6. WESTERN AUSTRALIA

Table of Contents

6.1 Western Australian Government Overarching Indigenous Policy Frameworks


6.1.2 Overcoming Indigenous Disadvantage in Western Australia Report (2005)


6.1.4 Western Australian Family and Domestic Violence State Strategic Plan (2004-2008)

6.1.5 Safer Communities Safer Children (2007)

6.2 Western Australian Aboriginal Justice-Specific Policy Frameworks

6.2.1 Aboriginal Justice Plan (2000)

6.2.2 Western Australian Aboriginal Justice Agreement (2004)

6.2.3 Prisons Division Strategic Plan for Aboriginal Services (2002-2005)


6.2.5 Prisons Division Indigenous Education and Training Policy (2005)

6.2.6 Statement of Reconciliation (DCS) (2006)

6.2.7 Department of Corrective Services Handbook (2007 and 2008)

6.2.8 Court Services has also developed Court Services Aboriginal Strategic Plan (2005-2009).

6.3 Annual Reports

6.3.1 Department of Attorney General/Department of Justice (incorporating Corrective Services)

6.3.2 DCS Annual Report 2006-07

6.4 Office of the Inspector of Custodial Services

6.4.2 Office of the Inspector of Custodial Services, Digest of Aboriginality in Western Australian Prisons as Reported in Published Inspection Reports 2000-2005 (June 2006)


6.5 Other Policy Initiatives and Documents

6.5.1 Inquiry into the Management of Offenders in Custody and in the Community (Mahoney Report) (November 2005)

6.5.2 Kimberley Aboriginal Reference Group’s initial recommendations toward the Kimberley Custodial Plan (October 2005) – Stage One Report

6.5.3 The Kimberley Custodial Plan – An Aboriginal Perspective – Stage Two Report – Prisoner Programs (February 2006)

6.5.4 Aboriginal Customary Laws: The Interaction of WA Law with Aboriginal law and culture (Law Reform Commission of Western Australia (2006))

6.5.5 Background Paper – Law Reform Commission (Morgan, N and Mottram J (2004) Indigenous People and Justice Services: Plans, Programs and Delivery, Background Paper No 7, Law Reform Commission of Western Australia, Perth)

6.5.6 Aboriginal Cultural Awareness Benchbook for West Australian Courts – Court Services
The Western Australian Government has introduced a range of whole-of-government strategic frameworks addressing Indigenous issues, including justice issues, with a proposed *Whole of Government Framework for Indigenous Services* in development.  


The *Government of Western Australia 2000 Implementation Report – RCIADIC* was introduced by the Minister for Indigenous Affairs, and provides information from relevant agencies with respect to how they have implemented each of the 339 recommendations of the RCIADIC. Those recommendations cover a broad range of issues (including housing, education, drug and alcohol, collation of statistical information, increasing economic opportunity, and addressing land need). For our purposes, the most relevant initiatives discussed in the report are as follows.

(a) *Imprisonment as a last resort* (Recommendations 86-88, 92-95, 101-014, 109, 111-114, 115-121)

- In terms of bail, the Ministry of Justice is assisting by ensuring that Community Corrections Officers liaise with hostel providers to allow for bail within hostels where bailees cannot return to their communities. These Officers will also provide a relevant court assessment with a view to home detention bail. The Juvenile Justice Division also operates a Supervised Bail Program, offering supervision to youth unable to locate a responsible adult. Juvenile Custodial Services are piloting a regional Bail Facility at Kimberley Aboriginal Community, which will give Magistrates the discretion of granting bail under the supervision of the Supervised Bail Program.
- Aboriginal offenders are permitted to perform community service on communities and with Aboriginal organisations. There is a wide range of statutory, non-custodial sentencing options available, including a drug court, and the diversion from court of juvenile offenders (diversion programs for adults continue to be developed). These options have been developed through consultation with agencies representing the interests of Aboriginal people.
- Up to 40 Aboriginal communities are participating in the supervision of adult community based orders, and negotiation with other communities is ongoing on an ‘as needs’ basis. Where possible, Juvenile Justice staff provide support to communities that

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1 The Western Australian Government is committed to developing a State strategy to provide a whole of government blueprint that effectively integrates programs, services and funding arrangements, in partnership with Indigenous Western Australians. This Framework will encompass a vision and key strategic directions, a blueprint for action in terms of achieving the government’s vision, ongoing arrangements to manage and evaluate Indigenous services on a whole of government basis, and a whole of government budget process for Indigenous-related programs and services (Department of Indigenous Affairs, (2006) *Annual Report*, DIA Perth WA: 18).
have juveniles completing orders. All Community Based Services branches have recruited Aboriginal staff to assist in the implementation of non-custodial sentencing options. Where supervision is contracted, staff from communities are provided with training in the management of offenders on community based orders.

(b) **Courts** (Recommendations 96 and 99-100)

- Work has been done within the Ministry of Justice to conduct interpreter-training courses for the accreditation of interpreters. Aboriginal Fines Liaison Officers commenced work in 1995, and they may be involved in providing information to Aboriginal people appearing at court or to the court and the magistracy on Aboriginal issues, or in supervising Aboriginal people placed on community based orders (or similar) by the court. Community Based Services employs Aboriginal staff at all its field offices (as Community Corrections Officers of Juvenile Justice Officers), and those staff also provide advice to courts, including in relation to what a relevant community considers to be appropriate in terms of sentencing. Cross – cultural training is provided to judicial officers and others working in courts and in the probation and parole services.

(c) **Custodial health and safety and the prison experience** (Recommendations 122-187)

- The Ministry of Justice provides an Aboriginal Visitors Scheme to provide support and counselling to Aboriginal detainees in prisons and juvenile detention centres.
- Whilst it was recommended that Aboriginal prisoners be detained in a facility as close as possible to the place of residence of his or her family, the Ministry of Justice provides for temporary transfer of prisoners to relevant facilities (including police lockups) which are closer to family for family visits (once or twice per year).
- Further, Corrective Services will give recognition, where appropriate, to special kinship and family obligations of Aboriginal prisoners which extend beyond immediate family in relation to a request for release for ceremonies, for instance. Aboriginal Welfare Officers are employed in juvenile detention facilities, and one of their roles is to provide management with family and background information in relation to attendance at significant occasions.
- A Peer Support Program operates in prisons, and, as well as supporting inmates, Prison Support Officers who coordinate this program also advise staff on culturally relevant, welfare related issues. Aboriginal ‘Meeting Places’ have been constructed in most prisons and Regional Prisons liaise with local Aboriginal groups and communities to encourage their participation in prison programs. In juvenile facilities, Aboriginal Teacher Aides are employed in the Education Centre and external Aboriginal agencies run relevant programs in the facilities. Aboriginal prisoners in adult prisons have their own classes, but are also able to access classes for the general population. Effort is made to deliver culturally relevant courses and vocational training for future employment opportunities and to engage Aboriginal personnel for delivery of training/educational courses. More broadly, the Ministry of Justice attempts to involve the Aboriginal community in correctional processes. In the Kimberley for example, Broome prison has negotiated with relevant organisations to provide section 94 activities for prisoners. This gives prisoners the opportunity to perform duties outside of the prison walls.
Self Determination (Recommendations 188 - 204)

- Aboriginal people are involved in negotiating, managing and delivering services. For instance, Community Based Services consults widely with Aboriginal Communities in planning for offender management (for specific cases, as well as in general cases). Further, Prison Services intends to appoint a Manager of Aboriginal Services to, among other things, assist with the modification of prison programs and services to better suit the needs of Aboriginal people.

6.1.2 Overcoming Indigenous Disadvantage in Western Australia Report (2005)

The DIA’s *Overcoming Indigenous Disadvantage in Western Australia Report 2005 (OIDWA)* seeks to improve performance by establishing baseline indicators for measuring progress, facilitating cohesive and coordinated action, and sharing examples of evidence-based best practice. Basically, it seeks to guide the delivery of better services to Indigenous people in Western Australia, serving as a tool for governments in developing policy and planning for services delivery, and to measure the impact of these services over time. An updated *OIDWA* (with progress noted in terms of the 2005 *OIDWA*) is due to be developed.

The structure of the *OIDWA* consists of three priority outcomes; twelve headline indicators; and seven strategic areas for action (with corresponding strategic change indicators).

The **three priority outcomes**, representing a long term vision for well-being, are as follows:

(i) Safe, health, and supportive family environments with strong communities and cultural identity;
(ii) Positive child development and prevention of violence, crime and self-harm; and
(iii) Improved wealth creation and economic sustainability.

There are then twelve **headline indicators**, used to indicate the extent of Indigenous disadvantage and to measure progress in the priority outcomes over the longer term. These indicators include rates for imprisonment, juvenile detention and victimisation. Statistical and other detail relating to each of the headline indicators is provided, within an Indigenous context. Seven **strategic areas for action** are then set out, with some detail, including relevant strategic change indicators. These are intended to drive collaborative action, and represent factors which potentially influence whether disadvantage will be experienced, avoided, or overcome. They pertain to issues such as juveniles at risk, substance abuse, and recidivism (see below). Change in these areas is said to impact positively upon the headline indicators, and ultimately, the achievement of priority outcomes. Some examples of action already undertaken in (relevant) strategic areas are set out below.

*Strategic Area: Substance use and misuse*
Strategic change indicators are alcohol consumption/drug and other substance use as well as alcohol related hospitalisations. (The co-relation between substance use and misuse and family violence, child abuse, assault, homicides, and rates of drunken detainees in police lockups are discussed). Initiatives include Indigenous Street Patrols, twenty of which exist in rural and metropolitan regions in Western Australia. Alcohol was reported by nineteen of the twenty patrols as being the single biggest issue, after anti-social behaviour and family violence, that they deal with. They serve to divert (mainly) Indigenous people from the justice system, and to alternative places such as sobering up centres. This initiative has reduced the number of drunken detainees and evaluation of this has been generally favourable. 

