald 1998; Firebrace 1998). The Audit also reports that Indigenous cultural issues have been incorporated into a variety of programs, such as the Protective behaviour curriculum and training materials. A number of government and non-government agencies have employed Indigenous workers to work with local communities. The example is given of a program developed by 'The Education Centre Against Violence', Parramatta, NSW, which provides training and resources for NSW professionals working with children and adults working with family violence. The Audit also notes that the Centre was developing a course on Aboriginal family violence for Aboriginal family health workers.

In 1999, the 'Education Centre Against Violence' produced, and has since distributed, two videos tackling the 'taboo' subject of child sexual assault, and the equally difficult subject of domestic violence. 'Big Shame' is a story about child sexual assault involving a young girl who is being sexually abused by her grandfather, a well respected Elder in the Aboriginal community. The second video, 'Who's the Loser?', is a story about the impact of family violence on children (Anonymous 1999 November 17<sup>th</sup>).

#### *Family Support*

In June 2001, the Victorian Government announced the launch of an Aboriginal Family Preservation Program which would provide intensive support to help overcome parenting or family problems. The \$224,000 program would help families in crisis by delivering support at home and reunify children already separated from their families. With the support of the Victorian Aboriginal Child Care Agency this program will provide an intensive home based service to families for up to three months, with longer extensions if necessary (Anonymous 2001 June 13<sup>th</sup>).

#### *'Healing Our Families', Apunipima Family Violence Advocacy Project*

The Apunipima Cape York Health Council launched the 'Healing our families: Apunipima Family Violence Advocacy Project', in 1999 (Condie 1999). The project has since closed down as funding ceased in September 2001. The main features of this project included the Council:

- taking on the role of intermediary between Cape York communities and service providers;
- assisting in the development of health promotion strategies;

- working to improve response times to Indigenous women and children who experienced family violence;
- using the existing value systems in a community to develop violence prevention strategies; and,
- ensuring community women are involved in intervention policies targeting families who are repeatedly at risk.

Under the project, women who were victims of family violence received appropriate legal assistance, referral advice, community support, and safe relocation out of a community, if required. Perpetrators of family violence were dealt with by Elders' Justice Advisory groups who made the decision about the appropriate course of action, which, in the case of imprisonment would involve post release support to stop the cycle of violence.

#### *'Tuckandee' - Using Aboriginal Art to teach*

This program, which anecdotal evidence suggests is most successful, uses traditional Indigenous stories and production of paintings to educate the community in issues such as parental responsibility and promoting shared responsibilities for child protection. Part of the program is a travelling art exhibition. The program is run by Aboriginal artist, Tex Skuthorpe and colleague, Anne Morrill (Taylor 2002).

#### *Partnerships Against Domestic Violence Programs*

Six new programs have been funded within the Indigenous community under the 'Partnerships Against Domestic Violence' Programs (Partnerships Against Domestic Violence 2001). The services have a preventative focus as well as a crisis response, and have the aim of addressing violence in the communities.

#### *'Best Start' program*

Lambert and colleagues (1999) note that the program, 'Best Start', which offers early intervention in the form of family support and parent education, appears to have had a positive impact on Aboriginal families and the rate of child abuse. An evaluation of 16 Best Start projects was to commence in 1999.

#### *Stronger Families Fund Projects*

The Federal Government's Stronger Families Fund project has allocated \$20 million over four years to be used with Indigenous families (Stern 2002). The principles underlying these projects were planned at an 'Indigenous Community Capacity Building Roundtable'. It is planned that these programs will use, and build on, community strengths and empower Indigenous leadership (Stern 2002).

A key facet of the government support is provided through the Australian Institute of Family Studies, who have set up a Stronger Families Learning Exchange, specifically designed to provide action research evaluation support to the various funded projects. The first Bulletin of the Learning Exchange, (Anonymous 2002) describes a program that has begun operation in Derby, WA. Commenced in 1994, and established by the Jalaris Aboriginal Corporation, this service provides a drop-in centre for the local children,

offering them food, education, recreation, and attention to health needs. Funds from the Stronger Families Fund will enable this service to be extended and provide education and advice to the service.

## **Models used with Indigenous communities overseas**

As with the situation in Australia, while there is some literature on models of child protection used with Indigenous communities, this literature is small and difficult to access. Sweeney (1995) gives some information on models of child protection services in Canada, New Zealand and the United States, where part, or all, protective responsibilities have been transferred to the Indigenous population. Pellatt (1991) provides an overview of the position of child protection in relation to Indigenous communities in many countries, although the information is somewhat dated. She records an overall world trend towards less intrusive protective practice and notes that Indigenous communities in Australia, Canada and the US are seeking legislative change.

