

**Keynote Presentation - Breakfast with HALO - Hope Beyond Bars**

**Tuesday 3 September 2013**

**Judge D J Reynolds  
President of the Children's Court of Western Australia**

It is very appropriate, given that we are meeting here on the bank of the Swan River, for me to acknowledge the traditional owners of this country and their continuing connection to it. I wish to pay my respect to the Elders, both past and present, of the Wadjuk Clan of the Noongar people and of all the Noongar people, and their cultures.

Uncle Ben, Sister Mingalee and Darryl. Thank you for your kind welcome to country.

Ladies and gentlemen - all.

Thank you to Darryl Kickett and Lee-Anne Smith and everyone at HALO for the honour of being able to speak with you today. And thank you to Timmy Kelly and all of the HALO dancers.

Can I also take this opportunity to publically congratulate Lewie Abdullah for his awesome achievement in being the 2013 WA Young Person of the Year - Lewie, you are a champion and an inspiration to us all. You and all of the young people at HALO make a champion team.

I have had the honour to serve the community as the President of the Children's Court of WA for the last nine and a half years. Not a day and case goes by without me reflecting on what a serious responsibility that is.

In my view the function of the President has two limbs to it:

- One is to make decisions in Court applying the law to the evidence in the case - i.e. determining guilt or innocence and sentencing.

Can I tell you that each case totally consumes me. When I have made the decision in a case, I have to clear my mind and move on to the next case. The only way you can mentally survive that task is to give your absolute best and make decisions based on the evidence and without fear or favour or ill will and according to the law in every case.

- The second function is to engage with Government, Government agencies and not for profit organisations, corporations and the community to try and ensure that adequate and proper Prevention and Diversion Programs exist for vulnerable children in our community.

The Court has a legitimate interest in this area.

The *Young Offenders Act 1994 (WA)*(the Act) requires the Court to apply certain objectives and principles when dealing with children. Those objectives and principles are consistent with those contained in the United Nations Convention on the Rights of the Child.

They include:

- Prevention and Diversion
- Enhancing and reinforcing the roles of adults, families and communities
- Rehabilitation
- Protecting the community
- Punishment, and
- Integrating children back into the community.

Within the framework of the Act:

- Rehabilitation is a purpose of a sentence of detention, and rehabilitation is a purpose of a community order.

Rehabilitation necessarily requires the delivery of programs. The credibility of the Children's Court and of the orders of the Children's Court is therefore very much dependent on the substance and quality of the programs that a child is required to engage in pursuant to its orders.

This second function does not compromise the first.

The community will be best protected by the rehabilitation of child offenders. That said, there will of course, be cases where the seriousness of the facts and circumstances and the protection of the community requires immediate detention. That is a judgment call.

I only have a short time - so can I cut to the chase.

Is the current approach in youth justice providing the best possible protection for the community? In my view the answer to that question is, no. It is important to state at the outset that the vast majority of children - in 2008 it was 96% - have no contact with the Police and the Courts.

It seems to me, that unfortunately, there is arguably a misplaced and mistakenly high level of fear of children in our community. In saying that, I in no way wish to diminish the serious problems that some children cause. But the point that I wish to make, is that within the law and order debate, I think that the focus of the response to

crime is too much on hardening rather than addressing the underlining causes of the criminal behaviour.

Particularly, in cases involving children, the focus should be on solution based responses. Credible research supports that approach.

When I speak with groups of people from the community and give them all of the relevant information in real examples of cases dealt with by the Children's Court and the range of available sentencing options in the Act - other than in the most serious cases - they invariably choose an option that will address the underlying causative factors of the criminal behaviour to try and rehabilitate the child so that he or she will not offend again. They choose a solution based response. These are people eligible to sit on juries and be the reasonable mind of the community.

After the riot at Banksia Hill Detention Centre on 20 January this year, the new Minister for Corrective Services, the Honourable Joe Francis, pointed to the need to consider the underlying causes of criminal behaviour when deciding how to respond to it. He also referred to the high cost of detention of children. Figures vary but I think that it is about \$650 per day. In essence the Minister was identifying the need for a paradigm shift in how young offenders are dealt with.

With respect, I think that what the Minister has said on this topic is both refreshing and right. I hope there is universal support for a new approach.

Having made those general comments, I now wish to talk specifically about aboriginal children.

In 1992, Commissioner Elliot Johnston QC, in the National Report, Royal Commission into Aboriginal Deaths in Custody, said:

The issues facing Aboriginal youth should be seen in the context of issues facing the general Aboriginal community and solutions to Aboriginal youth offending should also be located in this wider context...the problems confronting Aboriginal young people which lead to their involvement in the criminal justice system are central to the future reduction of disproportionate detention rates and deaths in custody and so require urgent and immediate attention. In the coming years increasing numbers of young Aboriginal people will move into the age groups which are most vulnerable to incarceration. If these problems cannot be solved, it is inevitable that the over-representation of Aboriginal people in Australia's prisons and police cells will continue and, in all probability, increase.