Outcomes include cost benefits through reducing the costs of detention and other criminal justice costs via its diversionary function.

**Strategic Area: Functional and resilient families and communities**

Strategic change indicators include repeat offending. The high rate of recidivism for adult and juvenile offenders is discussed. Relevant initiatives are as follows.

- Prisoner Traineeship Program is an initiative set up by the Department of Justice to assist prisoners post-release to reintegrate. Partnerships have been established between government, non-government, business and community organisations to assist through vocational education and training. It allows prisoners to gain traineeships in prison, enabling prisoners who have employment in prison-based industries to gain qualifications and experience in their chosen field. Upon release, prisoners are going on to further training and employment. It is not Indigenous-specific, but has delivered outcomes for Indigenous people.


The *Gordon Inquiry* came about in the aftermath of a coronial inquest into the death of an Aboriginal teenage girl at the Swan Valley Nyungah Community. The Inquiry was headed by Magistrate Sue Gordon and ultimately presented Government with 197 Recommendations and Findings. The *Gordon Action Plan* was formulated by the Department of the Premier and Cabinet in November 2002 as a formal Government response to the *Gordon Inquiry*. It details more than 120 initiatives to be implemented.

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by 15 agencies and a whole-of-government approach to organising and delivering services. It has been a very influential document in Western Australia, in terms of policy. The Action Plan focuses on the safety of women and children, and its key outcomes reflect this focus (that is:- timely responses to Aboriginal children identified as abused or significantly at risk of abuse and/or neglect; reduction in Aboriginal family violence and child abuse; increase in the percentage of Aboriginal people who feel safe; and an increase in the percentage of Aboriginal people who are aware of, and can access, family violence and child abuse services). Relevantly, the Gordon Action Plan acknowledges that the expansion of community-based programs and community supervision agreements to enhance the management of violent offenders may assist in achieving these outcomes. Specific recommendations of the Gordon Inquiry are also responded to.

(i) Responses to child abuse and family violence may be strengthened by implementing the best aspects of the Joonalup Family Violence Court Project; by ensuring that Aboriginal prisoners access relevant (and culturally appropriate) programs; and that Aboriginal (victims and) offenders are given better information about the justice (and specifically court) processes and systems (through, for instance, an information sheet for litigants in Indigenous languages, a video with an Indigenous focus, or employment of Indigenous people as Court Information Officers)); and working towards increasing the number of Aboriginal Community Supervision Agreements (whilst strengthening support provided to Aboriginal communities participating in this program).

(ii) The safety of communities may be strengthened through the use of work camps as an alternative to traditional incarceration of Aboriginal adult offenders. There is a commitment through amendment of the Young Offenders Act to early release of juveniles to allow them to return to communities under supervision for the latter part of their custodial sentence. Aboriginal Community Supervision Agreements for juveniles, and the use of elders, wardens and community advisors to facilitate Juvenile Justice Teams is also endorsed.

6.1.4 Western Australian Family and Domestic Violence State Strategic Plan (2004-2008)

In 2003, the Western Australian Government developed the Western Australian Family and Domestic Violence State Strategic Plan (2004-2008). Although this Plan is not Indigenous-specific, within the document the particular circumstances of Indigenous women (with respect to violence) are noted, and the Plan is informed by, or aligned with, Indigenous-specific frameworks or policy documents (such as the Gordon Action Plan and the WA Inquiry into Aboriginal customary law (see below)). The ten specific focus

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5 The Whole of Government, Whole of Community Response to Family and Domestic Violence: A Balanced Approach: Prevention – Protection – Provision 2004-2008 framework was developed by the Family and Domestic Violence Unit (FDVU) (Department of Community Development), in consultation with members of the Family and Domestic Violence Coordinating Committee (FDVCC).
areas of the Strategic Plan have been used to develop annual WA Family and Domestic Violence Action Plans over time.

Examples of initiatives undertaken as part of the Strategic Plan and Action Plans include increasing the circuits of visiting Community Corrections Officers and Juvenile Justice Officers to multi-functional (justice and policing) centres set up on remote communities. The Department of Corrective Services’ Community Justice Services have also assessed the need for, and established where appropriate, perpetrator programs in consultation with Aboriginal communities in the Goldfields, Pilbara, Gascoyne and Kimberley (with an innovative program established at Broome in 2006 - employing a fulltime program officer position to deliver the program, while building local capacity to deliver it on an ongoing basis). It is noted that the Department of Corrective Services has employed regional program officers in response to the recommendations of the Gordon Inquiry, and it is these officers who are responsible for undertaking the latter project. More specifically, in 2006/07, as part of this policy initiative, there was a focus on the expansion of family violence courts. Commencing in 2006-2007 and continuing through 2007-2008, Family Violence Courts were to be developed in a number of metropolitan court locations, including an Aboriginal-specific program at Geraldton. A reduction in the increasing rate of Aboriginal imprisonment through engagement of suitable perpetrators in a Family and Domestic Violence Court Case Management Model, and an increase the accessibility to courts for Aboriginal people were identified as outcomes for the initiative. An Aboriginal Reference Group was established to ensure effective consultation with Aboriginal people in the roll-out to new areas. The Department of Attorney General was responsible for promoting and educating the community on the expansion of the family violence courts, targeting the Aboriginal community in particular. The Family and Domestic Violence Unit were to continue delivery of their educational resources, and include as part of these resources specific radio segments for Indigenous communities as part of a ‘Freedom from Fear’ campaign. Family violence courts in a number of metropolitan court locations were to focus on service delivery to Aboriginal victims and perpetrators of family violence.  

6.1.5 Safer Communities Safer Children (2007)

Safer Communities Safer Children was developed by the Department of Indigenous Affairs in September 2007 in response to a dramatic increase in the number of disclosures and investigations of child abuse in the East Kimberley (WA). This document is informed by, linked to, and built on the commitments set out in the Gordon Action Plan, and is, in a sense, an extension of that Plan.

The document sets out a ‘phased approach’ to disclosure.

- Phase 1 consists of an initial, immediate and short-term response, where evidence is obtained, perpetrators charged and case managed within the court

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system, and victims provided with safety, support and intervention strategies. Community education is also undertaken in relation to legal processes.

- Phase 2 consists of recovery, and the delivery of support for the broader community to manage issues arising as a result of the allegations and arrests. 
- Phase 3 is concerned with ongoing community building where agencies will work with communities to accomplish any cultural shift required to ensure the safety and security of children. Each relevant agency has specific roles to fulfill in relation to each phase.

• The Department of Corrective Services (DCS) is to provide appropriate custodial care and transport of Indigenous prisoners, suicide prevention programs, and will manage the integration of Indigenous prisoners into the justice system (considering age, cultural and family issues) during Phase 1. During Phase 2, they will supervise persons on bail or on supervision orders and parolees in the community with other relevant support staff, and will train and supervise Aboriginal Community Corrections Officers. They will support the uptake of police and court diversion services. During Phase 3, they will contribute to streamlining core police and justice activities through an extension of custodial services, and will provide or purchase culturally appropriate sex offender treatment programs for adults and juveniles and cognitive behaviours, violent offenders and alcohol and drug programs, available both in and out of prison.

• The Department of the Attorney General, in relation to Phase 2, will evaluate the possibility of developing specialist Aboriginal courts and family and domestic violence courts within the region. Further, it will support the uptake of police and court diversion services. For Phase 3, it will ensure that regional Aboriginal Justice Agreements are available to all relevant agencies for action, and will evaluate the possibility of developing specialist courts.

6.2 Western Australian Aboriginal Justice-Specific Policy Frameworks

6.2.1 Aboriginal Justice Plan (2000)

The Aboriginal Justice Plan (2000) (AJP) was developed by the Justice Coordinating Committee (JCC) and the Aboriginal Justice Council (AJC) in response to the outcomes of the 1997 Ministerial Summit into Aboriginal Deaths in Custody. It sets out a vision, principles and framework to guide actions to reduce the number of Aboriginal people caught up in the criminal justice system. It is not a set of programs or services to be implemented, but sets out ways that Aboriginal communities can define priorities and negotiate with Government agencies to provide the resources and services needed to address the underlying issues which eventually result in the over representation of Aboriginal people in the criminal justice system.

6.2.2 Western Australian Aboriginal Justice Agreement (2004)

The Western Australian Aboriginal Justice Agreement: A partnership between Justice-related State Government Agencies and the Aboriginal and Torres Strait Islander
Commission was developed under the Statement of Commitment to a New and Just Relationship (2001) (AJA). The AJA was formulated by Western Australian justice-related agencies, ATSIC, the Aboriginal and Torres Strait Islander Services (ATSIS) and the Aboriginal Legal Service of Western Australia (ALSWA) - and within the context of a number of State and Commonwealth Government commitments, policies and initiatives. The AJA is five years in duration from the date of signing (March 2004).

It is, broadly, a framework or partnership between Government and Aboriginal communities to work together at a state, regional and local level to improve justice outcomes for Aboriginal people. It aims to achieve a number of objectives, including to reduce Indigenous contact with the justice system and to lower the incarceration rate of Aboriginal people.

There are three nominated justice outcomes in the AJA – (i) safe and sustainable communities; (ii) a reduction in the number of victims of crime; and (iii) a reduction in Aboriginal over-representation in the criminal justice system. With respect to the latter, relevant elements include the following –

- targeting resources for the development of diversionary programs
- reduced number of people, particularly children, entering the justice system
- imprisonment recognised as a sanction of last resort as a matter of practice
- improved opportunities for input from Aboriginal people into sentencing options
- enhanced Aboriginal leadership in the criminal justice system
- developing an evidence base specific to Aboriginal people to ensure the effectiveness of penalties used.