### *Canada*

Since the late 1970s, there have been attempts to develop child protection and family support services run by (and for) the First Nations peoples. Hill (2000) outlines some key issues for consideration when developing services for the protection of children in Aboriginal communities. Underlying this approach is recognition of the 'cycle of poverty and dependency perpetuated by the very services designed to resolve the social ills of First Nations communities ...[and that] First Nations people [have] had to become active participants in the resolution of social problems that impacted them' (Hill 2000: 163).

Subsequently, Aboriginal foster care programs and child protection services - staffed and run by the Indigenous community and with statutory authority - were provided in a way that recognised the cultural integrity of the people. The new services were developed *under the auspices* of the mainstream child protection body, but were not a unit of the Department.

Underpinning the service development was the following:

- recognition of the need for formal training and professional education for Aboriginal workers;
- adoption of 'least intrusive' approach to child protection work (unless over-ridden by risk of harm) and the greater emphasis placed on seeking to work with extended family as an alternative to placement, thereby maintaining the child within the family and cultural community. 'However, accepting these new opportunities also required First Nations to embrace the legal system in situations where involuntary interventions were necessary to protect a child' (Hill 2000: 166); and,
- recognition of collective Aboriginal rights - if court intervention is necessary for protection of a child, the child's tribe is entitled to be notified and has the right to send a representative as a third party to the court proceedings.

In addition, a variety of family support programs were developed, particularly culturally appropriate parent education programs for Indigenous parents, and the development of ancillary services, such as an Indigenous co-operative day nursery.

It is interesting to note that the development of all these services, including the statutory services, could be characterised as conflictual, as 'at every step ...there emerged political clashes, formal and informal, for decision making power' (Hill 2000: 166).

Overall, many of the tenets of the approach described by Hill have been embraced by Indigenous groups/agencies (and to an extent, government departments) in Australia. However, a statutory child protection service controlled and run by the Indigenous community has not been trialed yet.

Unfortunately, implementation of such a model is not easy, nor has it necessarily led to significant improvements in Canadian First Nation communities' health and wellbeing and/or a reduction in violence. Although providing an example of how to move forward with more effective services, Hill's model has some serious 'gaps'. It does not seem to address issues of how to place a child within their Indigenous community if the community is beset by familial violence, substance abuse etc. Nor does it provide a solution to the mainstream statutory authority's (or Aboriginal authority's) reluctance to intervene with Aboriginal families, which may leave children in serious harm. Finally, it does not address the issue of effective prevention and/or community development to minimise the removal of children and violence in the first place.

Lynch (2001: 506) believes that the 'standards and interests of the dominant paradigm have been applied to First Nations and Aboriginal peoples, particularly children, with insidious effect'. He supports the call by many First Nation and Aboriginal groups that there is a need for them to make decisions for themselves from within their own legal, political, cultural and social frameworks, in relation to child placement and protection principles and laws, and management of their own child welfare agencies and services. However, until this happens, there is a need to adapt the prevailing 'best interests principle' (Lynch 2001: 505). There also needs to be the option available that some Indigenous groups will remain within the mainstream legal system.

### **Comment on 'best practice' services**

It would appear that past practices still leave a legacy, impacting on both Indigenous people and present government policy and practice within Indigenous child welfare. Unfortunately many of the well-intentioned policies, such as the use of Indigenous officers in child protection services, appear to have only resulted in superficial changes, rather than fundamental change. Many writers argue that the control of child protection services and other child welfare should be given to the Indigenous community (with professional support from mainstream statutory child protection services). There are overseas precedents for this approach, the success of which needs further examination.

It is also apparent that many of the tenets underlying what may be 'successful' overseas approaches are well-known to both Indigenous and mainstream services, but that implementation of new approaches has been a highly politicised, difficult process that is unlikely to proceed quickly.



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## Conclusions

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A number of clear messages have come from this review of the literature. The extent of family violence and child abuse associated with Indigenous people in Western Australia and in Australia generally, is extraordinary. It would appear that the problem is so extensive that it is highly likely that another generation of Indigenous people will be scarred by this present trauma. While it is hard to get a clear picture of the extent of present disadvantage of Aboriginal people, certainly some communities appear to exist in a 'toxic' environment (Garbarino 1995). The levels of violence, disadvantage and despair are such that it would appear that this has become normalised and self-perpetuating. Any improvement in this situation is going to require a large-scale response, encompassing courage to address the problem, funding and resources, and large-scale attitude and philosophical changes.

