



# ***A Therapeutic Approach (Pilot Court) for Protection and Care in the Children's Court of WA***

## **Discussion Paper**

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## **Preface**

Interest in a more therapeutic approach towards protection and care proceedings has been developing for some time in Western Australia and continues to be an ongoing topic of discussion between the Department of Justice (DoJ) and the Department of Communities (DoC).

The idea of a therapeutic court was further strengthened in 2018, when the Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services, Hon Simone McGurk MLA and a staff member from the Attorney General's Office visited the Koori Court (protection and care jurisdiction) at Broadmeadows Children's Court in Victoria. This visit was followed by the President of the Children's Court, Her Hon. Judge Julie Wager.

Prior to this visitation, the Interim Statutory Review of the *Children and Community Services Act 2004*, published in November 2017 made four recommendations which related to the improvement of the protection and care process. More specifically recommendation 67 stated: *"The benefits of undertaking a 24-month pilot in the Perth Children's Court of a specialist list for protection matters involving Aboriginal families should be explored, informed by similar approaches in other jurisdictions such as the Koori Family Hearing Day (also known as the Koori List or Marram-Ngala Ganbu) being piloted in Victoria"*.

In addition, a Legal Symposium for interested stakeholders involved in providing support to families going through the Child Protection System was organised by the Family Inclusion Network of WA Inc. (FinWA) in March 2019. The purpose of the symposium was to *'raise the profile and experience of families facing statutory intervention in Children's Court proceeding with limited or no legal representation'*.

At this symposium, a number of issues were identified, including overwhelming support for the concept of a specialist court list with therapeutic elements for protection and care proceedings.

This Discussion Paper has been kept as short and as simple as possible, noting that it will be distributed to stakeholders with considerable expertise and experience in the protection and care field. The Discussion Paper provides basic background information and context about some of the significant issues that have been identified for consideration and asks questions about potential courses of action and strategies that may assist the DoJ in partnership with key stakeholders to move towards a more therapeutic approach to protection and care proceedings, with the possibility of a pilot program.

Stakeholders, interested persons or organisations are therefore invited to make written submissions in response to the questions raised and any other considerations they believe may be relevant to this Discussion Paper.

The closing date for submissions is **Monday, 16 March 2020**.

Submissions can be emailed to [SBDAdmin@justice.wa.gov.au](mailto:SBDAdmin@justice.wa.gov.au) or alternatively hard copies can be addressed to:

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### **Recognising Aboriginal and Torres Strait Islander People**

*The Department of Justice recognises and acknowledges the unique contribution of Aboriginal people’s culture and heritage to Western Australian society.*

*For the purposes of this Discussion Paper, the term “Aboriginal” encompasses Western Australia’s diverse language groups and also recognises those of Torres Strait Islander descent.*

*The use of the term “Aboriginal” in this way is not intended to imply equivalence between Aboriginal and Torres Strait Islander cultures, although some similarities exist.*

## **1. INTRODUCTION**

In recent years, the number of protection and care matters has increased, including the number of matters being referred to the Perth Children's Court from regional locations. In the past 10 years there has been a 51% increase in protection and care applications received at the Perth Children's Court and 25% increase in protection and care applications received by regional courts (an overall increase of 42%).

In addition, the Department of Communities (DoC) has experienced an increase in the number of children entering care, including Aboriginal children. There has been an increase of 61% in nine years, from 3,334 children in care in 2010 to 5,379 children in 2019.

The Interim Statutory Review of the *Children and Community Services Act 2004*, (the Act) published in November 2017 made seventy recommendations, four of which relate to the improvement of the protection and care process. These Interim Statutory Review recommendations include:

- **Recommendation 15:** *Section 13 should be amended to provide that in performing a function under the Act, a person, court or tribunal must observe the principle that Aboriginal people have a right to participate in the protection and care of their children with as much self-determination as possible.*
- **Recommendation 16:** *Section 14 should be amended to provide that in performing a function under the Act, a person, court or tribunal must observe the principle that an Aboriginal child's family, community or representative organisation is entitled to and should be given opportunities and, where appropriate, assistance to participate in decision-making processes under the Act that are likely to have a significant impact on the life of a child. In observing this principle the views of the child and the child's parent or parents must be considered.*
- **Recommendation 67:** *The benefits of undertaking a 24-month pilot in the Perth Children's Court of a specialist list for protection matters involving Aboriginal families should be explored, informed by similar approaches in other jurisdictions such as the Koori Family Hearing Day (also known as the Koori List or Marram-Ngala Ganbu) being piloted in Victoria.*
- **Recommendation 68:** *An Aboriginal Liaison Officer/Consultant should be located at the Children's Court to facilitate the participation and engagement of Aboriginal families in protection proceedings to improve outcomes for Aboriginal children.*

Traction to develop a more therapeutic approach towards protection and care proceedings has been developing for some time and continues to escalate. Anecdotally, magistrates have noted an increase in both the number and complexity of protection and care applications. However, until the undertaking of the scoping for this project, very few statistics have been analysed to verify these claims.

Due to this limited data, the President of the Children's Court initiated a project which would evaluate the current situation of protection and care and investigate the possible implications of introducing therapeutic elements into the protection and care process.

A Working Group was set up in 2019 and the project to explore the implementation of a specialist list with therapeutic elements for protection and care was initiated.

## **2. BACKGROUND**

### ***Legislation***

Western Australian legislation has allowed government intervention in the protection and care of children since the introduction of the *Industrial Schools Act 1874*. Since that time there have been numerous changes to legislation, government bodies and policies in regards to the protection and care of children.

The *Children and Community Services Act 2004* (the Act) is the principle piece of legislation allowing the Chief Executive Officer (CEO) of the Department of Communities (DoC) to apply to the Children's Court for a protection order for a child<sup>1</sup>. This Act, which came into effect in 2006, repealed the *Child Welfare Act 1947*, the *Community Services Act 1972* and the *Welfare and Assistance Act 1961*.

The Act also provides specific provisions for what should be considered when providing protection and care for children. These include that the best interests of the children are met (sections 7-10).

The Act specifies these factors under section 8 of the Act:

*(1) In determining for the purposes of this Act what is in a child's best interests the following matters must be taken into account-*

- (a) the need to protect the child from harm;*
- (b) the capacity of the child's parents to protect the child from harm;*
- (c) the capacity of the child's parents, or of any other person, to provide for the child's needs;*
- (d) the nature of the child's relationship with the child's parents, siblings and other relatives and with any other people who are significant in the child's life;*
- (e) the attitude to the child, and to parental responsibility, demonstrated by the child's parents;*
- (f) any wishes or views expressed by the child, having regard to the child's age and level of understanding in determining the weight to be given to those wishes or views;*

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<sup>1</sup> *The Children and Community Services Act (2004)*.

- (g) the importance of continuity and stability in the child's living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from —*
- (i) the child's parents; or*
  - (ii) a sibling or other relative of the child; or*
  - (iii) a carer or any other person (including a child) with whom the child is, or has recently been, living; or*
  - (iv) any other person who is significant in the child's life;*
- (h) the need for the child to maintain contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life;*
- (i) the child's age, maturity, sex, sexuality, background and language;*
  - (j) the child's cultural, ethnic or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);*
  - (k) the child's physical, emotional, intellectual, spiritual and developmental needs;*
  - (la) the child's educational needs;*
  - (l) any other relevant characteristics of the child;*
  - (m) the likely effect on the child of any change in the child's circumstances.*

The primary role of the Children's Court is to decide if a child is in need of protection and therefore determine if the DoC's protection order application should be granted or dismissed. The legislation also outlines when a child is in need of protection and care<sup>2</sup>. A child can be taken into care if they have suffered or are likely to suffer physical, sexual or emotional maltreatment or neglect. Also, if the parents have abandoned the child, or are deceased and there is no relative or other suitable adult to care for them, they are considered in need of protection and care.

Section 43 of the Act outlines the types of protection orders that the DoC can apply for. The types of applications are as follows<sup>3</sup>:

- ***Protection order (supervision)***: a supervision order allows the child to remain with either parent or both parents but permits DoC workers to see the child and check to make sure the child is safe. Parental responsibility remains with the parents, not with the DoC.
- ***Protection order (time-limited)***: a time limited protection order gives parental responsibility to the CEO of the DoC. The DoC is in charge of important decisions for the child, including where the child is placed. Generally, the DoC will seek a time-limited order with the intent of reunification between one or both of the parents. A time-limited order is restricted to two years.

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<sup>2</sup> *The Children and Community Services Act (2004)*, s. 28.

<sup>3</sup> *The Children and Community Services Act (2004)*.

- **Protection order (until 18):** a protection order (until 18) will grant parental responsibility with the DoC until the child turns 18. This order is usually applied for when the DoC thinks that long term arrangements are in the best interest of the child.
- **Protection order (special guardianship):** a special guardianship protection order allows for a carer or carers to be granted parental responsibility for a child. Once a special guardianship order has been made, the DoC no longer has parental responsibility.

Parties have three choices when the DoC seeks one of the above orders; consent to the order, neither consent or oppose the order, or oppose the order. If one or both of the parties oppose the order, then the matter will proceed to trial.