There are also five strategic focus areas to enable the development of strategic actions for implementation in the State, local and regional Aboriginal justice plans. Focus area C is concerned with the criminal justice system, and sets out a number of elements which are relevant to improving criminal justice responses to Indigenous people, including the following:-

- targeting intervention strategies for first offenders
- Aboriginal customary law
- broader range of sentencing options
- safety and security of individuals in custody

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7 The Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians (2001) framework was designed to ensure that the Aboriginal people of Western Australia and the Western Australian Government work together to build a new and just relationship, and is directed towards an agreement on a set of principles and a process for the parties to negotiate a Statewide framework that can facilitate negotiated agreements at the local and regional level. Further, it aims to enhance negotiated outcomes that protect and respect the inherent rights of Aboriginal people and to significantly improve health, education, wealth and living standards of Aboriginal people.
- education, training and rehabilitation programs
- aboriginal input into the review and reform of justice-related legislation and policies.

6.2.3 Prisons Division Strategic Plan for Aboriginal Services (2002-2005)

This document was formulated by the Department of Justice when Corrective Services (Prisons Division) was incorporated within that Department. The purpose of the Plan is to provide a framework for action to achieve a key set of objectives, and the primary outcome sought is a reduction in the over-representation of adult Aboriginal people in the prison system. It acknowledges that the ‘dominant issue’ facing the Western Australian Prison System in 2002 is massive over-representation of Aboriginal people amongst inmates. It is (apparently) guided by a new way of working with Aboriginal people through actively respecting and reinforcing Aboriginal culture; by collaborating with Aboriginal people to provide culturally appropriate services and programs; by establishing and maintaining strong, effective linkages between prisons and local Aboriginal communities and organisations; by supporting Aboriginal prisoners in maintaining strong ties with their families and communities; and, most importantly, by recognising that empowering Aboriginal people to develop and effect their own solutions is the only sustainable answer to the high Aboriginal imprisonment rate.

The Plan indicates that the following **approaches/principles** ought to be adopted in addressing Indigenous over-representation:-

- ongoing consultation with Aboriginal people will involve the sharing of information and its context so that Aboriginal people can make informed comment;
- the framework provided in the State *Aboriginal Justice Plan* will underpin the development of service delivery strategies for Aboriginal people;
- development of policy, programs and services that impact on Aboriginal people will be based on the analysis of improved information and statistics;
- the important role the Aboriginal Visitors Scheme plays in the welfare of prisoners will be supported and promoted within prisons;
- knowledge and skills learnt from cultural awareness training will be regarded as core competencies and will be applied by staff to their working environment.

**Key Objectives** are as follows:

*To reduce the over-representation of Aboriginal adults in prison*

Actions include developing strategies to encourage prisoners to engage in programs and
activities that seek to reduce re-offending; encouraging prisoners to access relevant external agencies (for instance, counseling or substance abuse services); making available, and ensuring participation in, programs designed to facilitate successful community re-integration; seeking collaborative partnerships to improve post-incarceration employment opportunities of Aboriginal prisoners; developing better links with Community Justice Services to ensure greater understanding of the process of ‘throughcare’; and more effective reintegration of prisoners by (i) developing alternatives to breaches of conditional release (so that problems can be dealt with in the community rather than through a return to custody), and (ii) increasing the use of cooperative partnerships to assist in the safe reintegration of high risk and high need prisoners approaching release.

To ensure that Prisons Division is responsive to the specific needs of Aboriginal women prisoners

Actions include providing accommodation for women that attends to their unique and diverse needs, and developing a comprehensive physical and mental health care strategy, with attention to programs and services aligned to the specific needs of women prisoners.

To ensure the services provided by the Prisons Division are appropriate to the culture and needs of indigenous people and their local communities.

Actions include ensuring that Aboriginal prisoners are housed in institutions which provide programs that respond to their needs; continuing to develop, expand and improve the range of programs and other risk management measures; developing culturally appropriate assessments in prisons and in the community to support reintegration; developing vocational training and educational programs to improve employment prospects; developing a comprehensive spiritual, physical and mental health care strategy addressing the specific needs of Aboriginal prisoners (particularly those in high risk categories); developing orientation and release videos specific to a prison location by, and for, Aboriginal prisoners; and recognising expressions of Aboriginality with regard to food preferences, ceremonies, customs etc.

To provide alternative approaches to managing adult Aboriginal prisoners in regional WA.

Actions include keeping prisoners in custody for the period prescribed by court at the least restrictive security level; facilitating access to Traditional Healers; developing strategies to maximise involvement of Aboriginal prisoners in culturally appropriate work and other activities; assisting in the capacity building of local communities (through engaging Aboriginal individuals and organisations in the delivery or facilitation of prison programs, and making available prison offender programs to local communities for their information/implementation within the community); seeking collaborative partnerships to develop and improve access to video link up to remote communities to ensure Aboriginal prisoners contact with family and community is maximised; and identifying models that provide for in-community management of offenders rather than imprisonment.
To acknowledge Aboriginal culture and diversity and to ensure ongoing consultation and collaboration with Indigenous people.

Actions include working to form collaborative relationships with local communities (by developing and providing work experience for prisoners which is of relevance and significance to the communities into which they will be released, and by facilitating prison visits by ATSIC members, regional councils and other external stakeholders to allay concerns and to raise awareness of prison management); reflecting the client group needs in design of prison accommodation (by consulting with Aboriginal people in design, and incorporating needs such as access to relatives through adequate visitation facilities); and providing primary health care, in conjunction with local community medical service, where possible, by promoting participation of State Public Health services, and by fostering partnerships with Aboriginal Health Care agencies.

To reduce the negative impact of incarceration on Aboriginal people

Actions include, where the security rating allows, accommodating Aboriginal prisoners within their homelands; maximising contact with families and community; recognising the importance of the Aboriginal Visitors Scheme and supporting their work; developing and sustaining an Elders – Speakers program; identifying and encouraging Aboriginal Chaplains to attend prisons; encouraging the use of Aboriginal Meeting Places in prisons; establishing a prisoner grievance procedure that enables greater internal resolution of complaints and grievances; and facilitating prisoners access to information and media in their language.


The Community and Juvenile Justice Aboriginal Justice Action Plan provides a basis for Community and Juvenile Justice to contribute to the agreed outcomes of the AJA. The stated mission is to reduce offending, protect the community, and encourage those who offend towards law-abiding lifestyles.

A number of objectives and strategies have been set out, as follows:

(a) Working with the community – to achieve broad community support and participation in local interventions and local solutions to crime.

Relevant strategies include working with Aboriginal communities to better prepare them for the return of offenders.

(b) Diversion and intervention - To provide a comprehensive range of diversionary and intervention options that are used by the courts, police and other Government and non-government agencies to address early and minor offending.

Strategies include the following:
• developing and implementing a range of comprehensive prevention and diversion options for Aboriginal offenders; and promoting the use of diversion options, particularly through the development of Aboriginal courts and alternative sentencing initiatives.
• increasing opportunities for Aboriginal youth, particularly those in regional and remote areas, to access the full range of juvenile justice diversionary services, including expanding of Juvenile Justice Teams to regional locations.

(c) **Services and programs - to increase the delivery of culturally appropriate services.**

Strategies include the following:

• developing and delivering programs and services focused on the specific needs of Aboriginal people, including therapeutic and skills-based programs, and with the involvement of Aboriginal people (including engaging respected Aboriginal people and Elders to review recruitment, selection and development strategies)
• developing innovative and flexible methods of delivering services to Aboriginal people and delivering them in appropriate, accessible locations
• developing program assessment tools to ensure programs and services are culturally and linguistically relevant and responsive to the needs of Aboriginal people
• working with Government and non-government health services to address Aboriginal people’s physical and mental health needs during involvement with the justice system.

(d) **Overrepresentation - To reduce the over-representation of Aboriginal people (as offenders and victims) in the criminal justice system.**

Strategies include the following:

• ensuring that pre-sentence reports prepared on Aboriginal people are comprehensive and include alternatives to custody, based on consultation with relevant Aboriginal people, family networks and/or communities.
• supporting opportunities for early engagement with Aboriginal prisoners and detainees, particularly to increase knowledge of, and access to, re-entry strategies and programs.

(e) **Managing offenders in the community – to promote and increase effective options for managing offenders within the community and to promote a reduced reliance on remand in custody.**

Strategies include the following:

• skilling staff to work effectively with Aboriginal people through accredited skills-based, cross-cultural training and engagement of community-based Aboriginal people for mentoring.
• reviewing the breaching protocols relating to Aboriginal offenders, including community corrections officers’ awareness of Aboriginal people’s ways of relating to non-criminal breaches, such as being late or missing meetings, before acting on non
compliance with an order.
• expanding the use of community supervision agreements for adult offenders and establishing community supervision agreements to monitor young offenders from regional and remote areas.
• increasing the range of alternatives available for Aboriginal youth being remanded in custody, including the regional supervised bail program.
• reviewing policy and practices regarding the management of Aboriginal juveniles and adults in custody who are eligible for bail yet unable to meet the bail conditions.
• developing a resourcing framework and standards for case management at the community level.

(f) Managing young offenders in detention - To provide quality, safe and humane custodial services which better equip offenders for reintegration into their communities.

(g) Women, young women and girls - To achieve improved and sustainable outcomes for female offenders.

Strategies include the following:

• developing programs and services to meet the specific needs of Aboriginal women, young women and girls
• developing a language framework and associated assessment tool to ensure Aboriginal women, young women and girls have access to material, programs and services in languages that are appropriate to their needs and abilities.
• engaging community-based Aboriginal women to assist Departmental staff provide cultural supervision and mentoring to staff.

(h) Young people – to ensure services to offenders are age and developmentally appropriate and address their individual needs.