It would seem that while there are a number of exceptions, the response to this problem, by both Indigenous and non-Indigenous people, has largely been a failure to act decisively. The reasons for this appear to be multifaceted. They include a reluctance to face the full magnitude of the problem, shame and a fear of racial stereotyping by Indigenous people, a fear of white authority, (for example that their children will be removed), an inability to understand what to do about the problem, a lack of resources, racism, apathy and indifference, ignorance and incompetence. In some areas, services are simply not being offered (for example, basic infra-structure services and substance abuse responses, such as in relation to children and chroming). In other areas, the services that are available are providing a less than adequate service to Aboriginal people.

While there is an increasing recognition of the need for Indigenous people to be empowered and participate in decision-making, many of the changes to facilitate this take the form of minor adjustments to the present systems, which remain within the dominant mainstream culture. What appears to be needed is a paradigm change where Indigenous people take responsibility for preventing violence and protecting their children. In the words of Ah Kit, the Northern Territory Minister assisting the Chief Minister on Indigenous Affairs in the NT,

'the government, in partnership with Aboriginal people, must allow the development of forms of governance that allow Aborigines the power to control their lives and communities' (2002: 15).

However, this will only be successfully achieved with support and training provided by statutory child protection services and the provision of funding and resources which are generous and long-term to the communities.



### *Prevention and crisis intervention programs*

A search of the literature suggests that there are very few programs presently operating which address Indigenous family violence. Information from other sources, such as the media, provides some information about programs. However, the fact that information about these programs is difficult to obtain suggests that measures to address family violence tend to be 'ad hoc', uncoordinated, short term, not evaluated for effectiveness and there is limited knowledge growth and development. There is an urgent need for significant resources to be made available to reverse the trends which suggest that violence is increasing, and to repair associated traumas. There appear to be few counselling services available for children who have been sexually assaulted, and it is reported that those available have long waiting-lists. Unless significant steps are taken to repair the trauma experienced by Indigenous children who have experienced and witnessed violence and abuse, then it is likely that significant problems will occur, and compound, in the next generation.

### *Research*

There appear to be significant knowledge gaps about Indigenous family violence. The need for program evaluations has been noted. This includes documentation about the process of program development by the Indigenous community, details of the programs and information about the success of the programs. Research is needed in a number of other areas. For example, the literature does not provide any sense of whether family violence occurs across all communities or whether it is concentrated in particular communities or is more common in urban, rural or isolated Indigenous communities. Similarly, information is not available on the distribution of substance abuse within Indigenous populations. Few studies appear to examine family violence within Indigenous communities in urban areas. Of particular relevance to this Inquiry, is the lack of information on the association between sexual assault and the suicide of children and youth. The literature provides no voice from the Indigenous youth and children about the issues in relation to family violence.

There have been many reports into aspects of family violence in Indigenous communities. Many of these cover the same ground, such as the Robertson Report, followed by the Fitzgerald Report, in Queensland. Many of the causal factors, barriers to change, and steps needed to address the violence and prevent further violence, are known in broad terms, similar findings being repeated in the many reports. Many of the recommendations of these reports have not been responded to. It would seem that action to address the issues, rather than further reports, is needed.

Finally, the authors of this brief support the introduction of mandatory reporting of child abuse in WA and the mandatory reporting of sexually transmitted diseases throughout Australia. The child protection system must be governed by the needs of children, not the level of resources allocated to child protection on some other basis.

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## Abstracts

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### **Prevalence of Child Abuse and Neglect**

*Australian Institute of Health and Welfare (2002)*

Child protection is the responsibility of the community services department in each State and Territory. Children who come into contact with community services departments include those: who have been or are being abused or neglected; or whose parents cannot provide adequate care or protection. The AIHW reports on national data on children who come into contact with the community services departments for protective reasons. The three areas of the child protection system for which national data are reported are: child protection notifications, investigations and substantiations; children on care and protection orders; and children in supported overnight out-of-home care.

*Bolger (1991)*

This study is concerned with violence against Aboriginal women in the Northern Territory. Eight communities were included in the study, four in Central Australia and four in the Top End, and each was visited for a period of approximately two weeks. An attempt was made to sample a variety of different types of communities on the basis of a number of factors including: population size and homogeneity/heterogeneity; language and culture; distance from and/or ease of reaching a major town; presence or absence of a police station, a health centre, or alcohol. In addition research was carried out in Darwin, Alice Springs and Tennant Creek. The report is arranged under the following chapters: Women and violence; Facts and figures; Violent experiences; Causes of violence against women; Dealing with violent situations; Public sector response; Future action.