#### ***Department of Communities and maltreatment types<sup>4</sup>***

The DoC will investigate allegations of physical, sexual and emotional maltreatment and neglect against a child. The types of maltreatment are outlined in the *Children and Community Services Act 2004* (section 28). The maltreatment types are further defined below:<sup>5</sup>

- **Physical:** when a child is physically hurt by the child's caregiver. Physical maltreatment also includes putting the child in a situation where they might suffer physical injuries inflicted by another person.
- **Sexual:** when a child is exposed to or involved in sexual activity that is age or developmentally inappropriate. It includes when a child is bribed, coerced or forced to engage in these inappropriate activities. It also includes circumstances where the caregiver fails to protect a child from sexual maltreatment.
- **Emotional:** includes but is not limited to psychological maltreatment (such as threatening, belittling or calling the child names that minimise their self-worth) and exposure to family violence.
- **Neglect:** this encompasses situations where the parent fails to provide appropriate care for their child, including not having access to appropriate housing, food or necessary medications.

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<sup>4</sup> Department of Communities (Child Protection and Family Support). Child maltreatment and neglect. Available at: <https://www.dcp.wa.gov.au/ChildProtection/ChildAbuseAndNeglect/Pages/Childabuseandneglect.aspx>.

<sup>5</sup> This list is not exhaustive, and other circumstances that may lead to the removal of a child are outlined in the Act.

### **3. THE CURRENT PROTECTION AND CARE PROCESSES IN WA**

Once the DoC has determined that a child is in need of protection and care, they have two options:

1. either remove a child without a warrant; or
2. apply to the Perth Children's Court for a warrant.

The DoC has two business days after removing a child without a warrant to list the matter in the court. If the DoC applies for a warrant application the listings officer is responsible for listing the matter no more than three days from the date of application. Registry staff provide the warrant application to the magistrate who reads the application in their chambers and then hears the matter in court. If the warrant is granted it is court sealed and returned to the caseworker.

The first court appearance for a protection and care matter is called a first protection appearance. This hearing is similar to a mention, and is heard during the daily general list. During this hearing the magistrate can (but is not required to) order a child representative be appointed and make interim orders. The next part of the process is a mention, during which a magistrate can make an order or adjourn to any of the following; another mention, a pre-hearing conference, allow for the parties to participate in a signs of safety pre-hearing conference, an interim hearing, an exparte hearing or a trial. It is not uncommon for a matter to have multiple mentions before proceeding to other hearings.

A pre-hearing conference is a less formal court hearing in which the DoC lawyer (including case worker and on occasion the team leader), a magistrate, the child representative, the respondent parents and any relevant members of the child's community convene to discuss the best outcome for the child.

Pre-hearing conferences can be held in either the training room or in the court room. Normal formalities, such as standing to speak to the magistrate, do not have to be adhered to during a pre-hearing conference. Those located in remote or regional communities can be linked via video or audio link. A significant benefit of the pre-hearing conference is that it is not recorded and anything said during the hearing cannot be used at trial.

This gives parents the confidence to be truthful and openly discuss any problems they may be having, without fear of the discussions becoming evidence.

If the parents and the DoC can come to an agreement, orders can be made. If an agreement cannot be made the magistrate can adjourn the matter to a mention, another pre-hearing conference, allow for the parties to participate in a signs of safety pre-hearing conference, an interim hearing, an exparte hearing or a trial.

During many of the court hearings, the magistrate can appoint a child representative. A child representative is the separate legal representative for the child and is funded by Legal Aid WA. Once a child representative is appointed, they can represent the child on best interest (if a child does not have the maturity to give instructions) or on instructions (usually for older child/ren).



The magistrate can also order a section 139 expert report. These are relatively rare and ordered in matters that are highly complex.

A signs of safety pre-hearing conference is administered by Legal Aid WA and is another setting in which the DoC and parents can openly discuss the matter and work towards what is in the best interests of the child. A signs of safety pre-hearing conference is provided for during a court hearing where the case is adjourned to allow the parties to arrange an appropriate date with the Signs of Safety Coordinator, who is responsible for scheduling signs of safety pre-hearing conferences.

On the day of the conference, parties arrive at the Legal Aid WA building, are spoken to separately about what they wish to achieve from the conference and are reminded that what is said at these conferences is confidential. Convenors are highly trained and aim to achieve an agreed outcome with the parties involved. During the conference, the convenor makes notes of the 'next steps', which outline what each person will do after the conference, and in what time frame. After the conference, the convenor writes up these 'next steps' and sends them to each party involved and to the court.

In matters where one or both of the parents continually fail to attend court hearings or lodge responding documents, the magistrate can order that the next hearing be held as a *ex parte* hearing. This means that if the parent or parents fail to attend the next court hearing, the magistrate can make an order in their absence. If the parents do attend on the day of the *ex parte* hearing, the magistrate can adjourn the matter to a mention, a pre-hearing conference, allow for the parties to participate in a signs of safety pre-hearing conference, another *ex parte* hearing or a trial.

If one or both parents oppose the order, the matter will go to trial. During a trial all parties can produce evidence and witnesses. The magistrate can either make an order or dismiss the application.

Before a trial, some matters are brought before the Judge for review. Matters are chosen for review, based largely on the date of the last court appearance, the complexity of the matter and other court factors. During the review, the President of the Children's Court hears from all parties, and tries to encourage agreement between the DoC and the parent or parents. In matters where an agreement cannot be made the trial plan, length of hearing and witness lists are reviewed. At this point the matter will proceed to trial.

#### **4. INITIATIVES FOR PROTECTION AND CARE IN OTHER JURISDICTIONS**

The extension of Aboriginal and other therapeutic courts to child protection and care matters in Australian jurisdictions successfully commenced in recent years.

Three examples of these initiatives include the:

- **Care Circles Program** in New South Wales (2011);
- **Family Drug Treatment Court (FDTC) pilot** in Victoria (2014); and
- **Koori Family Hearing Day or Marram-Ngala Ganbu Pilot** in Victoria (2015).

**Care Circles Program** is a child protection pre-hearing court presided over by a magistrate. After the pre-hearing the magistrate decides to either make orders by consent or refer the matter to the general Children's Court list.

The Care Circles or the Aboriginal Care Circles program was developed in 2011 in response to the NSW Government's commitment to improving the wellbeing of Aboriginal families. The program uses an alternative dispute resolution process to engage Aboriginal people in care proceedings before the Children's Court.

Compared to the usual court proceedings, Care Circles' is considered to be culturally comfortable and supportive environment ensuring the care proceedings are less daunting and distressing for the families.

The Care Circle program aims to:

- increase participation in decision making about Aboriginal children and young people by Aboriginal families and communities;
- empower Aboriginal families and communities by reducing any barriers that may currently exist between courts and Aboriginal people;
- enhance the viability and effectiveness of undertakings to be agreed to by a parent in placement proceedings;
- improve support provided to parents or people with parental responsibility;
- increase confidence of Aboriginal people and other stakeholders in the care process; and
- support the Aboriginal principles in the *Children and Young Persons (Care and Protection) Act 1998*.

**The Family Drug Treatment Court (FDTC)** was established in May 2014 as a three year pilot to conduct child protection proceedings within the Family Division of the Children's Court of Victoria, in Broadmeadows, Victoria. This was the first court of its kind in Australia.

The 12 month non-adversarial, intensive program is designed to assist families whose children have been placed in out-of-home care due to parental drug or alcohol misuse. The FDTC is designed to provide the best opportunity for parents to achieve rehabilitation and work towards successful family reunification.

The FDTTC was set up to provide a coordinated response to drug affected parents by creating a safe and stable environment for family reunification and therefore minimising the time children spend in out of home care.

While the role of mainstream courts is mostly limited to decision making about the living arrangements of children with limited focus on improving the circumstances associated with the parental drug use, the FDTTC program brings together the collaboration of social services, health practitioners and magistrate to systematically target parental drug use in an effort to improve social outcomes for children and families.

An important element of the FDTTC program and approach, includes a case docketing system where magistrates maintain carriage of cases they are allocated for the duration of proceedings from commencement to finalisation.

The ***Koori Family Hearing Day or Marram-Ngala Ganbu Pilot*** and the FDTTC are part of the Family Division of Victorian Children's Court in Broadmeadows. The Broadmeadows Children's Court was established in 2015 to trial innovative processes to improve outcomes for children and families involved in child protection proceedings in the Family Division.

The expansion of the Koori list in the Family Division of the Children's Court was a recommendation under the *Protecting Victoria's Vulnerable Children Inquiry* in 2012 and the Koori Family Hearing Day or Marram-Ngala Ganbu Pilot commenced July 2016.

The Marram-Ngala Ganbu provides an informal atmosphere and allows for greater participation of family members in the court process to improve court outcomes for Aboriginal children and enhance participation of Koori families and communities in child protection matters.

The appointment of a Koori Family Day Support Officer provides coordination of the Marram-Ngala Ganbu list and assists family members in obtaining legal representation and understanding of court process. The Koori Family Day Support Officer also assists in referrals to culturally appropriate services.