6.2.5 Prisons Division Indigenous Education and Training Policy (2005)

This policy framework aims to increase participation and success rates of Indigenous prisoners in terms of basic and vocational education; to involve Indigenous people in decision-making in relation to educational programs; to achieve equity in education and to strengthen Indigenous identity, decision-making and self-determination; and to increase Indigenous employment. The document also provides an overview of educational levels amongst Indigenous prisoners, and sets out a number of strategies to be utilised in reaching the aforementioned goals (such as ensuring that Indigenous offenders, where appropriate, have access to Indigenous-specific programs and teachers/trainers).

A Community Justice Services Programs Branch – Approach to Servicing Offenders (2005) has also been developed, but not made available, by WA Corrective Services.

6.2.6 Statement of Reconciliation (DCS) (2006)
The Department of Corrective Services *Statement of Reconciliation* acknowledges Aboriginal disadvantage, and notes, with concern, the over-representation of Aboriginal people within the justice system. The Department expresses a commitment to ensuring access to a fair and cost effective justice system and states that it is proactive in establishing partnerships with ATSI people to ensure equity of access to justice services. The Department indicates that it utilises consultation, inclusion and empowerment wherever possible to ensure that ATSI culture is promoted, maintained and developed.

6.2.7 Department of Corrective Services Handbook (2007 and 2008)

The *Department of Corrective Services’ Handbook* is a guide to services provided by the Department, and contains an expression of commitment to addressing the needs of Aboriginal people who are directly or indirectly involved in the justice system.

In 2007, information is provided in relation to the Department’s Aboriginal Visitors Scheme (AVS) which provides support and counselling for Aboriginal detainees and prisoners in prison, juvenile detention centres and police lock-ups. The AVS, according to the Handbook, aims to reduce the likelihood of death or self-harm; to ensure that the conditions of those in custody improve through consultation, advice and information; and that Aboriginal community groups are informed of conditions of custody. Information is also provided about the Community Supervision Agreements for adult and juveniles offenders from remote communities. Relevant councils and community members are contracted to provide services to young offenders in their own communities such as (i) providing placement options if suitable for supervised bail, (ii) providing mentoring, support and guidance where young people are on community-based orders, (iii) having community members (a) trained to provide community conferencing for minor offending and (b) develop and/or facilitate programs, and (iv) providing and monitoring community work.

The 2008 *Handbook* provides information about the Aboriginal Justice Directorate, established to improve delivery of services to Aboriginal offenders and to assist in implementing strategies (including those within the *Mahoney Inquiry; Gordon Inquiry* and *AJA*) to address over-representation, as well as Community Supervision Agreements in place for adult and juvenile offenders on remote communities.

6.2.8 Court Services has also developed *Court Services Aboriginal Strategic Plan (2005-2009)*.

This document has not been made publicly available.

6.3 Annual Reports

6.3.1 Department of Attorney General/Department of Justice (incorporating Corrective Services)

*Annual Report 2000-2001:*


Aboriginal Policy and Services further developed a pilot prison-to-work transition program in the Pilbara, aimed at helping released prisoners to gain and retain employment, reintegrate into the community and avoid continued offending. The office also extended the Aboriginal Visitors Scheme, and contributed to the development of the Aboriginal Justice Plan. In future, they seek to provide support to the regional Aboriginal Justice Council through the Aboriginal Visitor’s Scheme, and update the Aboriginal Justice Plan in consultation with related Government and community organisations. Three new prisoner work camps were opened in regional Western Australia, following extensive consultation with Aboriginal elders and community organisations. Community consultative groups will now operate in all areas where there is a work camp (six in total). The Aboriginal family supervision program, designed to help young Aboriginal offenders complete their community-based orders with support of their families, continued to operate, and an Aboriginal Juvenile Justice Team coordinator was appointed. Within Offender Management and Prison Services, and in terms of managing offenders within the community, the Aboriginal Cyclic Offending program (to reduce re-offending by adults and juveniles) was consolidated. The Aboriginal mentors scheme for young people was extended to assist with completion of community supervision orders. For offenders in custody (juveniles), the Kimberley Supervised Bail Program was developed through the establishment of the Banana Well juvenile bail facility for accommodating juveniles who were eligible for bail, but did not have a responsible adult to fulfil bail conditions. It is operated by the Burrguk Aboriginal community on behalf of the Ministry, and provides care, accommodation and supervision. For juveniles, it means they do not have to be escorted to and from a remand centre in Perth, and they are not removed from their culturally familiar surroundings and supports. A second facility is near completion near Kununurra.

Annual Report 2001-200:
There has been a reduction in rates of imprisonment, and changes in the way the Department works with Aboriginal communities, but the issue of Indigenous over-representation remains an important and difficult one. Building a culturally-sensitive justice system, through effective partnerships with Aboriginal people, is a priority. The Kimberley Justice Project will give rise to the development of the Kimberley Regional Justice Plan, which will be the first of a series of regional justice plans. It is intended that the plans will divert offenders away from imprisonment to appropriate alternatives in the community, reduce over-representation in prisons, and enhance community safety. In terms of managing juvenile offenders in the community, Aboriginal Case Support Officers have been appointed to assist young people and their families with attendance at family group conferences and compliance with resulting action plans. Further, a framework for Community Supervision Agreements to include juveniles was established. For managing adult Aboriginal offenders in custody, a strategic plan was developed (2002-2005), and Aboriginal Elders Speakers Program was initiated in 11 prisons (with a corresponding Community Reference Group to assist), and culturally sensitive Aboriginal offender treatment programs for sex offenders and drug and alcohol abuse were developed and provided in prisons. New work camps were established in remote and regional areas, with Aboriginal community consultation.
Annual Report 2002-2003:
Aboriginal over-representation continues to cause concern, leading to the establishment of the State’s first circle court at Yandeyarra in the Pilbara, and the commencement of discussions about common service delivery in remote central desert lands. As part of its commitment to the Gordon Inquiry, the Department has developed key initiatives in the areas of offender rehabilitation monitoring in remote communities and supporting remote communities to manage Aboriginal adult offenders. For Community and Juvenile Justice and Prisons Divisions, and in terms of managing juveniles in custody, a third remote supervised bail facility was opened at Yandeyarra. Aboriginal Policy and Services made the prison-to-work program permanent after a two-year trial.

Annual Report 2003-2004:
The signing of the AJA in 2004 marked a new approach to dealing with Indigenous justice issues. It is part of the Department’s leading role in the whole-of-government response to the Gordon Inquiry. It intends, in future, to lead and coordinate the AJA implementation plan, which involves development of local, regional and State justice plans, coordinating consultations to develop a discussion paper on Aboriginal courts, continuing to support Prisons, Court Services and Community and Juvenile Justice in developing and implementing their Aboriginal Service Plans, and working with other agencies and the Department to implement the Gordon Inquiry initiatives. Aboriginal community advisory committees were established by all regional prisons, and the cross-border justice initiative has been progressed. (for instance, a full demographic profile of people in the relevant areas has been prepared). As part of the Gordon Inquiry, the Department has appointed program officers to deliver perpetrator programs for adult and juvenile offenders on remote communities, and officers to work with remote Aboriginal community councils in relation to managing offenders on community-based orders. The Department of Justice’s Reconciliation Statement and the Prisons Division Aboriginal Services Strategic Plan (2002) appear to be improving services for Aboriginal prisoners. The range of rehabilitation programs tailored to meet the needs of Aboriginal prisoners, and relevant vocational and education opportunities (through appointment of Aboriginal education workers) were increased, with literacy and numeracy training in prison industrial workshops also expanded. Aboriginal prisoners participated in the Vocational Educational Guidance for Aboriginals Scheme, which helps prisoners to engage in post-compulsory training, develop skills and explore career opportunities. It also links prisoners to employment and/or training options after release. Further, Aboriginal elders-speakers programs were introduced into eight prisons. For young Aboriginal detainees, the Young Offender Personal Development program was re-oriented, with more Aboriginal content, and psychologists received supervision from an Aboriginal psychologist during their training. Education services delivered by Aboriginal education officers provided individualised learning programs for Aboriginal young people. And a number of Aboriginal youth completed the Protective Behaviours program (teaching them about dealing with potentially abusive behaviours), which supports the Gordon Inquiry recommendations, and a sex offender counselling program for remote Aboriginal youth. Aboriginal cross-cultural awareness training was provided to staff. As part of implementing the Gordon Inquiry recommendations, Community and Juvenile Justice appointed officers to deliver perpetrator programs to adults and juveniles on remote
Aboriginal communities. They will work with communities and other Government agencies, with community members encouraged to help deliver programs that are tailored to meet local needs and culture, and two further officers were appointed to work with remote Aboriginal community councils to manage offenders on community-based orders. Community supervision agreements are now held in 40 communities, and will be increased over the next year. Such agreements are essential because of the vast size of the State and sparse distribution of the population, making a permanent presence in all locations impractical. A number of communities have withdrawn from the regional juvenile bail program, including Banana Well following review of the community’s resources. The Aboriginal Visitors Scheme was also moved forward, to allow, for instance, improved access by visitors to all prisons.

Annual Report 2004-2005:
In terms of Community and Juvenile Justice and Prisons, the Mahoney Inquiry was announced. The Young Offenders Act 1994 was amended to allow community supervision agreements and community juvenile conferencing in remote areas. Agreements have been set up, and Aboriginal community supervision officers have also been employed, on a number of communities. A discussion paper on Aboriginal Courts was finalised, and is under consideration by the judiciary.

Annual Report 2005-2006:
The Department of Justice was separated into the Department of the Attorney General (DotAG) and Department of Corrective Services (DCS) as a result of the Mahoney Inquiry recommendations. The DotAG prioritised these recommendations according to their impact upon community safety, service delivery and staff safety and wellbeing, and gained Government funding to implement its key initiatives (and those of the AJA). 22 foundation projects relating to those recommendations were funded by Government in the last year, mostly relating to the DCS. Court Services began a community court at Norseman. It intends to reduce Aboriginal people’s contact with the justice system by improving fines enforcement case management practices, implementing an Aboriginal Court pilot in Kalgoorlie, developing family violence courts and associated programs at Geraldton and in metropolitan areas, and recruiting Aboriginal Court Liaison Officers in key court areas. As a result of the discussion paper on Aboriginal courts, work has begun on developing a pilot at Kalgoorlie.