*Ferrante, Morgan, Indermaur, Harding (1996)*

The focus of this analysis is on quantitative indicators of domestic violence in Western Australia. The data sources for estimating the incidence and prevalence of domestic violence analysed are: data related to crimes recorded by police; the results of the Community Safety Survey conducted by the Crime Research Centre in Perth in November 1994, involving a random sampling of 3061 households; applications for restraining orders lodged at magistrates' courts in Western Australia; and data made available by hospitals and non-government organisations involved in victim support. The final chapter of the book discusses the implications of the combined measures for the estimation of the incidence and prevalence of domestic violence. A range of estimates is discussed, from the largest to the smallest, together with an appraisal of the measurement difficulties. Included in this discussion is a consideration of the adequacy of the estimates and their relevance to policy development. The book also discusses the extent of domestic violence against men and particular attention is also paid to the position of Aborigines and rural Western Australian inhabitants.

*Memmott, Stacy, Chambers, Keys (2001)*

An important focus of the National Crime Prevention program of the Commonwealth government is to identify priorities for violence prevention in Indigenous communities, where statistics show it is occurring at higher rates than for the rest of the Australian population. This publication is the result of a research consultancy, the aims of which were to: identify priorities concerning the prevention of violence in Indigenous communities through a literature review and consultations with key stakeholders across disciplines and sectors; develop a strategic framework to incorporate policy recommendations designed to address the prevention of violence, and proposals on how to implement policy recommendations; and produce recommendations designed to inform the development of at least one demonstration project that would centre on the prevention of violence in Indigenous communities.

*Robertson (2000)*

Established in December 1998, the objectives of the Queensland Aboriginal and Torres Strait Islander Women's Task Force on Violence were to identify the factors behind the escalation of violence in Aboriginal and Torres Strait Islander Communities in Queensland and to provide advice on community-based strategies for prevention and intervention. The Task Force called for public submissions through regional and local newspapers on 30 January 1999. A literature review was also conducted. This report presents the findings and recommendations of the Task Force. Section 1 covers forms of violence, transgenerational trauma as cause and effect, and case studies; section 2 focuses on causes and contributing factors; section 3 is titled Rhetoric or reality? The extent of violence; and section 4 is titled Working for change. Discussion includes theoretical perspectives on violence and its causes; abuse of alcohol and other addictive substances; cultural and spiritual violence; socioeconomic disadvantage; neglect, abuse and violence against children; suicides, self-harm and other self-inflicted injuries; reporting rape and sexual assault; policies and services; education as empowerment; Indigenous health and well-being; families and security; the Indigenous experience of justice; land - spirit culture - identity.

## **Causal Factors of Family Violence and Child Abuse**

*Atkinson (1994)*

WE AL-LI is a self help community group located in Rockhampton, Queensland which has developed over the past eighteen months a whole healing approach to issues of violence in families and communities. A case study of an extended indigenous family or community is likely to show multiple, intergenerational layers of pain and trauma. This trauma may result from ungrieved family deaths, injury from introduced diseases, physical and sexual brutality and the forced removal of people to reserves and the separation of children from their parents. For the cycle of pain to be broken, the WE AL-LI group saw the need to create safe places, healing circles where people could start to break the denial, talk together and share stories. This article explains the contents of the WE AL-LI workshops and how participants have benefited from them. The workshops cover issues such as child abuse, juvenile offending, adult violence, and drug and alcohol addiction. Workshops are also being run for indigenous prisoners.

*Blagg (1999b)*

This is a report prepared for the National Crime Prevention (formerly known as the National Campaign Against Violence and Crime) and the National Anti-Crime Strategy which covers the second phase of a project aimed at developing strategies to prevent domestic violence by intervention with adolescents. The first phase was undertaken in Northam, WA (Working with adolescents to prevent domestic violence: rural town model), while this report focuses on Derby in the West Kimberley region of Western Australia. In this report emphasis was placed on a careful analysis and mapping of the institutional and cultural context of the locality, and on consultations with stakeholders and communities. It was widely accepted that negotiating with indigenous communities must preface any policy initiative and that respect for indigenous culture requires that due weight be accorded to the unique qualities of specific indigenous peoples and places. The report sets out the framework for a domestic violence prevention initiative specifically targeted towards indigenous adolescents, their families and communities.

*Read (1999)*

Coming from a background of writing about and working with the Aboriginal stolen generations including co-founder of Link-Up, an organisation which reunites separated Aborigines with their communities and their Aboriginality, Peter Read in this book examines who the stolen generation are, revealing through interviews, written and oral evidence the experiences of Aboriginal people who were taken away from their families. The establishment of Link-Up is described and its work with Aboriginal clients is outlined. The Bringing Them Home Report; the Royal Commission into Aboriginal Deaths in Custody; the United Nations Declaration of Human Rights; and the issue of reparation in the courts are examined. The refusal of the government to apologise is addressed and common objections to the Bringing Them Home Report are identified.