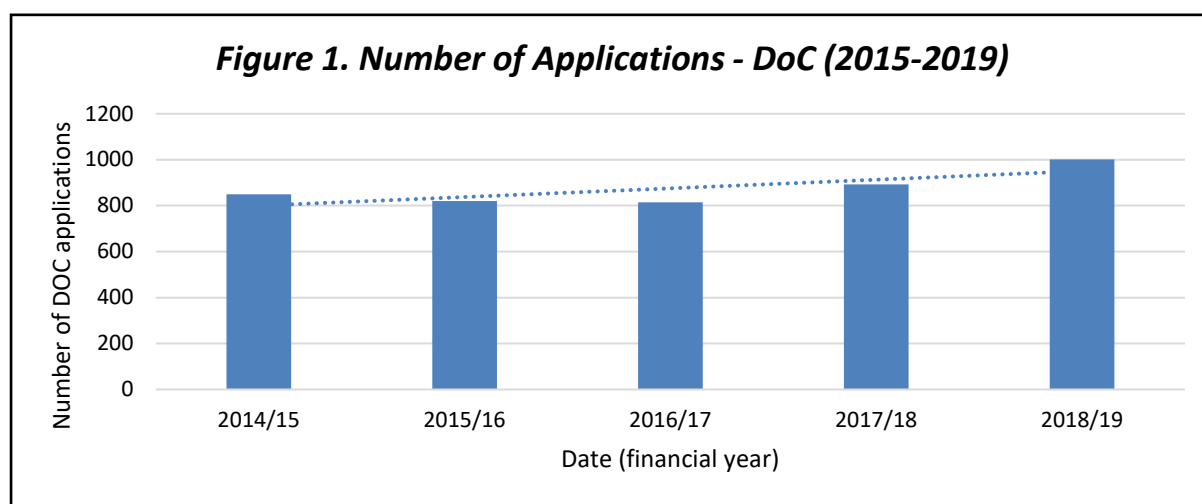
The magistrate sits at the bar table with all the participants, not at the bench and no contested matters can be heard at the Marram-Ngala Ganbu. The aim is to provide a safe place for families to work collaboratively with child protection to keep children safe and connected to their culture. The Children's Court of Victoria has confirmed that there are plans for the Marram-Ngala Ganbu approach to be extended to two additional Court locations of Shepparton and Melbourne in 2020.

## 5. SIGNIFICANT ISSUES AND QUESTIONS

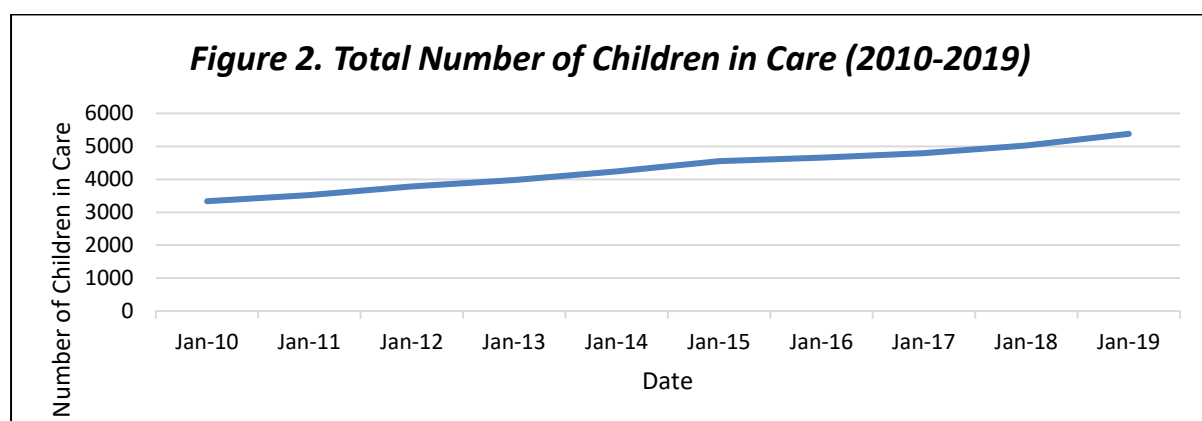
### 5.1 Increasing workload and complexity of protection and care matters

As explained in the Introduction for this Discussion Paper, the number of protection and care applications<sup>6</sup> lodged in the Perth Children’s Court and regional courts have increased by 42% (over the past 10 years), which also includes an increasing number of matters being referred to the Perth Children’s Court from regional locations.

**Figure 1.** below, shows that in 2018/19, 1,004 applications were lodged, compared to 705 applications in the 2009/10. This is an increase of 42%.



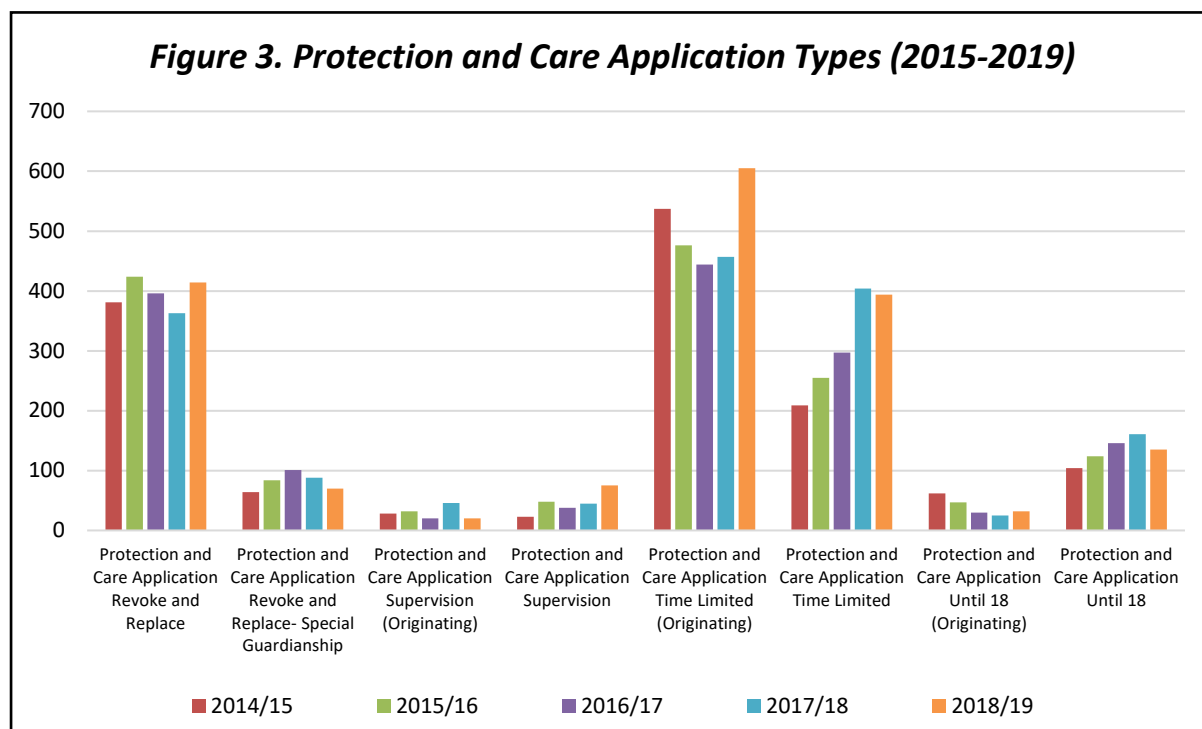
In addition, the DoC has also experienced an increase in the number of children entering care, including Aboriginal children. **Figure 2.** below, shows an increase from 3,334 children in care in 2010 to 5,379 children in 2019. This is an increase of 61% in nine years.



<sup>6</sup> This data includes all applications made by the Department of Communities, and includes originating applications, interim applications and revoke and replace applications.

**Figure 3.** below provides a breakdown of the type of applications made by the DoC for protection and care from 2014/15 to 2018/19. The most common form of an originating application is a time limited application. Time limited applications are significantly more common than either supervision or until 18 applications.

**Figure 3.** also shows that there are a number of revoke and replace orders, demonstrating that matters come back into the protection and care process, even after orders have been made.



In the last financial year, there has been an increase in the number of revoke and replace applications, supervision applications and an even larger increase in originating time limited applications. It is also evident that there is an increasing number of time limited orders.