Annual Report 2005-2006:
The Kalgoorlie-Boulder community court has started operation (with early indications being positive as 90 adult and 40 juvenile defendants elected to be dealt with by this court), and family and domestic violence courts, based on the Joondalup model, have been rolled out to address family violence in Aboriginal communities, offering defendants access to relevant programs. The Mahoney Inquiry informs much of the DotAG’s work. Progress has been made on five key initiatives, including the recruiting of Aboriginal Liaison Officers within courts (Recommendation 124). An Aboriginal

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8 For further discussion on Aboriginal Community Courts, see Temby 2006; Heath 2005; and King 2003.
Family Violence Court has been set up in Geraldton (the first such regional court), with much local Aboriginal participation in the project. The DCS and DotAG employed more community development officers in remote areas to assist in the management of outstanding fines and assist communities to identify community work for offenders.

**6.3.2 DCS Annual Report 2006-07**

Community engagement with Aboriginal people is a priority, in particular, planning for new custodial facilities in the Kimberley and Goldfields regions. Much of the DCS’ work is informed by the *Mahoney Inquiry*. In this reporting period, as part of a *Reducing Aboriginal Imprisonment Strategy* (a joint strategy with the Department of the Attorney General) the following were either planned for, or implemented:

- returning prisoners to their home communities to decrease the likelihood of re-offending
- providing bail coordinators at two prisons to help with meeting of bail conditions
- increasing access to early release through viable parole plans
- facilitating employment options post-release for prisoners
- employing a sheriff/community development officer for work in the Goldfields and other communities to increase the use of fine payment options.

Planning on future facilities at Goldfields and Kimberley progressed, focusing on specific needs of Aboriginal prisoners. The KARG continued to work with the Department to provide advice and guidance on reducing offending. A similar plan is being developed for Goldfields and Ngaanyatjarra Lands regions in 2006/07.

**6.4 Office of the Inspector of Custodial Services**


The Office of the Inspector of Custodial Services was created in 1999 as an independent statutory body. The role of the Office is to bring independent external scrutiny to the standards and operational practices relating to custodial services within the state. The Office, which falls within the general portfolio responsibility of the Minister for Corrective Services, is answerable directly to the Parliament.  

The *Directed Review of the Management of Offenders in Custody by the Office of the Inspector of Custodial Services (Report No. 30, November 2005) (Inspectors Directed Review)* was held simultaneously with the *Mahoney Inquiry*, and, in fact, the terms of reference of the latter directed the Inquirer to ‘have particular regard to the opinions and findings of the Inspector of Custodial Services’. The Inspector was directed to inquire

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into, and advise upon, a range of matters, including whether innovative approaches to custodial management can be developed, and whether existing prison facilities and their regimes and programs are appropriately calibrated to achieve the objectives of imprisonment. Some contextual background into Aboriginal over-representation is provided in the document. Issues addressed include risk management and prison regimes (including classification of Aboriginal prisoners, Aboriginal prison regimes) and custodial management in the Kimberley and Eastern Goldfields.

Classification system
Whilst the Prisons Division Strategic Plan for Aboriginal Services advocates recognising the unique position and history of Aboriginal people, including in relation to the justice system, the classification system applies uniformly to all prisoners, with no specific reference to racial background. In fact, there is potential for bias within the system as factors such as program performance, stability factors, work/education report are utilised in making an assessment, and these factors have been found to be poor predictors of Aboriginal behaviour. The classification system does not allow the Department to deliver on its Strategic Plan for Aboriginal Services. Prisoners are not accommodated in their homelands; contact with family is not maximized; Aboriginal prisoners are not being housed in institutions which provide programs that respond to their specific needs; and they are not developing culturally appropriate assessments in prisons and the community to support and sustain reintegration (as set out in recommendations in the Strategic Plan for Aboriginal Services). (Recommendation 2.129)

Regimes
There is a chronic shortage of programs and program staff in the northern and eastern prisons. For instance, at the Eastern Goldfields Regional Prison, Aboriginal prisoners make up 80% of the male prisoner population, and they are prone to heavy alcohol and substance abuse. However, only 23 of the prisoners attended the Indigenous Men Managing Anger and Substance Abuse program in 2003-2004 (with 649 prisoners received at the prison during this period). There were no other programs run during the year. Aboriginal prison regimes are a matter of deep concern to the Inspectorate. Aboriginal prisons have been neglected, and their conditions are inferior to those within non-Aboriginal prisons. This is structural racism, and regional stakeholder reference groups ought to be established in each region to be able to speak for the (particularly Aboriginal) prison population. These groups would maintain effective links between the community, communities, Aboriginal leaders and the prisons, and would engage in consultation in terms of policy and planning. More needs to be done to improve the funeral attendance policy. (Recommendation 2.129)

Kimberley Regional Custodial Management
In 2004, the Kimberley Aboriginal Reference Group (KARG) (see below) was set up to report to the Minister for Justice about infrastructure and facility needs, and programs and regimes, in terms of a custodial plan for the area. This is a move in the right direction – towards consultation. Whilst Aboriginal participation and partial ownership of justice processes, through, for instance, Aboriginal reference groups, will contribute to reducing
over-representation, a whole-of-government approach – involving the various agencies and Departments responsible for policing, community development, Indigenous affairs, health, crime prevention, drug and alcohol strategies, mental health, education and training, courts and others – is required. That holistic approach should adopt alternative ways of dealing with offenders through restorative justice and victim mediation models, for example. There also needs to be an integration of the range of custodial and correctional services in a particular area. Gaps in community justice services actually contribute to imprisonment patterns (for instance, where there is no work identified and negotiated which could be carried out under community service orders, fines or imprisonment are imposed). The lack of community justice personnel and services in some predominantly Aboriginal areas (such as Wyndham) exacerbates the situation for Aboriginal people, in terms of overrepresentation in custodial settings. A secure prison should be seen as a hub of regional correctional services. This approach should be piloted at East Kimberley, with the KARG (or a derivative thereof) potentially having responsibility for maintaining effective linkages with Aboriginal communities; advising on policy; and monitoring the actual impact of current policies and practices upon their people, both prisoners and families. (Recommendations 3.150)

Eastern Goldfields Custodial Management
Most prisoners from this region are placed ‘out of country’ due to a lack of facilities (mainly in metropolitan prisons) - an issue of particular concern in relation to juveniles. There are limited opportunities in terms of programs in this region. During community consultations, there was endorsement for community-run juvenile bail hostels, with adequate support from the Department and adequate community capacity. In 2004, a community bail facility was set up in the Kalgoorlie region, and there has been a commitment to build a juvenile remand centre in Kalgoorlie-Boulder. Aboriginal people want to care for Aboriginal people with appropriate support from government and non-government agencies, and with Aboriginal viewpoints being taken into account. This is consistent with the principles of the AJA. There is also support for a pre-release centre in the Kalgoorlie area, where Departmental staff or staff from other contracted organisations might provide social support to tenants. Released offenders on parole; offenders on a pre-release scheme, on bail; or offenders who have a community order requiring them to undertake a program which is not available on their remote community could reside here. Residents could get support in a number of areas, such as employment and successful reintegration, and people on bail would be supported to meet bail conditions.

6.4.2 Office of the Inspector of Custodial Services, Digest of Aboriginality in Western Australian Prisons as Reported in Published Inspection Reports 2000-2005 (June 2006)

This Digest of Aboriginality Report is a summary by the Office of the Inspector of Custodial Services of findings located in Inspection Reports for the period 2000-2005 which relate to Aboriginal persons. It is noted in the report, at the outset, that in 2001, Aboriginal prisoners represented one third of Western Australia’s prison population. In 2006, this figure increased to 40%, with 45% of this group accommodated in one of the
state’s four regional ‘Aboriginal Prisons’ (at Broome, Eastern Goldfields, Roebourne and Greenough Regional Prisons). According to the Report, each of these prisons has a population that is 75% or more Aboriginal, ‘yet, urban, white Australian values dominate the management of these prisons. It is in these four prisons that structural racism is most stark’, according to the report. Regional ‘Aboriginal prisons’ in Western Australia are underfunded and neglected, leading to appalling conditions (in all aspects) to be endured by Aboriginal prisoners.

The report goes on to consider conditions in a range of areas, and indicates where Western Australian prisons fall short in terms of meeting Standard Guidelines for Corrections in Australia, finding as follows.

- More culturally and linguistically appropriate orientation procedures are required.

- Foreign nationals on remand in regional prisons were more likely than Aboriginal remandees to be classified as low security, enabling them to enjoy better conditions (such as not being transferred out of the region whilst on remand).

- The current classification system disadvantages Aboriginal prisoners (such as privileging stable work history and residential address), and a more effective and realistic assessment process is required.

- Despite espousing a commitment to keep Aboriginal prisoners in their homelands, this is not occurring. For instance, in 2004, 40% of prisoners from the Kimberley were accommodated outside that region.

- The Aboriginal Visitors Scheme needs to work more effectively with Aboriginal women in regional areas.

- There were some difficulties with the Peer Support Group; namely, lack of awareness of the Group in regional prisons, and management attempting to ensure Aboriginal and non-Aboriginal members of the Group (in one instance).

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10 The concept of an "Aboriginal Prison" was first articulated by the Inspector in the Overview to Report 4 (2001) Report of an Unannounced Inspection of Eastern Goldfields Regional Prison. It was defined as ‘a prison whose normal population is predominantly (75 per cent or more) Aboriginal.’ However, it should be noted that three prisons – Hakea, Casuarina and Acacia – individually accommodate more Aboriginal prisoners than are found in any one of the four ‘Aboriginal Prisons’ that have been identified (see discussion at Office of the Inspector of Custodial Services (2008) Inspection Standards for Aboriginal Prisoners, Office of the Inspector of Custodial Services, Perth, WA: 1-2)

- The employment of a full time Indigenous Liaison Officer at Acacia Prison was a practice that ought to be followed in other prisons, as this initiative worked very effectively.