*Hunter (1990b)*

Author discusses the way in which violent incidents involving Aborigines are presented in the media. Goes on to discuss the current level of violence in Aboriginal communities and analyse whether the incidence of violence has risen recently, or whether more attention is now being paid to it, making it appear to have increased. Reviews the position of men and alcohol in today's Aboriginal society.

*Hazelhurst (1994)*

This book addresses the problems of alcohol addiction, family violence, and community breakdown which are destroying the spirit and lives of indigenous people. The author gives an account of the current problems and programs in preventative action taking place amongst Aboriginal leaders in Australia and Canada.

*Lynch (2001)*

The author acknowledges that Australian Aboriginal children and Indigenous Canadian (First Nations) children have been removed from their communities from the time of European invasion, firstly in order to 'merge', 'absorb' or 'assimilate' those children into the non-Indigenous population and more recently in the name of the best interests of the child. He calls for reform of child welfare law, policy and practice which currently places a disproportionate number of Aboriginal and First Nations children in care, secluding them from their cultural identity and heritage. Although he believes that ultimately self-determination for Indigenous people should transfer responsibility for the welfare of their children back to them, in the meantime the prevailing best interests

principle needs to be adapted and applied by the courts and decision makers to acknowledge the unique nature of Indigenous culture, identity and child care practices. Decisions about where the child's best interests lie should be informed by the best interests of the community as long as this approach does not mean that a child is left in an abusive situation.

### **Aboriginal beliefs about gender and sexuality**

*Atkinson (1996a)*

Are Aboriginal people being asked to turn to a legal system for protection from violent assaults which are, in part, its product? The author looks at the issue of violence in Aboriginal families and communities by drawing on a number of case studies. She argues that there has been very little progress for Aboriginal women and their children despite all the myriad reports, Commissions of Inquiry and bureaucratic activity in Australia. Violence is increasing and taking on a new, uglier dimension. The legal system fails to meet the needs of Aboriginal women at all levels, nor does it serve most Aboriginal men, and in fact may contribute to the complexity of behaviours we call anti-social and/or violent, the author argues. Her conclusion is that she is 'yet to be convinced that the legal profession and the government have the will and commitment for real justice reform that will restore to Indigenous individuals, our families and communities the ability to rebuild our lives from the multiple intergenerational traumatisations that comprise the colonising impacts'. She does, however, have implicit faith that her people will to do the work of healing and rebuilding, of regenerating and restoring, and she requests that governments and legal institutions give them support.

*Greer (1992)*

Rape is placed in the context of the particular difficulties faced by Aboriginal communities, beginning with the impact of colonisation. The extent of sexual violence in Aboriginal communities is discussed, and obstacles to intervention are outlined. Author highlights the fear and mistrust felt by Aboriginal people toward outside intervention into Aboriginal issues. She believes 'Many communities are torn apart by the secrecy that is inherent in this attitude which protects offenders and allows the cycle of sexual violence to continue'. She notes that Aboriginal women have begun speaking out against sexual violence, and have taken steps to organise at a national level, and concludes by suggesting other developments such as changes in service provision.

*Lucashenko & Best (1995)*

The idea that Aboriginal people suffer high levels of violence is one readily accepted in most of mainstream Australia. The widespread violence experienced by Aboriginal women by their partners has received little attention, however, assert the authors. What are the causes of this violence against Aboriginal women? If large-scale violence in the Aboriginal family is not traditionally sanctioned behaviour, the obvious place to locate its cause becomes the process of invasion, dispersal and dispossession following colonisation. The authors present three ideas for change. Firstly, the bashing of Aboriginal women, children and men must become totally unacceptable to Aboriginal people. Secondly, Aboriginal people must identify, challenge and change sexist behaviour and rebuild the status black women enjoyed before white settlement. Finally, there is a critical need for highly skilled Murri violence workers in urban areas.

*Tatz (2001)*

Aboriginal suicide has unique social and political contexts, and must be seen as a distinct phenomenon, states the author. To understand Aboriginal suicide one has to understand Aboriginal history: their way of life has been destroyed, resulting in a loss of structure, cohesion and meaning. The legacy for the present generation is a loss of basic communal values. The continuing effects of that history on today's Aborigines are more important to the understanding of Aboriginal suicide than any psychological, sociological or medical theories. To ignore, or worse, to deny that history is to obfuscate the origins, causes and nature of a current problem and to forestall any possible alleviation. The author's report on Aboriginal youth suicide is presented in the following chapters: The social and political contexts; The origins of the 'new violence'; An anthropology of suicide; The prevalence of Aboriginal suicide - definitional problems; The prevalence of Aboriginal suicide - the data; The nature of Aboriginal suicide; Social factors - community values; Contributing factors - societal values; Lessons from abroad (including South Africa, Canada and the United States, the Pacific Islands, and New Zealand); Towards alleviation.