**Questions:**

- Q 1.** *Given that the data is showing that the DoC is supportive of a large percentage of families achieving re-unification, would you consider the introduction of a therapeutic court list would provide an alternative to the current adversarial process and therefore deliver better outcomes for children and their families?*
- Q 2.** *If a therapeutic court list was to be introduced, which families or types of applications would you give priority and consider to have a greater chance of achieving re-unification?*

## 5.2 Aboriginal and Torres Strait Islander over-representation<sup>7</sup>

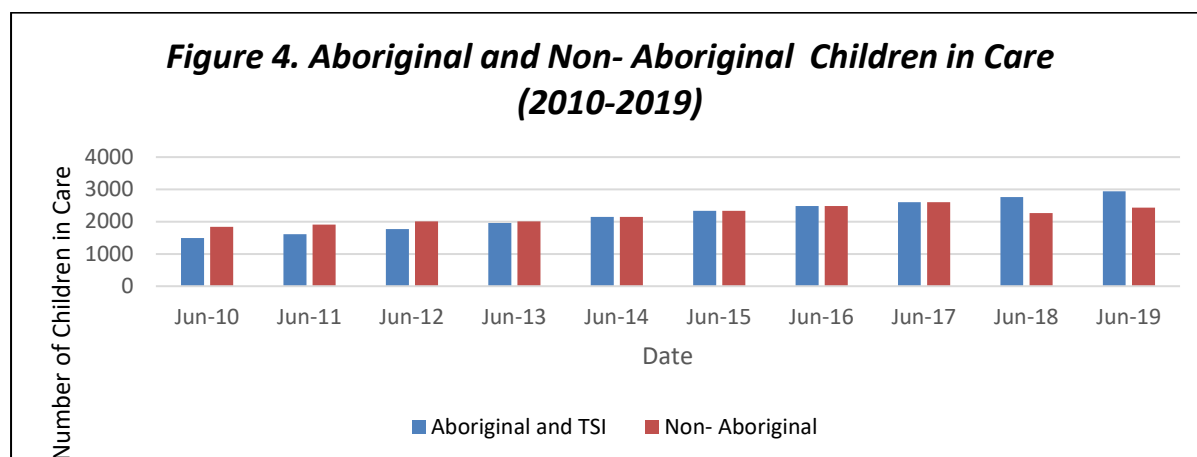
The over-representation of Aboriginal children in care is a significant issue in the protection and care jurisdiction, with both the DoJ and the DoC acknowledging the need for change that will ensure improved outcomes for Aboriginal children and their families involved in child protection proceedings.

The DoJ (and by extension the Children’s Court) are extremely aware of the need to actively take steps to ensure that the needs of Aboriginal children and their families are being met when they have contact with the court environment.

The number of Aboriginal children in the DoC care has significantly increased over the last few years. In 2010, non-Aboriginal children were more likely to be taken into care, when compared to Aboriginal children. However, in 2018/19, Aboriginal children were more likely to be taken into care compared to non-Aboriginal children, with around 55% of the children in care being Aboriginal.

The 2018/19 Department of Communities Annual Report, identified the outcomes of assessed concerns, with the substantiated and substantiated likelihood harm categories being neglect, emotional (family and domestic violence), emotional (other), physical and sexual. Emotional (family and domestic violence) is the most common harm (36.3%), followed by neglect (27.4%), physical (16.8%), emotional (other) at 12% and sexual (7.31%).

The DoC data identified that the most common form of maltreatment of Aboriginal children was emotional (42.7%), followed by neglect (34.1%). Data also indicated that sexual (as a maltreatment type) was less common for Aboriginal children (8.3%) compared to non-Aboriginal children (13.4%).



The *Children and Community Services Act 2004* makes specific reference to principles relating to Aboriginal children, with one of the key principles being that Aboriginal children ‘*maintain a connection with family and culture*’<sup>8</sup>. Section 12 of the Act, outlines the Aboriginal child placement principle, that an Aboriginal child should be placed with a member of the child’s family.

<sup>7</sup> Further information about the over-representation of Aboriginal children and young people can be found on the Australian Institute of Family Studies, available at: <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>.

<sup>8</sup> *The Children and Community Services Act (2004)*, s. 12 (1).

As at June 2018/19, 5,379 children and young people were in care in Western Australia. Of these, 2,942 children are Aboriginal (54.69%) and 2,437 are non-Aboriginal (45.31%). Considering that Aboriginal people only make up approximately 3% of the Western Australian population, this highlights an extreme disparity.

It is acknowledged that there are many reasons for this overrepresentation including social and economic disadvantage; poverty; homelessness; and a lack of access to services, especially for those living in regional or remote communities. Additionally, the history of intergenerational trauma, the stolen generation and the forced removal of Aboriginal children has adversely impacted the relationship between government agencies and Aboriginal people.

In recognition of statistics that show Aboriginal children make up the greater percentage of children in care, it is proposed that a therapeutic court list will operate under the presumption of Aboriginality. What this means, is that the court will be inclusive rather than exclusive, by ensuring its processes and procedures, including the physical layout of the court are culturally safe for Aboriginal families.

Further information about the challenges Aboriginal families face in the court system is outlined in the '*Equal Justice Bench Book*' and '*Aboriginal Benchbook for WA Courts*' published by the DoJ<sup>9</sup>.

**Questions:**

- Q 3.** *Given the strong family structures within Aboriginal communities, and the dynamic nature of sometimes diverse and blended Aboriginal families, what might be some of the cultural sensitivities that we need to consider, when dealing with Aboriginal children?*
- Q 4.** *How can the existing court environment be changed to make it more culturally appropriate to Aboriginal children and families, where parents/parties feel empowered to speak in protection and care proceedings?*
- Q 5.** *What are some of the physical barriers existing in the court that can be altered to make a therapeutic court more culturally safe for Aboriginal children and their families?*
- Q 6.** *If we were looking to make the therapeutic court more culturally safe, are there any suggestions on who else could be part of the court?*
- Q 7.** *What community support services or programs would you consider need to be made available to the therapeutic court to give Aboriginal families the best chance of successful reunification?*

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<sup>9</sup> Equal Justice Bench Book. Available at:  
[https://www.supremecourt.wa.gov.au/equaljustice/C/chapter\\_aboriginal\\_people.aspx?uid=669-9495-04-2416](https://www.supremecourt.wa.gov.au/equaljustice/C/chapter_aboriginal_people.aspx?uid=669-9495-04-2416)

### **5.3 Legal representation and advocacy (access to justice)**

Jurisdictions across Australia and New Zealand differ in their delivery of care and protection services. One of these key differences, is in regards to legal representation for the child. In all jurisdictions, the court may appoint a legal representative for the child, however in many jurisdictions, including WA, it is not mandatory.

In WA, representatives for the child are typically funded by Legal Aid and can be either on instructions or on best interests. Children who are older and have the appropriate maturity level, can provide instructions to their lawyer as to their views on the orders being sought. A lawyer for a young child, a child with a cognitive disability or a child who lacks the appropriate level of maturity, may represent the child on “best interests”. This means that the lawyer provides the court with a recommendation based on what they have determined is in the best interests of the child.

The differences/similarities between jurisdictions with regards to legal representation for children in protection and care proceedings is outlined in the table below:

<b>Legal representation for the child</b>	<b>Jurisdiction’s position</b>
<b>Western Australia</b>	<i>A separate representative can be appointed by the magistrate, but is not mandatory. Funded by Legal Aid. Either best interests or on instructions.</i>
<b>Australian Capital Territory</b>	<i>Appointed for every child. Funded by legal aid. Children over 15 years old have to consent to the order.</i>
<b>New South Wales</b>	<i>The Children’s Court may appoint a Guardian ad litem (GAL) for a child or young person where there are special circumstances under section 99(1) of the Act.</i>
<b>Northern Territory</b>	<i>Court can order a legal representative of a child.</i>
<b>Queensland</b>	<i>The court can appoint a separate representative for the child but it is not mandatory.</i>
<b>South Australia</b>	<i>Appointment of a separate representative is mandatory unless the child makes an independent and informed decision not to be represented.</i>
<b>Tasmania</b>	<i>The court can appoint a separate representative for the child, but it is not mandatory.</i>
<b>Victoria</b>	<i>All children aged 10 and above who are the subject of child protection proceedings are required to be legally represented on a direct instructions basis. Those aged under 10 may be represented on ‘best interests’.</i>
<b>New Zealand</b>	<i>All children must be legally represented by a legal representative appointed by the court. Court may also appoint a lay advocate for the child.</i>

One of the key similarities across Australian jurisdictions is that the legislation incorporates a “best interests” principle. In general terms, the “best interests” principle outlines that the guiding principle in all protection and care matters is that the child’s best interest is considered the highest priority.

Also, all Australian jurisdictions make specific provisions for Aboriginal children. These provisions ensure that Aboriginal children are able to maintain a connection with their culture and where possible live with members of their community.

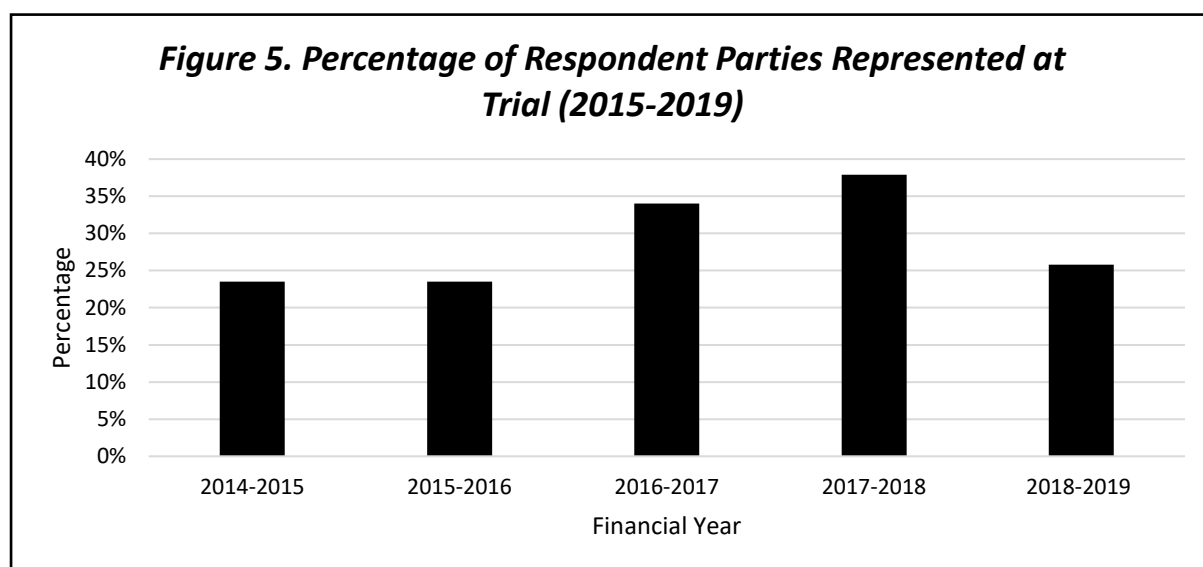
*A further breakdown of information regarding each jurisdiction is provided for in **Appendix 1**.*



### **Legal representation at trial**

**Figure 5.** below, shows the percentage of cases where at least one respondent party is being represented at trial. It is clear from **Figure 5.** that legal representation is not available/provided to the majority of those cases, with over 76% of respondent parents (in 2015/16) proceeding to trial unrepresented.