In 2008 the Chief Justice of WA, The Hon Wayne Martin AC, noted that, in the 20 years from 1987, in WA, that the rate of imprisonment of adult aboriginal people almost trebled. That meant that aboriginal imprisonment was about 27 times that of non-aboriginal imprisonment. In 2007 about 1 in 15 adult aboriginal men was in prison at any given time.

I can tell you that statistics of detention show that 75% - give or take - of sentenced children are aboriginal children. That has been the case for many years.

These statistics clearly show how right Commissioner Johnston was and that our current approach is failing the community and the children of this State.

In my view this is the greatest challenge that our justice system faces and it is also the greatest social challenge that our community faces.

About 40% of the aboriginal population of our State are less than 15 years of age.

In the Children's Court we see aboriginal children who are themselves parents.

In 2008, about half of more than two billion dollars per annum spent on aboriginal affairs in this State was spent in the Justice, Child Protection and Corrective Services system.

Less than about 1% was spent on community development and economic participation.

Those figures may have changed but it is unlikely that they have significantly changed.

So we need to change our approach - we need to change it quickly - we need to change it because social morality and good conscience requires it, the protection of the community requires it, and the current approach is economically unsustainable.

Can I expand on that point of social morality and good conscience requiring it. In my view every reasonably minded member of our community would think that it is a right, and not a privilege, for every child in our community to be able to hope, and also that every child should be given all reasonable supports to enable them to achieve their full potential and hopes. For all the children in our community to have an equal chance of having those rights, some may need to be given more support than others.

Sadly, aboriginal children who appear before the Children's Court, have lives characterised by layers of crises - they include family breakdown, domestic violence, grief, unstable accommodation, no real sense of identity, poor education, substance abuse and mental health issues. Those last two are symptoms as well as causes.

Their parents often have the same histories and need supports themselves. They have come to carry the cumulative weight of generations of marginalisation in their own land.

What do we need to do differently for aboriginal children? First we need to accept that the solution resides in the aboriginal people themselves. Aboriginal Elders and also aboriginal people including aboriginal children need to be listened to and taken notice of. Elders need to be empowered. To listen to aboriginal children is not a sign of weakness or giving them control. Communicating with them on what their problems are and ways to solve them is obviously logical and good sense.

Government agencies don't listen enough, don't take enough notice and don't empower aboriginal people enough.

Not for profit organisations are much better at that and get much better results because of it.

We need more programs which:

- Help aboriginal children discover a sense of identity and positive self esteem. Only aboriginal people can do that. Programs must be culturally relevant.
- A positive sense of identity is the foundation for everything else.
- Aboriginal children live in two worlds and we must make sure that they know about, are connected to, and can enjoy the best of both.
- There are many wonderful aboriginal people ready, willing and able and also who want to enter this space. They need support. In addition to Elders and senior aboriginal people there are wonderful younger mentors and role models - many are here today.
- Connection to and inclusion in community is also a key. Too much of the current approach actually causes disconnection.

I often hear people talk about young aboriginal people needing to show more responsibility. Indeed I talk about that myself.

It is difficult to make anyone feel responsible if they have no connection - no sense of ownership - and so no sense of obligation.

We need to give aboriginal children safe space, safe places to go, opportunities to get a sense of belonging with peers behaving positively. That is what HALO does so well. We need to help with their education which may mean ways other than mainstream. We need to help skill them to be able to participate economically and feel the sense of dignity which goes with that.

In addition to providing culturally appropriate supports to the children - we need to extend it to families and communities. Healing supports for all three tiers - the community, the family and the child, is essential and should be supported.

Funding should not necessarily be tied to crime reduction. Vulnerable children who do not offend should not miss out on receiving essential supports.

I know there are some wonderful people and wonderful organisations doing some great work in this area and incorporating things that I have mentioned. We need to make it systemic and coordinated - with outsourcing by Government agencies and partnerships between service providers.

Generally, I believe that local problems are best solved by local people designing and delivering local solutions.

I agree generally with the principles of Justice Reinvestment - but I think that the name does not accurately reflect what it does. To do what I have spoken about is broadly consistent with the concept but it does require some new money to kick start it - which in time will significantly reduce the expenditure that would have otherwise been expended under the old approach. And of course and importantly, in addition to that, will come a better reconciled community - an equal community - a safer community - and children who will live longer and more fulfilled lives.

HALO does so much of what I have spoken about and I wish it and all of the people associated with it, longevity and success.