## **Mandatory Reporting**

*Goddard (1994)*

With the phasing-in of mandatory reporting of some forms of child abuse in Victoria during 1993 and 1994, only Western Australia retains a system of voluntary reporting. This article places mandatory reporting in context, presenting discussion of, What is child abuse? ; The arguments for and against mandatory reporting; and the implications of such reporting laws.

*Cunneen & Libesman (2000)*

The removal of Indigenous children from their families within contemporary Australia is considered by way of both child protection and juvenile justice interventions and within the context of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. In particular, the article considers the findings and recommendations of the Inquiry in relation to contemporary removals and Government responses to those recommendations. (Journal abstract)

*Quinton (1991)*

This paper, produced as an issues paper for the ACT Community Law Reform Committee, sets out arguments for and against mandatory reporting of child abuse in the ACT and discusses the degree to which people are obliged to report circumstances of child abuse in the ACT.

## **Solutions to Aboriginal Family Violence and Child Abuse**

*Ah Kee & Tilbury (1999)*

The Aboriginal and Torres Strait Islander Child Placement Principle has been the policy guiding the placement of indigenous children in most Australian child protection jurisdictions for around fifteen years. The Principle requires the involvement of Aboriginal and Torres Strait Islander community representatives in decision making

concerning indigenous children, and ensuring that alternative care placements of Aboriginal and Torres Strait Islander children are with Aboriginal and Torres Strait Islander care providers. Most jurisdictions still have a significant number of Aboriginal and Torres Strait Islander children placed with non-indigenous care providers, and community based Aboriginal and Islander child care agencies continue to express dissatisfaction about the nature and level of consultation which occurs when welfare departments are taking action to protect indigenous children. This paper examines why there has been such limited improvement in Child Placement Principle outcomes. Work undertaken in Queensland to address the over representation of Aboriginal and Torres Strait Islander children in the child protection system is outlined from both a departmental and community perspective. The paper argues that if strategies for addressing these issues are not located within a framework of self determination for Aboriginal and Torres Strait Islander people, then they will not work. (Journal abstract)

*Sweeney (1995)*

This article refers to an apology made by New South Wales Premier Bob Carr for past government policies which resulted in the breaking up of Aboriginal families and calls for reform of Aboriginal child welfare policies and practices. The historical background and legal basis of policies leading to the removal of Aboriginal children from their families is discussed. The terms of reference of the Wilson Inquiry into the separation of indigenous children and their families are outlined. The report 'Learning from The Past' by the NSW Department of Community Services is analysed and the author questions whether its recommendations would lead to a real transfer of control of Aboriginal child welfare to Aboriginal communities. Experiences in Canada, New Zealand and the United States involving the transfer of indigenous child welfare services to community control is discussed. The author questions the ability of government agencies such as the Department of Community Services to adequately change and he advocates a holistic approach to the care and upbringing of Aboriginal children rather than the present fragmented approach to child welfare, child protection, adoption and juvenile justice.

*Litwin (1997)*

In recent times, child welfare bureaucracies have been required to re-define their relationship with indigenous communities, particularly in view of the impacts associated with their past interventions within these communities. This process of readjustment has been grounded in the apparent endorsement by child welfare bureaucracies of the principle of indigenous self determination and their declared acknowledgment of the desirability of devolving greater responsibility for decision making about child welfare matters to indigenous communities. This paper suggests that, despite statements to the contrary, the processes and mechanisms employed by child welfare agencies to promote indigenous autonomy have not adequately acknowledged the saliency of indigenous social domains nor have they seriously challenged the precepts of the existing administrative domains that govern child protection interventions. Consequently the processes employed by child protection agencies to develop culturally appropriate services have seldom matched the rhetoric associated with them. It is still the case that indigenous Australians are expected to fit within the current structure of child welfare agencies, and that their expectations should conform with the accepted orthodoxies that govern child protection interventions. This paper seeks to examine the processes by which child welfare bureaucracies have, on the one hand, attempted to re-cast their relationship with indigenous communities, while,

on the other hand, maintaining the primacy of their administrative domains. (Journal abstract)

*Pellatt (1991)*

The purpose of this paper is to examine ways in which child welfare services are provided to aboriginal communities in the following countries: Canada, United States, New Zealand, Australia, Sweden, Norway and Finland. The paper identifies and describes varying approaches to the delivery of child welfare services to aboriginal communities; identifies problems and issues (constitutional, structural and practical) associated with the varying methodologies; and develops a typology of the child welfare models identified. The focus is on describing programs and initiatives developed at the band, tribal, and community level. The paper also examines issues aboriginal people are dealing with in the process of re-establishing the primacy of community-based networks of caring and decision making.