In addition, this data does not show the cases where a parent is denied legal representation and therefore consents to an order before trial or cases where more than one party sought legal representation but only one party was granted legal representation. It is therefore likely, that this data could be actually over-estimating how many parents have access to legal representation for trial. For the past five years (based on this data) legal representation at trial has sat between 23% and 38%.



Below are several of the organisations that provide legal representation to clients in care and protection matters. We note that this is not a complete list and that several community legal centres, as well as the Southern Aboriginal Corporation, also provide advice and representation in care and protection matters or are considering expanding the scope of their services to include care and protection. Located throughout the State, community legal centres are independent, non-profit organisations that provide legal services to disadvantaged and vulnerable people or those on low incomes who may be ineligible for legal aid.

### **Legal Aid WA**

Legal Aid WA provides legal services and education in both the criminal and civil jurisdictions. For protection and care matters, parties can either use the duty lawyer service or apply for a grant of aid. If a party is approved for an initial grant of aid, they are provided a lawyer for initial advice, investigation, negotiation and representation at the first court appearance following the grant (typically four hours of work).

If a party is seeking further legal representation, they must file a request for an extension.

### **Aboriginal Legal Service (ALS)**

The Aboriginal Legal Service (ALS), is a primarily Commonwealth funded legal service for Aboriginal people in the criminal, family and protection and care jurisdictions. The service currently has four lawyers who provide legal representation for protection and care and family law matters for the State of WA.

For a person to qualify for legal representation for a protection and care matter, the person must be an Aboriginal person and there must be an open protection and care matter. When an issue of conflict arises, ALS can exercise discretion. For example they may be requested to represent a respondent mother, but may have previously represented the respondent father in a criminal matter. In this circumstance, if the father's criminal matters do not relate to the mother or the child, then ALS can still represent the mother.

The ALS tries to sustain relationships with clients and acknowledges that at times some of their clients may be difficult to contact and may withdraw either temporarily or permanently from the protection and care process. The ALS does not close files for respondent parties until the end of the protection and care matter.

### **Aboriginal Family Law Service (AFLS)**

The Aboriginal Family Law Service (AFLS) are a not-for-profit organisation, that assists Aboriginal and Torres Strait Islander people to live free from family violence and sexual assault. AFLS offer free legal services, community education and early intervention and prevention programs for Aboriginal families.

Funded under the Prime Minister and Cabinet as a Social Emotional Wellbeing Program, AFLS strive to close the gap in Aboriginal peoples' access to justice, and empower their people to implement strategies for safer communities.

*As explained by AFLS: 'The organisation incorporates the regionalisation model, with offices in Broome, Carnarvon, Geraldton, Kalgoorlie, Kununurra, and Port Hedland. Each office employs a regional managing solicitor, as well as appropriate legal and support staff. The six regional offices are supported by a corporate services office based in Perth that is responsible for overall coordination of the various operations and financial management of the corporation as a whole'.*

AFLS is an advocate for Aboriginal led decision making and encourages family members to attend court and to provide support to the respondent parents. This is especially true given that definitions of families differ in Aboriginal communities and extended family often play a greater role in raising children.

Due to operating in regional locations, the AFLS faces issues that may not necessarily apply to services that primarily operate in the metropolitan area. For example, in regional areas there are many different Aboriginal communities and therefore different protocols exist for engaging with specific communities. Social support officers and community services officers are members of the local community and therefore can provide guidance to lawyers and other AFLS staff about how to best engage with members of the local community.

### **Djinda Services (Women's Legal Service WA)**

Djinda services is a collaborative program between Relationships Australia WA and the Women's Legal Service WA. This State funded program primarily provides support to Aboriginal women and children who have been victims of family violence and/or sexual assault. Services are only available in the Perth metropolitan area. Two lawyers are funded to provide free legal representation in regard to child protection, restraining orders, victims' compensation where it relates to family violence and family law, including payment of child support.

In order to access legal services for protection and care proceedings, the respondent must be an Aboriginal women involved in a child protection matter who at some point in their life has been a victim of family or sexual violence. While Djinda Services are specifically targeted at Aboriginal women, non-Aboriginal mothers can access legal representation if they have Aboriginal children.

Djinda Services are primarily promoted by word of mouth, but they also receive referrals from Legal Aid WA and the Aboriginal Legal Service. Once a person contacts Djinda Services for legal representation in child protection matters, a conflict check is conducted to ensure there is no actual or perceived conflict. Respondent mothers, once granted legal representation are represented from the first protection mention through to just before trial. Due to the external factors facing many of the respondent mothers, they may disengage and re-engage with Djinda Services on many occasions. Djinda Services will welcome clients back, as they understand that the lives of their clients are often complicated and may not be able to make it to appointments or court appearances.

With the current funding, Djinda Services does not represent respondent mothers at trial, but if the case is deemed to have merit, Djinda will refer the respondent mother to another legal service where possible.

### **Advocacy - Family Engagement Worker (advocate/support person)**

Advocacy in all its forms seeks to ensure that people, particularly those who are most vulnerable in society, are able to have their voice heard on issues that are important to them. To have their rights defended and safeguarded and ensuring their views and wishes are genuinely considered when decisions are being made about their lives and family circumstances. It would be beneficial to all parties, for families to have access to support services that assist them navigate through the protection and care processes. A Family Engagement Worker would not replace legal representatives and would not provide legal advice, but would provide support to parent(s) and the child(ren) during the process.

### **Questions:**

- Q 8.** *Do you see a role for a Family Engagement Worker in protection and care?*
- Q 9.** *How would you envisage the role of a Family Engagement Worker, in protection and care proceedings, working?*
- Q 10.** *How would you see the role of a Family Engagement Worker assisting a self-represented party?*

#### **5.4 Regional context and disadvantage**

Although the pilot therapeutic court will operate in the metropolitan area, at the Perth Children's Court, the DoJ is interested in the views of stakeholders on the challenge of delivering support services and programs in regional and remote locations.

It is acknowledged, that WA is geographically, the largest State in Australia, with an area of over 2,500,000 square kilometres, and is currently the second largest sub-national entity in the world. Perth is also one of the most isolated capital cities in the world, and is closer to Singapore than it is to the Australian capital city, Canberra.

With a population of 2.6 million people, only about 10% of Australia's total population live in WA. The population is concentrated in the south west corner of the State, with 74% residing in the Australian Bureau of Statistics Perth Statistical Division, 10.8% in the South West Statistical Division and the remaining 15% shared among the seven other nonmetropolitan Statistical Divisions, each of which hold between 1% and 3% of the State's total population.

The geographical size of the State and its relatively small and concentrated population raise challenges to government and non-government agencies providing services in regional and remote areas.

Over the past 10 years the number of protection and care applications in regional courts have increased from 228 applications in 2009/10 to 285 applications in 2018/19, an increase of 25%. This compares to a 51% increase for the Perth Children's Court with application increasing from 477 to 719 in the same period.

While the *Children and Community Services Act 2004* applies equally across the State, there are several differences in the processes and procedures, between the regional courts and the Perth Children's Court. These differences are outlined in the **Appendix 2. Perth Children's Court and Regional Court Comparison (Table)**.

It is anticipated that some of these differences can be addressed as part of a continuous improvement project in partnership with key stakeholders.

In regional WA, the Aboriginal Family Law Service (AFLS) provides free legal services, community education and early intervention to Aboriginal people. The aim of the service is to assist *'Aboriginal and Torres Strait Islander people live free from family violence and sexual assault'*. AFLS operates in six regional locations:

- Kalgoorlie
- Broome
- Geraldton
- Port Hedland
- Carnarvon
- Kununurra

Further information about the challenges Aboriginal families face in the court system is outlined in the *'Equal Justice Bench Book'* and *'Aboriginal Benchbook for WA Courts'* published by the DoJ<sup>10</sup>.