- Officers at one regional prison in particular allegedly treated Aboriginal prisoners ‘like animals’, and the report indicates that there is ‘increasingly embedded racism’ present which cannot be eradicated solely by cultural awareness training. Racism existed in metropolitan prisons, although perhaps not at such a serious level as occurs at a regional level.

- The use of restraints in regional Aboriginal prisons (particularly to move prisoners within prison facilities, perhaps due to lack of secure perimeters) is ‘disturbing’, and would not be tolerated in mainstream custodial facilities.

- Accommodation in regional prisons is below acceptable national standards.

- In some instances, cultural meeting places in prisons were tokenistic only, and access to them by prisoners was restricted.

- Aboriginal prisoners had been denied leave to attend funerals on the basis that the relationship with the deceased did not constitute a sufficiently ‘significant relationship’ (although significant within Aboriginal culture).

- There was insufficient provision of traditional foods in many instances.

- More and better use might be made of Aboriginal Medical Services in providing health care to Aboriginal prisoners.

- Aboriginal prisons suffered a program deficit when compared to non-Aboriginal and metropolitan prisons.

- There were inadequate systems in place to enable Aboriginal prisoners to maintain contact with kin and community. Distance was prohibitive in those instances where Aboriginal people were transferred ‘down south’ and away from community, and transfers of prisoners to community for visits were not occurring in numbers of any significance.

- Aboriginal prisoners in regional prisons were not given the same opportunities to participate in work opportunities and rarely were found in top-level industry employment, in part due to stereotypes of Aboriginal people as unskilled, as lacking a work ethic and as being suited to a limited range of manual jobs.

- Aboriginal participation in community work was positive, but it was noted that there was unequal access to (s 94) projects. For instance, over half of the
prisoners undertaking community work in the course of a year are non-Aboriginal at Broome Prison, despite the fact that the latter constitute only 25% of the prison population. At Eastern Goldfields, Aboriginal community work was more menial in nature than that undertaken by non-Aboriginal inmates.


The Inspector of Custodial Services developed these Standards to represent the codification of findings and recommendations for improving the outcomes for Aboriginal prisoners (constituting 40% of the WA prison population), developed over the eight years that inspections have taken place. Standards cover a wide range of issue, and some examples follow:

- Aboriginal prisoners should be able to serve out their sentence within their own country

- Prison buildings and layouts should be culturally appropriate

- The transport of Aboriginal prisoners out of their country should only be undertaken where absolutely necessary and after making provision for the high level of stress that such journeys generally cause.

- Care should be taken to ensure that significant Aboriginal cultural values are not unknowingly or unnecessarily transgressed or that European cultural assumptions are placed on Aboriginal behaviour.

- Culturally appropriate criteria for leave to attend family funerals should be established and implemented for Aboriginal prisoners, and in those instances in which all the Aboriginal prisoners who wish to attend a funeral are not granted leave to do so, each prison should make provision for appropriate internal meetings or ceremonies to take place. Aboriginal spirituality should be encouraged and strengthened through the systematic observance of customs relating to language, food, death, healing, storytelling, rites of passage or tribal traditions.

- Prisons where the population is predominantly Aboriginal should have an active peer support group of prisoners which broadly reflects the various gender and skin groups that comprise the prison population.

- The management of Aboriginal women should reflect an understanding of a women-centred approach to all aspects of imprisonment.
- Prisons with a predominantly Aboriginal population must have comprehensive health services that reflect and cater for the epidemiological profile and needs of its Aboriginal population.

- At prisons with a predominant Aboriginal population, the health service should employ an Aboriginal health worker.

- Food and dietary arrangements should take account of the particular health needs and preferences of the prisoner population and appropriate provision should be made for the availability of traditional food and bush tucker.

- Aboriginal prisoners from remote communities should be able to access appropriate compensatory arrangements to mitigate the many additional disadvantages that they experience in prison.

- Visiting arrangements at Prisons with a predominantly Aboriginal population should be highly flexible, particularly for visitors that have come from remote communities. Many such visitors are only able to visit infrequently and where practicable, such visitors should be allowed extended and all day visits.

- Each prison with Aboriginal prisoners should make available culturally appropriate offender programs, with the whole suite of programs calibrated to the offending profile and criminogenic needs of the prisoners.

- Vocational skills programs that are relevant to post-release employability of Aboriginal prisoners in either local industries or on their own communities should be established and maintained.

- Prisons with a predominantly Aboriginal prisoner population must ensure that there are appropriate pre-release opportunities for women prisoners.

- Educational opportunities should be culturally appropriate to the needs and beliefs of the prison population.

- Release arrangements for Aboriginal prisoners, particularly for those from remote communities must include robust processes to ensure that prisoners can safely and promptly return to their homes, regardless of where they were initially arrested and/or tried.

6.5 Other Policy Initiatives and Documents

6.5.1 Inquiry into the Management of Offenders in Custody and in the Community (Mahoney Report) (November 2005)

In 2005, it was announced that an inquiry was to be held into the management of
offenders and associated matters by Hon. D. Mahoney under the Public Sector Management Act 1994. The inquiry came about as a result of public outcry following a number of prison escapes, an assault upon a female prison officer, and a murder committed by a parolee. The Terms of Reference required, *inter alia*, the examination of the corrections system; the assessment of the organisational structure, role, and performance of the Department of Justice (as relevant); and the development of a plan of ‘implementable strategies’.

In the final *Mahoney Report*, recommendations were made with respect to a range of relevant issues, including parole; re-socialisation of offenders; courses and programs; and the management of female and Indigenous offenders. In terms of the latter, the report goes into some detail in relation to the overrepresentation of Indigenous people within the justice system in Western Australia (as both victims and offenders). It is noted that there are four ‘Aboriginal prisons’ in Western Australia, holding 75% or more of Indigenous prisoners, and that nearly half of the adult prison population, and almost all of the juvenile detention centre population, is Indigenous.

It is noted that Indigenous offenders are not accessing diversionary initiatives such as the Drug Court or Justice Mediation Program, and that employment of Indigenous staff and/or more culturally appropriate programs may be of assistance in this regard. Indigenous offenders are accessing the Geraldton Alternative Sentencing Regime\(^\text{12}\) (GASR), however, but only at under 50% of the total number of those who utilise the Regime. Comment is also made in relation to the Indigenous Diversion Program (IDP) (a diversionary program developed under the COAG Drug Diversion Initiative) operating from within the WA Drug and Alcohol Office. IDP is an early intervention court diversion program that specifically targets persons who have committed minor offences and who have alcohol or other drug problems, and is provided in Broome and Carnarvon as part of court proceedings, but with only two workers employed at the time of writing. This, it is suggested, must impact on output. It is suggested that more needs to be done in

terms of accessibility of government diversionary programs. Government must also ensure that programs are community-owned, rather than simply community-based. In this way, there is some assurance that the programs will be culturally appropriate, where Indigenous people are involved in the planning, delivery and evaluation of relevant services, as has occurred with the GASR.

Other key Indigenous-specific recommendations are set out in the Inquiry’s report. They include implementation of an Indigenous employment strategy; greater attention to be given to contracting Indigenous groups to provide relevant services; and establishment of standing Indigenous justice-related groups to work in partnership with government agencies at the local, regional and state-level. With respect to the latter, it is recommended that Regional Indigenous Justice Advisory Groups (RIJAG) should be established, reporting to the Attorney General. They would (a) assume the role of the former ATSIC in implementation and monitoring of the AJA; (b) provide policy and project advice in relation to Indigenous overrepresentation; (c) explore opportunities for (i) whole-of-government responses to Indigenous offenders needs and (ii) Indigenous community groups to enter into commercial and non-commercial agreements to provide ‘community-owned’ corrections-related services; and (d) establish Women and Young Offenders sub-Committees. From these RIJAGs, a State Indigenous Justice Advisory Group could be developed (Recommendations 81 & 82).

The Inquiry recommended that corrections and the Attorney General’s departments be separated into two distinct departments (as has subsequently occurred). Further, the Corrections Act should require the Department to specifically contemplate the unique cultural needs of Indigenous offenders in the development, delivery and evaluation of policies, programs and services (Recommendation 85); and, in light of the high proportion of Indigenous offenders in custody, planning for all custodial facilities should ensure appropriate consideration is given to the needs of Indigenous offenders (Recommendation 86). Each Prison Superintendent should establish a standing Indigenous Services Committee to coordinate and monitor the implementation of the Department’s Indigenous strategies (Recommendation 87). The current classification system is not always appropriate for Indigenous offenders (for instance, an Indigenous prisoner may not be motivated to escape other than to resolve urgent family matters, but this may not be taken into account in classification), and it should be reviewed to determine its appropriateness for the management of Indigenous offenders (Recommendation 88). The Department should consider increasing the use of low security facilities for Indigenous offenders, such as work camps (including women’s work camps), in all areas. In this regard, Government should consider recommendations of the Inspector’s Directed Review (Recommendation 94) (see below). Planning for future infrastructure in predominantly Indigenous areas should be based on a ‘Regional Prison’ model, where such prisons contain prisoners of all levels of classification and determine the facilities and services according to the needs of Indigenous offenders (Recommendation 8).