*Dudgeon, Garvey & Pickett (2000)*

This handbook begins to show the ways of working in culturally sensitive and culturally affirmative ways. It is intended to help psychologists working in a cross cultural context, particularly with Indigenous clients and co-workers. The focus is on social justice, inclusion, ethics, and reconciliation. The handbook is divided into the following five sections: Conceptualising psychology and Indigenous Australians, subdivided into history, Indigenous mental health and contemporary Aboriginal life; cultural difference and cross cultural communication; psychology and Indigenous people, subdivided into history and psychology, and cross cultural practice; alternative models and community initiatives; and the last word. Concluding papers by Richard Wilkes and Joan Winch are presented along with personal insights into locally driven programs and issues from Andre D'antoine, Esther Bevan, Cheryl Osies, and Nik Wevers. All remaining papers are individually indexed and can be retrieved by title of the book.





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## APPENDIX 14

### *Retention and disposal schedule*

## RETENTION AND DISPOSAL SCHEDULE

The *State Records Act 2000* instructs government agencies to provide a record keeping plan. This plan incorporates a retention and disposal schedule, which stipulates at Part 3 s16 (3):

- (a) *those government records that will be State archives*
- (b) *those State archives that will be restricted access archives and the ages at which they will cease to be restricted access archives; and*
- (c) *the retention period for those government records that are not State archives*

The retention and disposal schedule is a policy document that locates and identifies all records, establishes the retention period and provides a means for prompt, efficient and legal destruction of obsolete and redundant records. It also allows the transfer of significant historical records to the State Archive.

The '*Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*' (Inquiry) was directed to present a final report to Parliament (see section 'Preliminary Matters' of this report). After its presentation, the Premier will decide whether to make the report publicly available.

A number of submissions were received from government agencies, non-government agencies, individuals and Aboriginal communities. Most of the information received from the agencies was photocopies of their original files. This information may be obtained under the *Freedom of Information Act 1992* from the originating agency. Therefore, duplicate copies held by the Inquiry will be destroyed at the conclusion of the Inquiry.

Some research material may be culturally sensitive. In accordance with the *State Records Act*, this material will be assessed and treated as a 'restricted access' archive as required.

Formal hearings were held to gather evidence from a number of government agencies and witnesses. The exhibits of the hearings are not publicly available, following a decision made by the Inquiry on the 8th March 2002. They will be destroyed in accordance with the approved retention and disposal schedule.

**APPENDIX 15**

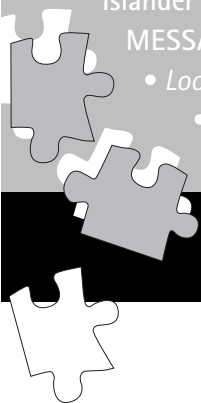
*Unaudited financial statement as at 30 June 2002*

**UNAUDITED FINANCIAL STATEMENT AS AT 30 JUNE 2002**

	Actual	Credits	Balance
	\$	\$	\$
<b>INCOME</b>			
Budget Allocated		1,250,000	1,250,000
<b>EXPENDITURE</b>			
Staffing Costs	135,000		
Communications	12,000		
Service & Contracts			
Inquiry Committee Fees	200,844		
Counsel Assisting, Expert	204,000		
Professional Services	95,000		
Building Costs	85,000		
Travel	100,000		
Administration Operating Costs	140,000		
<b>TOTAL EXPENDITURE</b>	<b>971,844</b>		<b>278,156</b>

NB: This statement includes projections for expected expenditure to 31 July 2002

*Child Abuse Review May-June 2001* • *Child Protection Review Discussion Paper May 2002* • *Crisis Intervention in Aboriginal Family Violence* • **HEALTH AND WELFARE OF AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 1999** • *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* • *Practice Standards for Working with Children and Young People who have lived with Domestic Violence* • *REVISITING THE OLD IN REVITALISING THE NEW* • *Through Young Black Eyes* • *Violence Directions for Australia* • **VIOLENCE IN INDIGENOUS COMMUNITIES** • *'Black sex-abuse whistleblower axed'* *The Weekend Australian* 22-23 December 2001 • *'Abuse claims mar image of campaigner'* *The West Australian* 1 November 2001 • *WESTERN AUSTRALIAN MAGAZINE - SUSAN'S STORY* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • *Mandatory Sentencing in WA* • **THE CHILDREN ACT NOW - MESSAGES FROM RESEARCH** • *Project AXIS* • *Mandatory Sentencing in WA* • *Looking After Children Grandmother's Way* • *A Question of Safeguards* • *Cape York Justice Study Report* • *Aboriginal & Torres Strait Islander Social Justice Report 2001* • **FRAMEWORK FOR THE ASSESSMENT OF CHILDREN IN NEED AND THEIR FAMILIES**