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<sup>10</sup> Equal Justice Bench Book. Available at:  
[https://www.supremecourt.wa.gov.au/equaljustice/C/chapter\\_aboriginal\\_people.aspx?uid=669-9495-04-2416](https://www.supremecourt.wa.gov.au/equaljustice/C/chapter_aboriginal_people.aspx?uid=669-9495-04-2416)

**Questions:**

- Q 11.** *How do you see the inconsistency of court practices and procedures between regional and metropolitan courts impacting on the outcomes for protection and care matters?*
- Q 12.** *Is there a case for **all** protection and care matters to be handled by magistrates of the Perth Children's Court?*
- Q 13.** *Acknowledging that within WA, there are various localised Aboriginal language groups which are collectively known as nations, what might be some of the issues arising when dealing with Aboriginal children originating from different geographical locations (rural and remote), if we were to pilot a Perth based therapeutic court?*
- Q 14.** *How can we overcome the challenge of delivering support services and programs to assist children and their families in regional and remote locations?*

**5.5 Community support and availability of services**

The challenges in providing equality of access to effective support services and programs are not unique to WA. All jurisdictions in Australia are experiencing similar challenges, particularly with increasing numbers of children in care. The importance of working with and supporting families at the earliest opportunity, continues to be the most effective strategy to deliver the best possible outcomes for children.

It is acknowledged, that community based wrap-around, local and individual tailored support services and programs are considered essential to the success of a therapeutic court. Early engagement and consistency of contact, provides the opportunity for participants to address the underlying causes to the reasons that they may be experiencing involvement in the child protection and justice systems.

These can include programs addressing drug and alcohol use, parenting programs and other programs identified as assisting the child or family. If appropriate, consideration may be given to the provision of additional child protection and family support services, to better support participants accessing the court and to assist in the matching of participants to the appropriate services in the community.

In WA, provision of comprehensive support services to vulnerable groups is limited to particular geographical areas such as the Perth metropolitan area, the South West and Kimberley areas.

The Family Inclusion Network of Western Australia Inc. (FinWA) provides advocacy and support services to parents and family members who have had their children placed in 'out of home care' i.e. foster care or relative care. Families who seek their assistance are involved with statutory workers from the DoC. Parents who are at risk of having their children placed in care, grandparents and other affected family members can also access this service.

There are a number of reforms and initiatives currently underway in WA to support at risk children and young people to thrive with their families. In particular, the DoC has launched two new initiatives:

- The **Early Years Initiative** is a 10-year program that invests in children, in their homes and communities, from conception to age four. The initiative recognises that children reach their full potential when parents and families are confident, and communities are strong, safe and healthy. As different communities have different needs, the Early Years Initiative will achieve outcomes by adapting delivery of services to suit the region it is operating in. In 2018/19, the Early Years Initiative was commenced by the Shires of Katanning, Broomehill-Tambellup, Kojonup and Gnowangerup.
- **Target 120** supports identified young people and families presenting with complex needs to reduce contact with the justice system and keep themselves and their community safe. Target 120 commenced operations in Armadale, Bunbury, Kununurra and Mirrabooka. The operating model has been tailored to each location and is being delivered in conjunction with local partner and State government agencies, including the Departments of the Premier and Cabinet, Education, DoJ, Treasury and Health and the WA Police Force.

In addition, other programs such as the **Earlier Intervention and Family Support Strategy** provides the framework for a coordinated response between DoC, other State government agencies and the community services sector, to support families who are most vulnerable to their children entering care. The suite of programs delivers earlier intervention and supports, which range from service referral and case coordination to more intensive services that address safety issues, strengthen family functioning and parenting skills.

In 2018/19, the expanded Family Support Networks and all 17 Intensive Family Support Service providers began accepting referrals. The Family Support Networks operate in four corridors: Armadale/Cannington, Mirrabooka/Joondalup, Midland/Perth and Fremantle/Rockingham.

The networks are delivered in partnership with an Aboriginal community controlled organisation and aim to provide culturally appropriate services that prioritise the needs of Aboriginal families. The networks engage with families to identify and improve their cultural needs, in part by including their natural support networks and wider community links.

Intensive Family Support Services are now available in more than 10 service locations, providing over 60 per cent of regional Western Australia with access to these types of services for the first time. Seven non-Aboriginal community sector organisations partner with 11 Aboriginal community-controlled organisations and Yorgum Aboriginal Corporation (in partnership with Anglicare WA Inc.) to provide the services.

The Family Care Support Service commenced in October 2018 and provides supports to extended family members caring for children brought into the DoC's care. The service aims to strengthen and stabilise care arrangements and prevent children entering non-family care arrangements, seeking to maintain children in their community and on Country. Since it commenced in October 2018, the service has provided 40 families across Kununurra, Port Hedland, Karratha, Northam, Broome and Perth with in-home support delivered in a culturally appropriate way through a partnership between Aboriginal community-controlled and other community organisations.

The ***Kalgoorlie-Boulder Earlier Intervention and Family Support Service*** is aimed at older children and delivered by a co-located team of child protection, WA Police and Department of Education staff, overseen by the Goldfields District Leadership Group.

The service uses an intensive home-visiting model to work with families on parenting goals around education, employment and homemaking. Since the service began in March 2017, 17 families and their children have received intensive support. At June 2019, there were seven families and their children open to the service.

The DoC continues to invest in programs that support the wellbeing of Aboriginal Western Australians. For example, the Aboriginal In-Home Support Service funded by DoC and delivered by Wungening Moort provides a practical, trauma-informed and culturally safe intensive in-home response. The service supports Aboriginal families to reunify safely at home or assists in preventing children from going into care.

**Questions:**

**Q 15.** *What support services and programs do you consider should be prioritised for children and their families involved in the protection and care process?*

**Q 16.** *In what ways can a therapeutic court list assist children and their families, to access the support services and programs they need?*

**5.6 Legal Symposium held by FinWA in March 2019**

A Legal Symposium for interested stakeholders involved in providing support to families going through the Child Protection System was organised by FinWA in March 2019. The purpose of the symposium was to *'raise the profile and experience of families facing statutory intervention in Children's Court proceeding with limited or no legal representation'*.

In total, 113 representatives attended including community, government and private lawyers, policy advisors and academics. At this conference, Her Hon. Judge Julie Wager, President of the Children's Court of WA spoke about the importance of legal representation for parents, especially initial advice, as it was considered that this is where a large proportion of matters can, potentially be resolved. Judge Wager also stressed, that the lack of representation has serious consequences for the parents, primarily that they can lose parental rights for the child's whole life.

During the symposium, multiple attendees suggested introducing a docketed system, in which magistrates would case manage each matter. It was suggested that this would result in better outcomes for the child, as it would ensure consistency for the parents. As noted by many attendees a docketed system would require additional resources, and therefore would not be possible without additional funding. Other smaller changes suggested at the symposium, included hearing ex-parte matters at the end of a list, moving prison links to the afternoon, and providing specific times to matters for mention.

Attendees at the symposium also discussed the role of the DoC caseworker during trial. The issues arises as parents are encouraged to trust their caseworker while they are working towards reunification, however the caseworker becomes a key witness against the parents if the matter proceeds to trial. This situation only creates distrust between the parents and the DoC. Attendees at the symposium suggested that wrap-around services, especially in the early stages of the court proceedings and even before the DoC becomes involved, is crucial in improving the possibility of reunification.

Attendees identified a number of issues that were grouped under the following headings:

- Prevention and early intervention;
- Department processes/structure/relationship with client based-accountability;
- Systemic and discriminatory practice – disadvantage of Aboriginal children and families;
- Robust effective services:
  - An integrated holistic approach;
  - Parental participation; and
  - Reform of the judicial process/Children' Court; and
- What can be done to right the issues for Aboriginal children, their families and community?

The significant majority of attendees were committed to moving forward and contributing to working groups developing strategies to improve the outcomes for children, parents and families. This work is continuing through the efforts of FinWA and attendees of the symposium.



### **5.7 A child focused, problem solving approach to protection and care - proposed process**

Attention is drawn to an article published by the University of Western Australia Law Review<sup>11</sup>, which states that there are two core principles that are associated with therapeutic jurisprudence; procedural justice and integration of support services.

Procedural justice is a key aspect of the protection and care process, with respondent parents encouraged to voice their positions either through a lawyer or, if unrepresented, to state their position to the magistrate. As discussed further in this Discussion Paper, many parents appear unrepresented, which can be disadvantageous. A therapeutic approach would ensure that where possible, respondent parents are represented, therefore ensuring procedural justice is upheld.

In addition, a therapeutic jurisprudence approach will focus on the impact of the law on an individual's psychological wellbeing. Families involved in the protection and care process often face issues such as poverty, illiteracy and family violence. These families often need assistance accessing social services such as housing and mental health services including counselling. In order for an approach to be considered truly therapeutic, the court must understand the impact that engaging in the process has on respondent parents.

The current interest and support for improved outcomes for children and families involved in child protection and care matters, provides an opportunity to progress the development and introduction of a therapeutic court to manage child protection matters.