In terms of management and treatment of Indigenous inmates, the final report indicates that conditions endured by inmates is ‘appalling’ in ‘Aboriginal prisons’, both in physical
It was recommended that future regional custodial facilities with predominantly Indigenous prisoners should be specifically constructed to meet the needs of Indigenous offenders and to provide for the delivery of services to prisoners at all classification levels so that the need to transfer prisoners to other facilities out of their ‘country’ due to overcrowding is minimized (Recommendation 89). At least one new custodial facility should be established in the Kimberley immediately (currently only a minimum security facility) and the Eastern Goldfields Regional Prison should be replaced as a matter of priority due to poor conditions (Recommendations 90 & 91). Indigenous inmates should be provided with culturally appropriate courses of literacy, numeracy, healthcare, anti-drug and other courses to address criminogenic and non-criminogenic needs. The programs and educational courses delivered to offenders, and particularly those directed to re-socialisation, should be adapted to suit Indigenous offenders. The Aboriginal Visitors Scheme is favourably endorsed.

Rates of re-offending amongst Indigenous offenders is high, and more needs to be done in terms of development, planning, delivery and evaluation of therapeutic and non-therapeutic offender programs and services in both prisons and community correction systems. In a Departmental review of programs, there were no Indigenous-specific programs, and, since 1998 only the Indigenous Sex Offenders Program (ISOTP) and the Indigenous Men’s Managing Anger and Substance Abuse Program (IMMASU) have been provided. Mainstream programs are available to Indigenous offenders, but referrals and completions of such programs by these offenders are low. The Prison Division and Community and Juvenile Justice are developing a Family Violence Program in Broome. In response to the Gordon Inquiry, the Department is implementing three initiatives - (i) providing therapeutic programs to violent offenders, victims and other members of remote communities; (ii) expanding Community Supervision Agreements; and (iii) expanding Victim Support Services for Indigenous victims (to be provided by Court Services). It is recommended that the Department should significantly increase its expertise and capacity in the Programs Branch to develop, deliver and evaluate programs for Indigenous offenders, particularly to meet the needs of women and young offenders (Recommendation 92).

In terms of remote communities, the Department of Justice committed in their Gordon Implementation agreement with the Department of Treasury in 2003 to develop Indigenous-specific program materials for violent offenders, their victims and other members of remote communities, to be delivered on those communities. This has not occurred. It was suggested that the management of the initiative was lacking; that the initial intention and scope of the project was too ambitious; a strategic business plan for the project was not developed; and there was insufficient project management or coordination. However, a draft set of program materials have now been developed, which are non-therapeutic. The Department has developed three new Community Supervision Agreement Officer positions in the Kimberley, Pilbara and the Goldfields. Whilst this has had a greater impact on the ground, compared to the remote communities education strategy, there is room for improvement, particularly in ensuring communities have the capacity to sustainably provide this service. The Department of Corrections should enter
into commercial and non-commercial agreements with Indigenous community groups for the provision of correctional services to Indigenous offenders such as work camps, Women’s Pre-Release centres, juvenile correction camps, community supervision agreements, offender programs and other services (Recommendation 93).

In terms of female Indigenous prisoners, almost all are Indigenous in regional areas (and primarily mothers), and more need to be placed nearer to, or in, ‘their country’. The specific needs of female Indigenous prisoners are noted in the report. For instance, the Department should undertake research to determine the causes of the high failure rate of Indigenous women in relation to community-based orders (Recommendation 109). Any Departmental Indigenous policy or strategy should include separate reference to the needs of Indigenous women, and not simply as a subset of those for women in general or those for Indigenous men (Recommendation 110).

Further, and more generally, more will be achieved with a greater application of performance indicators and benchmarks in policies, strategies and plans.

6.5.2 Kimberley Aboriginal Reference Group’s initial recommendations toward the Kimberley Custodial Plan (October 2005) – Stage One Report

In 2005, the Minister for Justice established the Kimberley Aboriginal Reference Group (KARG). This initiative provides an example of effective community engagement in relation to justice issues. KARG consulted widely with Aboriginal people throughout the Kimberley to provide to Government initial recommendations in its *Stage One Report* (2005). A further report (see below) was produced for input into a final Kimberley Custodial Plan.

KARG’s recommendations were as follows:-

- Building one large prison is not appropriate, given that Aboriginal prisoners emanate from both the East and West Kimberley. One prison would mean isolating one group from their support networks.

- A ‘full prison’ is required in both the East and West Kimberley, in order to accommodate prisoners of all security classifications. These facilities should include opportunities for community-style living; visitor and family accommodation; a ‘structured-day’ regime; education and skills development programs and facilities; and reparation, rehabilitation and re-entry programs and facilities. KARG looks to the WA Boronia Pre-release Centre for Women, the design of the Malmsbury Juvenile Detention Facility in Victoria and Canadian healing lodges as possible examples of appropriate facilities.

- The two existing work camps ought to be upgraded in terms of accommodation and access to services and programs and three new work camps ought to be developed, with full access to prisoner services and
programs (with the possibility of a further mobile work camp so that remote communities, and offenders from remote communities, can also benefit).

- Many communities are willing to provide community-based alternatives to prison, although some might require capacity building in order to do so. A number of communities were also willing to consider ownership and management of a work camp custodial facility as an economic development opportunity. Communities should be contracted to provide community-based custodial alternatives.

- Security classification must be reviewed to ensure that otherwise eligible prisoners are not disqualified for work camp participation because of a technical and empirical assessment. Local Department of Justice staff and local Aboriginal people ought to be able to advise in terms of eligibility.

- Women ought to be accommodated in a separate custodial facility, or in separate facilities within a custodial facility. The main features of the female facility should be mainly Aboriginal staff; facilities that enable children to be with their mothers and the prisoners to conduct a normal life under supervision and direction; a ‘structured day’ regime; opportunity for reparation and rehabilitation; and re-entry and post-release support programs. Consideration ought to be given to establishing community-based facilities for women, given their low numbers, and a work camp for women (which offered cultural programs, education and rehabilitation programs and the opportunity for practical community reparation).

- There is no support for a separate juvenile custodial facility in the Kimberley, and juveniles ought to be held in home or community detention in preference to custody.

- Services and programs ought to be designed specifically for Kimberley Aboriginal prisoners, and be planned in partnership with the Kimberley Aboriginal community and Aboriginal service providers.

- A Kimberley Regional Prisons Board should be established to advise and monitor the design, implementation and management of the Kimberley Custodial Plan. Membership would be drawn from Aboriginal and non-Aboriginal community leaders and experts in the administration of justice and the management of custodial facilities, services and programs.

- Kimberley Aboriginal service providers should be contracted, on a commercial basis, to deliver custodial facilities and services and programs.

- Although Aboriginal elders are currently invited to sit on the Bench at Magistrate Courts in the Kimberley, this practice requires more consistency.
Aboriginal advocates should be appointed to advise the bench and court officers (in the East and West Kimberley), and be paid and trained to do so.

6.5.3 The Kimberley Custodial Plan – An Aboriginal Perspective – Stage Two Report – Prisoner Programs (February 2006)

KARG notes that the Stage One Report informed and supported the Mahoney Inquiry and the Directed Review (see above). This Stage Two Report focuses on prisoner programs. Effective programs are absolutely essential to reduce incarceration and recidivism, according to KARG. At the time of writing, Aboriginal prisoners made up almost 100% of the prison population in the Kimberley, and had no access to rehabilitative programs, and did not appear to be involved in any structured preparation for release or return to their communities.

The following recommendations are made:

- Kimberley facilities and services ought to be designed to meet the unique needs of Kimberley Aboriginal prisoners, through, for instance, a partnership between the Department of Justice and a Kimberley Regional Prison’s Board (or extension of the KARG) (with prisoner representation).

- Prisoner programs are essential, and they must be designed and delivered in partnership between non-Indigenous and Indigenous leaders and professionals. Design of the programs should also lead the design of the physical custodial facilities.

- A prison-based therapeutic community must be set up.

- The prisoner program/prison-based therapeutic community model must also be administered under the through-care concept, as most Aboriginal prisoners average only 5 months in prison.

6.5.4 Aboriginal Customary Laws: The Interaction of WA Law with Aboriginal law and culture (Law Reform Commission of Western Australia (2006))

In 2000, the Western Australian Law Reform Commission (WA LRC) was asked to inquire into and report upon Aboriginal customary laws in Western Australia and to consider whether, and, if so, how Aboriginal customary laws should be recognised within the Western Australian legal system. In 2005, after consultation, the Commission published a Discussion Paper detailing opportunities for recognition of Aboriginal customary laws in Western Australia and called for submissions. The Commission finally reported in 2006, setting out 131 recommendations.

Broadly, the WA LRC recommended establishing an Office of the Commissioner for Indigenous Affairs to report on progress of implementation of this report and the RCIADIC, as well as on outcomes directed towards reducing Aboriginal disadvantage
generally and overrepresentation in the justice system. Chapter 5 of the report focuses on the criminal justice system and makes a number of recommendations in relation to Indigenous over-representation. The WA LRC identifies particular difficulties experienced by Indigenous people within the justice system. It addresses, and makes specific recommendations in relation to these issues throughout the report (including recommending cultural awareness training for staff and volunteers within the Corrective Services (Recommendation 12), and for lawyers (Recommendation 11), and a review of programs and services for Aboriginal people by the Departments of Attorney General and Corrective Services).

A major recommendation of the LRC concerns Aboriginal community justice groups. There are initiatives being undertaken, or planned, in this area under the AJA, according to the report, with the development of regional and local justice plans and (proposed) local justice groups, and under the Mahoney Inquiry, as well as some community action groups. The Commission recommends that an Aboriginal Justice Advisory Council should be established to support community justice groups, which would operate at a local level. The LRC recommends that community justice groups ought to be able to set community rules and sanctions (within the constraints of Australian law). They would be able, potentially, to assist with sentencing and bail matters, providing information to courts about an accused, as well as providing evidence or information about Aboriginal customary law and culture. They may also assist with diversionary programs, participate in the supervision of offenders subject to court orders, and play a role in the establishment of Aboriginal courts (Recommendation 17).