# SECTION

List of shortened forms

Bibliography





## List of shortened forms

### LIST OF SHORTENED FORMS

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AAC	Aboriginal Advisory Council
AAPA Act	Aboriginal Affairs Planning Authority Act 1972
ABS	Australian Bureau of Statistics
AC Act	Aboriginal Communities Act 1989
ACOP	Aboriginal Cyclic Offending Program
ACSA	Aboriginal Community Supervision Agreements
ADR	Aboriginal Alternative Dispute Resolution Service
AH Act	Aboriginal Heritage Act 1972
AHIU	Aboriginal Housing and Infrastructure Unit
AJAC	Aboriginal Justice Advisory Committee
AJC	Aboriginal Justice Council
AJICEOF	Aboriginal Justice Issues Chief Executive Officers Forum
AJISOG	Aboriginal Justice Issues Senior Officers Group
AJP	Aboriginal Justice Plan
APIC	Action Plan Implementation Committee
APLO	Aboriginal Police Liaison Officer
ASCWA	ATSIC State Council WA
ATSIC	Aboriginal and Torres Strait Islander Commission
BMOP	Broome Men's Outreach Program
CAIU	Child Abuse Investigation Unit
CCO	Community Corrections Officers
CDEP	Community Development Employment Project
COAG	Council of Australian Governments.
CPCH	Child Protection Clearing House
CPU PMH	Child Protection Unit at Princess Margaret Hospital
CWS	Child Witness Service
DCD	Department of Community Development
DCD	Department of Community Development
DHW	Department of Health
DHW	Department of Housing and Works

DIAWG	District Interagency Working Groups
DNA	Deoxyribonucleic Acid
DOJ	Department of Justice
DOJAC	Department of Justice Advisory Council
DPC	Department of Premier and Cabinet
DPP	Director of Public Prosecutions
DVPU	Domestic Violence Prevention Unit
DYHS	Derbarl Yerrigan Health Service
FCMT	Forensic Case Management Team
FDVT	Family and Domestic Violence Taskforce
FTE	Full Time Equivalent (Note: If used in context of employee numbers)
FVCC	Family Violence Co-ordinating Committee
GASR	Geraldton Alternative Sentencing Regime
HREOC	Human Rights and Equal Opportunities Commission
IAAC	Indigenous Affairs Advisory Committee
IAC	Implementation Advisory Committee
IDC on Sexual Assault	Inter-Departmental Committee on Sexual Assault
IFP	Indigenous Family Program
IPR	Integrated Prison Regime
JCC	Justice Coordinating Council
JFVC	Joondalup Family Violence Court
JJHC	Joint Justice Health Interdepartmental Council
JJO	Juvenile Justice Officer
KEMH	King Edward Memorial Hospital
KRJP	Kimberley Regional Justice Project
LDAGs	Local Drug Action Groups
MAAG	Midland Aboriginal Advisory Group
MACSC	Midland Aboriginal Co-ordinating Steering Committee
MCATSIA	Ministerial Council for Aboriginal and Torres Strait Islander Affairs
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
MRAG	Midland Regional Action Group

## List of shortened forms

NAPCAN	The National Association for Prevention of Child Abuse and Neglect
NASAS	Noongar Alcohol and Substance Abuse Service
NATA	National Association of Testing Authorities, Australia
NERYC	North East Regional Youth Council
NICSA	National Initiative to Combat Sexual Assault
NRC	National Research Council
PathCentre	Western Australian Centre for Pathology and Medical Research
PCFBL	Path Centre Forensic Biology Laboratory
PCS	Prison Counselling Services
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RCPP	Department of the Premier and Cabinet
RDVCs	Regional Domestic Violence Committees
SACP	Servicing Aboriginal Communities Project
SARC	Sexual Assault Resource Centre
SCSP	Standing Committee on Social Policy
SFs	Strong Families
SHT	State Homelessness Taskforce
SRAC	State Records Advisory Committee
SVNC	Swan Valley Community Ngunguh
TAFE	Technical and Further Education
TCO	Through Core Officers
TICHR	Telethon Institute for Child Health Research
UWA	University of Western Australia
VNR	Victim Notification Register
VSS	Victims Support Service
WAPS	Western Australia Police Service

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