This proposal would also support recommendation 67 of the Interim Statutory Review of the *Children and Community Services Act 2004* report 2017, which stated:

*"The benefits of undertaking a 24-month pilot in the Children's Court of a specialist list for protection matters involving Aboriginal families should be explored, informed by similar approaches in other jurisdictions such as the Koori Hearing Day (also known as the Koori List of Marram-Ngala Ganbu) being piloted in Victoria".*

In addition to recommendation 67, the Interim Statutory Review of the *Children and Community Services Act 2004* report 2017, made a further three recommendations relevant to the improvement of the protection and care processes in WA. These recommendations included:

- **Recommendation 15:** *Section 13 should be amended to provide that in performing a function under the Act, a person, court or tribunal must observe the principle that Aboriginal people have a right to participate in the protection and care of their children with as much self-determination as possible.*

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<sup>11</sup> Henshaw, Bartels & Hopkins (2019). Set up to fail? Examining Australian parole compliance laws through a therapeutic jurisprudence lens. Available at: [http://www.law.uwa.edu.au/data/assets/pdf\\_file/0004/3411463/4.-Set-up-to-fail-rev.pdf](http://www.law.uwa.edu.au/data/assets/pdf_file/0004/3411463/4.-Set-up-to-fail-rev.pdf).

- **Recommendation 16:** *Section 14 should be amended to provide that in performing a function under the Act, a person, court or tribunal must observe the principle that an Aboriginal child's family, community or representative organisation is entitled to and should be given opportunities and, where appropriate, assistance to participate in decision-making processes under the Act that are likely to have a significant impact on the life of a child. In observing this principle the views of the child and the child's parent or parents must be considered.*
- **Recommendation 68:** *An Aboriginal Liaison Officer/Consultant should be located at the Children's Court to facilitate the participation and engagement of Aboriginal families in protection proceedings to improve outcomes for Aboriginal children.*

It may be beneficial to also acknowledge a quote from the Australian Institute of Family Studies:

*'The participation of Aboriginal and Torres Strait Islander peoples in decisions promotes continuity of children's cultural identity, as well as continuity of family and community relationships that are essential to children's health and wellbeing.'*

Given the over-representation of Aboriginal children in the DoC care, encouraging Aboriginal self-determination and their participation in protection and care proceedings is considered vital.

Recommendation 67 proposes that a trial of a specialist list for protection and care matters involving Aboriginal families be explored. It is considered that any pilot program, would not exclusively serve Aboriginal families, it may however, adhere to a presumption of Aboriginality.

A therapeutic court list (pilot) would allow the magistrate, the DoC lawyer, caseworker and other relevant support organisations to support families achieve the best interests of the child, including where appropriate the re-unification of children with their parent(s). As noted by the statutory review, a therapeutic court list could be piloted without any change to the legislation.

Additionally, the statutory review recommends (recommendation 68) that an Aboriginal Liaison officer (ALO) be situated at the Children's Court. This ALO would assist Aboriginal families engaged in protection and care proceedings to complete forms, provide information about the court process and availability of support services and encourage re-unification.

It is understood that an ALO specifically for protection and care matters has been appointed and commenced in October 2019. While the ALO is an employee of the DoC, it is envisaged that the ALO would play a role in the therapeutic court list (pilot). It is anticipated that this position would provide support in a similar manner to the support currently provided to the Children's Court, Drug Court. In addition to the ALO, the support of an Aboriginal agency such as Wungening Aboriginal Corporation<sup>12</sup> would be seen as critical to Aboriginal families engaged in protection and care proceedings.

An essential element of any therapeutic court is the case management process and the development of a coordinated case plan in which the scheduling and timing of support services are both realistic and achievable. This can only be achieved with the cooperation and involvement of all stakeholders, including the engagement of the child, parent(s) and family.

In addition, the therapeutic court requires access to high quality substance use and co-occurring mental health options, which is extremely important together with access to a range of quality community support services. This improves the opportunity to develop case plans that address the individual needs of participants.

The ultimate goal of a therapeutic court (pilot) for protection and care matters in the Children's Court is to improve social outcomes for both children and their families by achieving safe and sustainable family reunification of parents and their children.

This will be achieved by addressing the comprehensive and sometimes complex needs of children, parent(s) and families through the judicial oversight of a holistic response to the individual needs of participants. This may involve inbuilt capacity for referral to specialist alcohol and other drug services, parenting programs, mental health support or any other identified community support service.

**Questions:**

- Q 17.** *As a stakeholder, why would you support a therapeutic approach to protection and care matters?*
- Q 18.** *Are there specific elements you would like to see incorporated in a therapeutic approach to protection and care matters at the Children's Court?*
- Q 19.** *What would you consider to be the outcomes of a successful therapeutic approach to protection and care matters?*
- Q 20.** *Would you have any suggestions for "naming" a therapeutic court for protection and care matters at the Children's Court?*

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<sup>12</sup> Further information about the Wungening Aboriginal Corporation can be found at <http://www.wungening.com.au/about-us/>.

## **6. SUMMARY OF QUESTIONS**

### **6.1 Increasing workload and complexity of protection and care matters**

- Q 1.** *Given that the data is showing that the DoC is supportive of a large percentage of families achieving re-unification, would you consider the introduction of a therapeutic court list would provide an alternative to the current adversarial process and therefore deliver better outcomes for children and their families?*
- Q 2.** *If a therapeutic court list was to be introduced, which families or types of applications would you give priority and consider to have a greater chance of achieving re-unification?*

### **6.2 Aboriginal and Torres Strait Islander over-representation**

- Q 3.** *Given the strong family structures within Aboriginal communities, and the dynamic nature of sometimes diverse and blended Aboriginal families, what might be some of the cultural sensitivities that we need to consider, when dealing with Aboriginal children?*
- Q 4.** *How can the existing court environment be changed to make it more culturally appropriate to Aboriginal children and families, where parents/parties feel empowered to speak in protection and care proceedings?*
- Q 5.** *What are some of the physical barriers existing in the court that can be altered to make a therapeutic court more culturally safe for Aboriginal children and their families?*
- Q 6.** *If we were looking to make the therapeutic court more culturally safe, are there any suggestions on who else could be part of the court?*
- Q 7.** *What community support services or programs would you consider needs to be made available to the therapeutic court to give Aboriginal families the best chance of successful reunification?*

### **6.3 Legal representation and advocacy (access to justice)**

- Q 8.** *Do you see a role for a Family Engagement Worker in protection and care?*
- Q 9.** *How would you envisage the role of a Family Engagement Worker, in protection and care proceedings, working?*
- Q 10.** *How would you see the role of a Family Engagement Worker person assisting a self-represented party?*

#### **6.4 Regional context and disadvantage**

- Q 11.** *How do you see the inconsistency of court practices and procedures between regional and metropolitan courts impacting on the outcomes for protection and care matters?*
- Q 12.** *Is there a case for **all** protection and care matters to be handled by magistrates of the Perth Children's Court?*
- Q 13.** *Acknowledging that within WA, there are various localised Aboriginal language groups which are collectively known as nations, what might be some of the issues arising when dealing with Aboriginal children originating from different geographical locations (rural and remote), if we were to pilot a Perth based therapeutic court?*
- Q 14.** *How can we overcome the challenge of delivering support services and programs to assist children and their families in regional and remote locations?*

#### **6.5 Community support and availability of services**

- Q 15.** *What support services and programs do you consider should be prioritised for children and their families involved in the protection and care process?*
- Q 16.** *In what ways can a therapeutic court list assist children and their families, to access the support services and programs they need?*

#### **6.6 A child focused, problem solving approach to protection and care - proposed process**

- Q 17.** *As a stakeholder, why would you support a therapeutic approach to protection and care matters?*
- Q 18.** *Are there specific elements you would like to see incorporated in a therapeutic approach to protection and care matters at the Children's Court?*
- Q 19.** *What would you consider to be the outcomes of a successful therapeutic approach to protection and care matters?*
- Q 20.** *Would you have any suggestions for "naming" a therapeutic court for protection and care matters at the Children's Court?*