In the LRC’s Discussion Paper, it was recommended that an Aboriginal Court be established in both regional and metropolitan locations, and for both adults and children. An Aboriginal Court has since commenced at Norseman in February 2006, and was due to commence in Kalgoorlie in November 2006 (with an Aboriginal Family Violence Court in Geraldton). The LRC recommended that the Courts be established under formal government policy in order to ensure long-term sustainability, and sets out procedures and a structure for the relevant Courts (Recommendation 24). It was also suggested that Aboriginal people should be involved in the design and delivery of community-based sentencing options, with community-owned programs and services as part of this.

The LRC also focused on ways to increase diversion for Aboriginal youth, including through amendments to relevant legislation. It was strongly recommended that youth who have committed minor offences be dealt with by community justice groups, without recourse to the criminal law at all. Where a matter does come to the attention of Police, it is suggested that they refer an offender to a pilot diversionary scheme which utilises community justice groups. Those groups need to be resourced to develop and operate diversionary programs (Recommendations 50 & 51). Aboriginal liaison officers ought to be employed in all courts to provide assistance to Aboriginal people giving evidence in court, and to ensure that due regard is given to customary law in court (Recommendation 127). Judicial officers ought to be provided with cultural awareness training (Recommendation 128).
This document reviews the direction of programs and services in the context of Aboriginal people, with reference to the concerns of the Aboriginal Customary Laws project. The paper sets out legislative and policy initiatives addressing Indigenous contact with the criminal justice system (beginning with the RCIADIC), and then considers initiatives from within the Department of Justice’s Aboriginal Policy Services and Corporate Services directorates, Court services, prisons etc. There is a thematic review of the material provided.

Reports, plans and policy documents (2000-2004) include the Aboriginal Justice Plan (2000), Reducing Imprisonment Strategy (2001-2002) (not available) (noting that Aboriginal prisoners were especially disadvantaged by short prison sentences, including fine default terms. Money could be better spent in strengthening community based initiatives and in developing stronger strategies to reduce offending); Re-entry (2002) (a Government policy paper underlying a commitment to reduce offending by focusing on the re-entry of prisoners into the community (not referencing Indigenous issues); and Prisons Division Strategic Plan for Aboriginal Services (2002-2005). The Gordon Inquiry (2002) and Kimberley Regional Justice Project (commencing in 2000, with community consultations in 2002-2003) are also considered. The latter aimed to better meet the justice needs of Aboriginal people in rural and remote communities, and three objectives were identified after the consultations, including that of diverting offenders from imprisonment to alternative sanctions in the community and a reduction in the representation of Aboriginal people in the justice system. This was followed by the AJAs (2004), which differed from the Aboriginal Justice Plan (AJP) in that it only encompassed justice-related agencies (whereas the AJP also focused on family, health and education), and the AJA also focused on a range of justice issues (not just over-representation).

The Aboriginal Policy Services and Corporate Services’ initiatives include the Aboriginal Visitors Scheme (established in 1998 as a result of the Vincent Enquiry into Aboriginal Deaths in Custody, and evaluated in 2002). Court Services Directorate initiatives include those relating to the Gordon Inquiry recommendations, and the Family Violence Court - set up at Joondalup in 1998 by the Department of Justice, with only 5% of clients being Aboriginal. The Department advised that this may be because few family violence matters involving Aboriginal people are reported to the police, and few Aboriginal females are using the courts for the issuing of restraining orders, and a low number of Aboriginal people living in the Joondalup area. The Geraldton Alternative Sentencing Regime, the cross border justice project, and the Yandeyarra Circle Court are also discussed, as are the Community Courts operating in a number of remote locations, the latter being an initiative of the Gordon Inquiry.  

13 The objectives of the Courts are to
establish forums that meet the needs of local Aboriginal communities, to involve the different groups living in these areas in court processes, and to reduce offending in these areas. The initiative is in the early stage of development and the working arrangements of the Community Courts are yet to be finalised. The Community Courts are to be formally gazetted to administer the laws of Western Australia in a format that is culturally accepted by the community and based on community specific justice models. The justice models will be determined by community consultations and community requirements. Service delivery will be determined by the community's needs and the community's capacity to become involved in the justice system. It is envisaged that community elders will provide an advisory role to the magistrate. The project will involve modifications to existing justice facilities and the installation of new facilities to create multi-functional justice facilities in each location. The facilities will contain courts, police and other justice agencies. They will have a permanent police presence but this is expected to decrease as the communities develop their own justice models. The courts will be designed and conducted in a culturally appropriate manner to encourage access and participation.

In terms of prison services, a number of programs that are either Indigenous-specific, or, in most cases, may be modified for an Aboriginal audience, are discussed. The Indigenous-specific programs are the Sex Offender Indigenous Medium Program, the Noongar Alcohol and Substance Abuse Services, Indigenous Men Managing Anger and Substance Abuse program designed for remote area populations. Details are provided of rates of Aboriginal participation in mainstream programs.

For Community and Juvenile Justice Services, it is acknowledged by the Department that there are no Indigenous-specific family and domestic violence perpetrator programs/services – however, such programs may be Indigenous-focused where they operate within areas with large Indigenous populations. Indigenous participation is low, and most participants are mandated offenders. There are difficulties in delivery in remote and rural areas (such as finding trained contractors and/or individuals to provide training), and the program needs to be modified to suit such areas. Community Service Orders may be carried out under Community Service Agreements (CSA), established with specific Aboriginal communities and projects for the benefit of Aboriginal people. The Gordon Inquiry recommended an expansion of CSAs in remote communities. These agreements allow the community, in which the offender resides, to oversee the management of the offender to ensure the completion of the sentencing and release order. In an effort to reduce the rate of Aboriginal imprisonment, more CSAs are to be made available to the judiciary as a valid sentencing option and as an alternative to detention. Three Gordon Inquiry funded officers will assist communities participating in this Boulder, in particular, as showing early indications of being successful, with 90 adult and 40 juvenile defendants elected to be dealt with by this court (Department of Justice (WA) Annual Report 2005/06, DOJ Perth WA). (See also Temby 2006; Heath 2005; King, op.cit. (2003); and
initiative. Participating communities will be paid a fee for service. A Young Offenders Act Amendment Bill 2004 (WA) has been tabled in Parliament to give statutory backing arrangements to allow juvenile offenders to be managed in a similar way to adult offenders.

In their thematic review, the authors criticized the lack of availability of relevant information upon which evidence-led policies have been formulated. Further, a number of significant policy documents, such as Re-entry, did not mention Aboriginal persons and/or issues at all. The gap between ‘paper promises’ and ‘bottom line statistical measures of victimisation or incarceration rates’ is noted. At times, Government has relied upon the existence of a particular policy to deflect criticisms, and for Aboriginal people ‘policy documents have less meaning…. than action’. A significant number of initiatives (for instance, in relation to prison treatment programs) are not yet operational, or they are ‘Indigenised’ or simply have no or little Aboriginal specific focus.

6.5.6 Aboriginal Cultural Awareness Benchbook for West Australian Courts – Court Services

The Aboriginal Cultural Awareness Benchbook for West Australian Courts was an initiative of the National Indigenous Cultural Awareness Committee of the Australian Institute of Judicial Administration. Relevant recommendations of the RCIADIC are set out, including the need to recruit Aboriginal court staff and interpreters, and for sentencing authorities to consult in remote communities with Aboriginal authorities/organisations. Further appropriate cross cultural training was recommended for those within courts and in probation and parole services who come into contact with Aboriginal people. The latter recommendation gave rise to the Cultural Awareness Committee, and, ultimately, the Benchbook, which is to serve as a model for other jurisdictions.

The document sets out information concerning contemporary and traditional Aboriginal culture (including law) and history and Aboriginal language and communication with specific details relating to Aboriginal people in Western Australia, and concerning. It then goes on to deal, in some detail, with aspects of the criminal justice system which present as areas of concern with respect to Indigenous people and their interaction with the system (along with relevant case law).

(a) In terms of pre-trial procedure, the difficulties which a committal may create for Aboriginal people includes anxiety due to a lack of understanding of the nature of such proceedings, and the fact that a dispute arising from the alleged offence may have been resolved by the time of the substantive hearing. Further, in terms of bail, an Aboriginal accused is more likely than a non-Aboriginal person to be detained in custody in Western Australia, and remand in custody may present particular difficulties for Aboriginal people (for instance, as Aboriginal people are ‘socio-centric’, separation from family and support persons, particularly far from home). Bail legislation may operate in a discriminatory way in relation to Aboriginal offenders. They may be less likely to be able to meet conditions (such as a requirement of surety), and may find complying with
bail conditions difficult (for instance, there may be difficulties in understanding bail conditions, or in meeting conditions due to simple impracticalities (such as lacking transport to report)). The question of fitness to stand trial includes an assessment of physical or mental impairment. The document suggests that the incidence of hearing impairment from middle ear disease within Aboriginal communities is high, and may therefore give rise to such an impairment. There are also issues relating to the use of interpreters.

(b) During criminal proceedings, issues such as the efficacy of a plea of guilty or confessions arise due to factors such as coercion or a lack of understanding (Anunga guidelines are discussed). A further issue is the cultural background and gender of jurors, and whether an Aboriginal person has a right to have Aboriginal jurors hearing a case, and whether a jury of a particular gender ought to be empanelled where appropriate. Communication issues which may be of relevance to the adducing of evidence are discussed (for instance, traditional Aboriginal body language). The particular difficulties for Aboriginal female victims/witnesses and child victims/witnesses are discussed (such as shame, community pressure against reporting).

(c) The inherent limitations in focusing only on sentencing to address overrepresentation are noted. The underlying causes of Indigenous offending must be addressed. However, a sentencing judge may influence how an Aboriginal offender will be treated in the justice system. A number of relevant RCIADIC recommendations are set out, including the use of prison as a sanction of last resort, and that a range of non-custodial sentencing ought to be available for Aboriginal offenders.