**Responses to the questions raised and feedback on any other relevant considerations would be welcomed.**

**Appendix 1.**

Jurisdiction	Guiding legislation	Court jurisdiction	Child protection agency	Best interest Principle	Principles relating to ATI people	Interim orders	Final orders	Legal representation for the child
Western Australia	Children and Community Services Act 2004	Children's Court	Department of Communities (DoC)- Chief Executive Officer	s.7	s.12	<ul style="list-style-type: none"> <li>Contact orders</li> <li>Placement of the child</li> <li>DNA testing</li> <li>Secure care orders</li> <li>Counselling orders</li> <li>Order to join an individual as a party</li> <li>Any other matter under s.133(2)(g)</li> </ul>	<ul style="list-style-type: none"> <li>Protection order (supervision)</li> <li>Protection order (time limited)</li> <li>Protection order (until 18)</li> <li>Protection order (special guardianship)</li> </ul>	A separate representative can be appointed by the Magistrate, but is not mandatory. Funded by legal aid. Either best interest or on instructions
Australian Capital Territory	Children and Young People Act 2008	Children's Court	Children and Youth Protection Services (CYPS)- Director General	s.8	s.10	<ul style="list-style-type: none"> <li>Contact orders</li> <li>Drug use provisions</li> <li>Residence provisions</li> </ul>	<ul style="list-style-type: none"> <li>Short term shared parental responsibility</li> <li>Long term order</li> </ul>	Appointed for every child. Funded by legal aid. Children over 15 years old have to consent to the order.
New South Wales	Children and Young Persons (Care and Protection) Act 1998	Children's Court	Family and Community Services- Director General	s.9	s.13	<ul style="list-style-type: none"> <li>Assessment order</li> <li>Undertaking order</li> <li>Supervision order</li> </ul>	<ul style="list-style-type: none"> <li>Order allocating parental responsibility</li> <li>Guardianship order</li> </ul>	The Children's Court may appoint a Guardian ad litem (GAL) for a child or young person where there are special circumstances under section 99(1) of the Act
Northern Territory	Care and Protection of Children Act 2007	Family Matters Court (Family Court)	Territory Families – Chief Executive Officer	S.10	s.12	<ul style="list-style-type: none"> <li>Supervision direction</li> </ul>	<ul style="list-style-type: none"> <li>Daily care and control direction</li> <li>Short term parental responsibility</li> <li>Long term parental responsibility</li> </ul>	Court can order a legal representative for a child
Queensland	Child Protection Act 1999	Children's Court	Department of Child Safety, Youth and Women (Child Safety)	s.5A	s.5C	<ul style="list-style-type: none"> <li>Temporary assessment order</li> <li>Temporary custody order</li> <li>Court assessment order</li> <li>Directive order</li> <li>Protective supervision order</li> <li>Transition order</li> </ul>	<ul style="list-style-type: none"> <li>Short term custody orders</li> <li>Short term guardianship order</li> <li>Long term guardianship order to the Chief Executive</li> <li>Long term guardianship order to a suitable person</li> <li>Permanent care order</li> </ul>	The Court can appoint a separate representative for the child, but it is not mandatory
South Australia	Children and Young People (Safety) Act 2017	Youth Court of South Australia	Department of Child protection- Minister	s.7 ('Safety of children and young people paramount').	s.12	<ul style="list-style-type: none"> <li>Assessment order</li> </ul>	<ul style="list-style-type: none"> <li>Undertaking</li> <li>Direction to refrain from coming within a specified distance of a child's residence</li> <li>Contact order</li> <li>Supervision order</li> <li>Custody order</li> <li>Guardianship- to the minister 12 months</li> <li>Guardianship to the minister- until 18</li> </ul>	Appointment of a separate representative is mandatory unless the child makes an independent and informed decision not to be represented
Tasmania	Children, Young Person's and their Families Act 1997	Children's Court	Department of Communities-Child Safety Service	s.8(2a)	s.10G	<ul style="list-style-type: none"> <li>Order requiring child or guardian to do, or refrain from doing something</li> </ul>	<ul style="list-style-type: none"> <li>Custody orders</li> </ul>	The court can appoint a separate representative for the child, but it is not mandatory
Victoria	Children Youth and Families Act 2005 Child Wellbeing and Safety 2005	Children's Court	Department of Health and Human Services	s.10	s.13	<ul style="list-style-type: none"> <li>Undertaking</li> </ul>	<ul style="list-style-type: none"> <li>Family Preservation order</li> <li>Family reunification order</li> <li>A care by Secretary order</li> <li>Long-term care order</li> </ul>	All children aged 10 and above who are the subject of child protection proceedings are required to be legally represented on a direct instructions basis. Those aged under 10 may be represented on 'best interest'.
New Zealand	Children, Young Persons and their Families Act 1989	Family Court	Ministry for children- Oranga Tamariki – Director	S.9(2)	N/A	<ul style="list-style-type: none"> <li>Order for counselling for one or both of the parents</li> <li>Support order</li> </ul>	<ul style="list-style-type: none"> <li>Extended Care order</li> <li>Custody order</li> <li>Guardianship order</li> <li>Permanent care order</li> </ul>	All children must be legally represented by a legal representative appointed by the Court. Court may also appoint a lay advocate for the child.
Northwest Territories	Child and Family Services Act	Territorial Court	Department of Health and Social Services	S.2(a)	Various- refer to sections relating to Aboriginal Organisations	<ul style="list-style-type: none"> <li>A supervision order</li> <li>Temporary custody</li> </ul>	<ul style="list-style-type: none"> <li>Permanent Custody orders</li> </ul>	A child representative can be appointed on the request of the Child Protection Worker.
British Columbia	Child, Family and Community Service Act (1996)	Family Division (Family Matters)- Provincial Court	Ministry of Children and Family Development	S.4(1)	Various- most sections of the act have sub-sections relating to First Nations Children or young persons.	<ul style="list-style-type: none"> <li>Temporary supervision order (placed with parents)</li> <li>Temporary supervision order (placed with relatives)</li> <li>Temporary custody order</li> </ul>	<ul style="list-style-type: none"> <li>Out of care order in which a family member or friend provides for the long term care of a child.</li> <li>A continuing custody order- child placed in foster care permanently.</li> </ul>	N/A

## Appendix 2.

Location	Circuit locations	General list sitting times	First court appearance date	Warrant applications	Pre-hearing conferences (PHC's)	Trials	Orders
Perth Children's Court	<ul style="list-style-type: none"> <li>N/A</li> </ul>	General list sits every week day, starting at 9am	The DoC lawyer indicates the date they would like the matter first heard (no more than three working days from lodgement date)	Accepts warrant applications	Hears PHC's	Trials heard by PCC magistrate	Order completed by the JSO. Order checked and distributed by the judicial secretary
Kimberly-South Hedland	<ul style="list-style-type: none"> <li>Marble bar</li> <li>Newman</li> <li>Jigalong</li> <li>Nullagine</li> <li>Yandeyarra</li> </ul>	Combined list sits every third Friday, starting at 9am.	JSO assigns the first Court appearance date when the DoC submits their initial application	Accepts warrant applications	All PHC's heard by PCC magistrates	Trials heard by PCC magistrate	JSO completes and distributes order
Kimberly-Kununurra	<ul style="list-style-type: none"> <li>Halls Creek</li> <li>Wyndham</li> <li>Balgo</li> <li>Warmun</li> <li>Kalumburu</li> </ul>	Combined list sits on an ad-hoc basis on Wednesdays, starting at 9am	JSO assigns the first Court appearance date when the DoC submits their initial application	Accepts warrant applications	All PHC's heard by PCC magistrates	Trials heard by PCC magistrate	JSO completes and distributes order
Kimberly-Brome	<ul style="list-style-type: none"> <li>Derby</li> <li>Fitzroy Crossing</li> <li>Looma</li> <li>Dampier Peninsula</li> <li>Bidyadanga</li> </ul>	Combined list sits every Friday in Broome, starting at 9am	JSO assigns the first Court appearance date when the DoC submits their initial application	Accepts warrant applications	All PHC's heard by PCC magistrates	Majority of trials heard by PCC magistrates. Some trials heard by Broome Magistrate <sup>1</sup>	JSO completes and distributes order

<sup>1</sup> While the Broome magistrate currently hears trials, this is subject to change as Magistrates may rotate.

## Appendix 2.

Location	Circuit locations	General list sitting times	First court appearance date	Warrant applications	Pre-hearing conferences (PHC's)	Trials	Orders
Murchison-Carnarvon	<ul style="list-style-type: none"> <li>Burringurrah</li> <li>Cue</li> <li>Exmouth</li> <li>Meekatharra</li> <li>Wiluna</li> <li>Mount Magnet</li> <li>Onslow</li> <li>Pannawonica</li> <li>Shark Bay</li> <li>Tom Price</li> </ul>	Combined list typically sits on a Friday, starting at 9:30am	JSO assigns the first Court appearance date when the DoC submits their initial application	Accepts warrant applications	All PHC's heard by PCC magistrates	Trials heard by PCC magistrate	JSO completes and distributes order
Murchison-Geraldton	<ul style="list-style-type: none"> <li>Dongara</li> <li>Leeman</li> <li>Kalbarri</li> <li>Morawa</li> <li>Mullewa</li> <li>Northampton</li> <li>Three Springs</li> <li>Yalgoo</li> </ul>	Separate general list, typically listed on a Tuesday, starting at 9:30am	JSO assigns the first Court appearance date when the DoC submits their initial application. First protection appearance listed as a mention.	Accepts warrant applications	All PHC's heard by PCC magistrates	Trials heard by PCC magistrate	JSO completes and distributes order
Goldfields-Kalgoorlie	<ul style="list-style-type: none"> <li>Blackstone</li> <li>Esperance</li> <li>Laverton</li> <li>Leonora</li> <li>Norseman</li> <li>Warakurna</li> <li>Warburton</li> </ul>	Combined list typically sits on a Tuesday, starting at 9am	JSO assigns the first Court appearance date when the DoC submits their initial application.	Accepts warrant applications	All PHC's heard by PCC magistrates	Trials heard by PCC magistrate	JSO completes and distributes order
South West-Bunbury	<ul style="list-style-type: none"> <li>Bridgetown</li> <li>Busselton</li> <li>Collie</li> <li>Harvey</li> <li>Manjimup</li> <li>Margaret River</li> </ul>	Combined list typically sits on a Friday, starting at 9:30am	JSO assigns the first Court appearance date when the DoC submits their initial application.	Does not accept warrant applications	All PHC's heard by PCC magistrates	Trials heard by PCC magistrate	JSO completes and distributes order